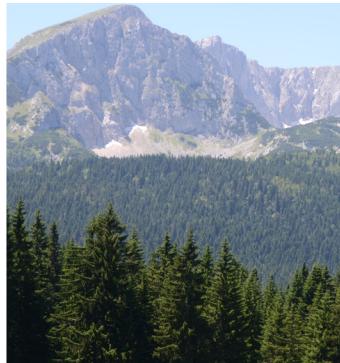


Implementation of Montenegro's Domestic Violence Legislation

July 2017



WOMEN'S RIGHTS CENTER
CENTAR ZA ŽENSKA PRAVA



Implementation of Montenegro's Domestic Violence Legislation

A Human Rights Report

The Advocates for Human Rights
Minneapolis, Minnesota USA

SOS Hotline for Women and Children Victims of Violence Nikšić
Nikšić, Montenegro

Women's Rights Center
Podgorica, Montenegro

July 2017

This report is dedicated to the women of Montenegro.

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LIST OF ACRONYMS

CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
COE	Council of Europe
CSW	Center for Social Welfare / Center for Social Work
ER	Emergency Room
ISTANBUL CONVENTION	Council of Europe Convention on preventing and combating violence against women and domestic violence
LDVP	Law on Domestic Violence Protection
MOH	Ministry of Health
MDT	Multidisciplinary Team
MOI	Ministry of the Interior
MOJ	Ministry of Justice
NGO	Non-governmental organization
OPP	Order for Protection
UN	United Nations
UNDP	United Nations Development Programme

EXECUTIVE SUMMARY

Domestic violence devastates the lives of millions of women around the world with serious consequences for children, families, and communities. Domestic violence violates women's fundamental human rights to life, liberty, and security of person, equal protection before the law, and freedom from torture. According to the World Health Organization, one in three women will experience violence in her lifetime, and 38 percent of femicides are perpetrated by a male intimate partner.¹

This prevalence is also reflected in Montenegro, where more than half of married women have suffered domestic violence.² Women are discouraged from reporting the violence because of various factors, such as financial dependence on the abuser, fears of retribution and stigmatization, lack of confidence in systems actors, the absence of effective mechanisms to prevent repeat violence, and lack of information about their rights. A recent survey of approximately 1,000 Montenegrins identified a widespread belief that victims of domestic violence do not feel that they can safely report domestic violence to government authorities.³ The survey found widespread distrust of institutions responsible for protecting victims of domestic violence.⁴

In 2010, Montenegro adopted the Law on Domestic Violence Protection (LDVP), a critical step toward promoting victim safety and holding domestic violence offenders accountable. By passing this law, the government has signaled its commitment to combat domestic violence. The law provides protection for victims in the form of a three-day immediate eviction order, as well as an emergency and regular order for protection that provides for various remedies. In addition, the government has promulgated an inter-sectoral protocol to address domestic violence, which established procedures and cooperation. The government should be commended and further encouraged to ensure effective implementation of the LDVP.

Adoption of the law represents a first step, however, and more is needed to ensure an effective government response to domestic violence. Other laws, including criminal, misdemeanor, and family legislation, must be harmonized with the LDVP and reformed to effectively address domestic violence. Systems actors, including police, Centers for Social Work (CSWs), judges, prosecutors, and health care workers, must receive training and standardized guidance on how to best implement these laws and respond to violence against women.

The Advocates for Human Rights, SOS Hotline for Women and Children Victims of Violence –Niksic, and Women's Rights Center carried out fact-finding to monitor and document the Montenegrin

¹ World Health Organization, *Violence against Women: Intimate Partner and Sexual Violence against Women*, Nov. 2016, available at <http://www.who.int/mediacentre/factsheets/fs239/en/>.

² CEED and SOS Hotline for Women and Children Victims of Violence, *Study on Family Violence and Violence against Women in Montenegro*, 2012, at 64 (finding that 67% of female survey respondents suffered from violence by a spouse, and 22% suffered violence from a former spouse). *Id.*

³ Ipsos Strategic Marketing, *Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju*, Nov. 2015, at 18 [hereinafter, Ipsos Strategic Marketing]. This research was part of the project implemented by the NGO Women's Rights Center and UNDP, funded by the Norwegian Embassy in Belgrade.

⁴ *Id.* at 19.

government's implementation of domestic violence legislation. The authors carried out a monitoring mission in July 2015, during which they visited 6 cities and conducted 60 interviews with government officials, police, judges, prosecutors, health care workers, CSWs, mediators, and non-governmental organizations (NGOs), and conducted follow-up interviews in 2016 and 2017. The findings and recommendations presented in this report represent the results of these interviews, the authors' observations, and secondary research. While findings reveal some good practices and initiatives, they also reveal a lack of knowledge, harmful attitudes, and gaps in responses by all systems actors.

Despite an established legal framework, police are not effectively implementing the applicable laws and regulations. In some cases, police lack knowledge of the specifics of the laws and their responsibilities. In other cases, they fail to follow the laws and procedures because of their harmful attitudes and misperceptions about domestic violence.

As a result, police practices may re-traumatize victims and deter them from making future reports. Police who process domestic violence reports at times discourage victims from pursuing legal remedies and even encourage reconciliation. Officers may do nothing more than issue a verbal warning to an offender. For example, although police have tremendous power to offer immediate protection to a victim through the three-day eviction order, numerous interviewees reported that police underuse this measure and view it as a last resort. Those efforts where police more frequently initiate LDVP proceedings are concentrated in one locale and not representative of a systematic law enforcement response across the country.

Police lack the initiative to follow cases through within the misdemeanor court system. Police rarely file applications for orders for protection before the misdemeanor courts, and if they do, they do not consistently follow the case through to the end. They often rely entirely on the victim's statement to build a case, or on her statement and a medical report, which may not accurately describe the nature of the victim's injuries or extent of domestic violence. Police reports, which are typically the basis for initiating misdemeanor proceedings, lack necessary details to facilitate effective prosecution in both misdemeanor and criminal settings. Moreover, deficient police investigation and communication can prompt prosecutors to decline criminal charges for severe acts of domestic violence.

CSW workers play a critical role as first responders to domestic violence, but they often subscribe to myths about domestic violence, which affect their attitudes and response. Some CSW workers prioritized concern for the offender's welfare over the victim's safety or exhibited skepticism about victims' veracity. While CSW workers indicated knowledge of their role in developing safety plans, they do not always respect victim autonomy nor do they work together with the victim to complete the plans. CSW reports to courts in penal as well as civil proceedings carry great weight, but the reports do not always include information about domestic violence.

CSWs' responses when children are involved indicate a lack of understanding of the dynamics of domestic violence. Some CSWs prioritize the welfare of the violent offender as the parent, only restricting custody when children are direct victims of violence. Others blame the non-violent parent for fleeing the home or allowing their children to witness the abuse. CSWs infrequently recommend

supervised visitation; when they do, they fail to enforce supervision, enabling offenders to interact with their victims during visitation even while under an order for protection.

CSWs also head up the multidisciplinary teams (MDTs), an intersectoral approach to addressing domestic violence cases. Despite the use of MDTs, CSWs focus on ad hoc responses for individual cases rather than addressing systemic gaps. As a result, problems persist even in locales where MDTs function.

Misdemeanor judges lack familiarity with the LDVP and the important tools it provides. They fail in their duty to provide the victim with the "full and coordinated protection" to which she is entitled under the LDVP. They unnecessarily subject the victim to the traumatizing procedure of confrontation, forcing the victim and offender to face each other while recounting their experiences. Of particular concern, there is no standardized or mandated bench risk assessment, leaving it to individual judges' discretion to assess future harm. They often fail to inform the victims of their right to seek protective measures, and may encourage them to reconcile with their abusers. In misdemeanor courthouse settings, victims often wait or are present in close proximity to their abuser without adequate security. Misdemeanor court judges fail to issue emergency orders for protection, even though such orders can provide important protection during proceedings. Confidants—individuals who, under the LDVP may accompany victims to proceedings—can provide some measure of support, but judges generally prohibit them from speaking in proceedings and confidants often face threats to their own security.

Misdemeanor judges' practices can further endanger victims and discourage future reporting. Misdemeanor judges often wait until the end of proceedings to issue orders for protection, or do not issue them at all, citing a common belief that a guilty verdict must precede an order for protection. This practice leaves victims at risk of further violence throughout what could be several months of proceedings. Misdemeanor judges impose unnecessarily burdensome and time-consuming evidentiary requirements, relying heavily on CSW or medical reports, and they often fail to take into account an offender's history of domestic violence when adjudicating guilt and imposing penalties. Finally, they often impose penalties such as fines and admonitions that can harm the victim and discourage her from reporting further acts of violence. When addiction or psycho-social treatment is ordered, a lack of effective monitoring hinders their enforcement. Moreover, there is little evidence that existing psycho-social treatment programs adhere to best practice standards, protect victims, or foster change in a perpetrator's violent behavior.

Prosecutors have the authority to hold offenders criminally responsible, yet they are not doing so. Prosecutors tend to downplay domestic violence, either relegating it to the misdemeanor system or encouraging reconciliation. Their charging decisions are often made without adequate inquiry into a perpetrator's history, a problem that is further compounded by the lack of communication and record-sharing between the misdemeanor and criminal court systems. When they do pursue criminal prosecution, they rely on the victim and close many of the cases when victims recant or invoke their right not to testify. Although a new law permits the use of a victim's original statement without her cooperation, there is little practice to indicate that prosecutors are using this provision. In the absence

of adequate measures to protect victims during criminal proceedings, prosecutors nevertheless do not consistently inform women of the availability of misdemeanor orders for protection. Moreover, these misdemeanor remedies can be issued only for separate acts of violence not being prosecuted in the criminal case. While some prosecutors have pursued violations of misdemeanor orders for protection, most are not consistently prosecuting these violations, even though they are a crime.

As with other systems actors, criminal court judges at times display harmful attitudes and insensitivity toward victims in the courtroom setting. Some attribute domestic violence to alcohol abuse, a perception that can affect sentencing. Courts do not communicate with victims about the status of their cases and the victims are left to rely on public sources of information. Although expedited summary proceedings are available in specific cases, most domestic violence cases are protracted and last several months, often leading to further harm or dismissal of cases. Sanctions are often lenient and not commensurate with criminal-level violence; instead, suspended sentences or medical treatments are common. Although recent amendments allow criminal judges to issue post-conviction evictions and restraining orders, judges have not received specific training on these measures, nor are they issuing them in cases where they could.

Overall, the health care sector lacks a standardized response to domestic violence. Without a uniform protocol tailored to the health care sector, health care workers do not proactively screen or investigate any suspicions of domestic violence. Instead, they rely on the patient to communicate about domestic violence. But several physicians reported they do not always separate the victim and offender during an examination, reducing the opportunity for a victim to speak openly, disclose any violence, or seek additional help. Despite the Law on Domestic Violence Protection that mandates reporting of violence for professionals who assist victims and the following Protocol's directive to report, most health care providers follow the World Health Organization's recommendation and do not report without victim consent.⁵ Others use ad hoc judgment and report if they think she will sustain further injuries.

Health care workers also play a role in evaluating offenders for purposes of detention and medical treatment in lieu of sanctions. Their reports do not always probe into domestic violence or provide further details of injuries or the abuser's history.

Family law judges carry out their duties with respect to divorce, child custody, and visitation without any formal regulations or bench guides for cases involving domestic violence. Judges do not actively screen for domestic violence, but instead rely wholly on the parties to inform them. They tend to overlook the harms that domestic violence imposes in these cases and instead prioritize reconciliation and make custody and visitation decisions without taking domestic violence into account. In fact, family law judges tend to prioritize visitation as a violent parent's right and may forego any supervision when children are not direct victims of the violence.

⁵ World Health Organization, *Responding to Intimate Partner Violence and Sexual Violence against Women: WHO Clinical and Policy Guidelines* (2013), at 41, available at http://apps.who.int/iris/bitstream/10665/85240/1/9789241548595_eng.pdf?ua=1.

Mediation and reconciliation are often part of the divorce process, but the Law on Mediation, Family Law, and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) forbid such practices in cases of domestic violence. Judges prioritize these harmful processes, yet fail to adequately assess for domestic violence. In the mediation setting, victims are at risk of further coercion as they face their abuser and are disallowed from bringing a confidant to support them. Moreover, court-appointed mediators have an inherent conflict of interest because they are only compensated for "successful" mediations where the couples reconcile.⁶ They are not a neutral party in the proceedings.

NGOs in Montenegro fill the many gaps that are left in order to protect victims. They often assist women in applying for orders for protection and are often successful in their requests. When state institutions do not respond effectively to domestic violence, NGOs intervene to hold them accountable and ensure that institutions fulfill their responsibilities. Although CSW workers can also act as confidants, NGOs are best positioned to perform this role as independent outsiders who best understand victims' needs and barriers. NGOs provide legal representation to victims throughout divorce proceedings and help them navigate a system that too often disregards the effects of domestic violence. Although victims may qualify for legal aid, the quality of these private attorneys varies and can place victims at greater risk or disadvantage.

In conclusion, although the government of Montenegro has taken critical steps to combat domestic violence, monitoring revealed that the government must take additional measures to more fully achieve victim safety and to ensure offender accountability. These measures are addressed in the Recommendations section on page 120. The authors commend the state, the many systems actors, and especially NGOs working together to protect victims and hold offenders accountable. We urge the government of Montenegro to execute the recommendations presented by this report and to continue this vital work.

⁶ Interview with Center for Mediation, Podgorica, July 10, 2015.

INTRODUCTION

On June 4, 2006, Montenegro declared independence, and on the following day, President Filip Vujanovic applied for membership in the United Nations (UN) with a formal declaration of acceptance of the obligations of the UN Charter.⁷ On June 28, 2006, the UN admitted Montenegro as the organization's 192nd Member State.⁸ By accepting its obligations under the UN Charter, Montenegro recognized its responsibility to protect the human rights of the people in Montenegro.

Montenegro moved promptly to accept human rights obligations set forth in several human rights treaties. On October 23, 2006, Montenegro formally confirmed its ratification of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁹

Montenegro also took prompt action at the regional level to recognize its human rights obligations. Three days after declaring independence, Montenegro applied to accede to the Council of Europe (CoE), and on May 11, 2007, Montenegro became its 47th Member State.¹⁰ Upon its application, Montenegro provided notification to establish its successor status and be legally bound to several CoE human rights treaties.¹¹ On April 22, 2013, Montenegro ratified the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and its obligations entered into force on August 1, 2014.¹²

⁷ Security Council Report, Update Report No. 6: Montenegro's Admission to the UN, June 21, 2006, available at <http://www.securitycouncilreport.org/update-report/lookup-c-gIKWLeMTIsG-b-1807447.php>.

⁸ United Nations, *United Nations Member States*, Press Release, July 3, 2006, available at <http://www.un.org/press/en/2006/org1469.doc.htm>.

⁹ *United Nations Treaty Series: Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations*, Cumulative Index No. 44 (Vols. 2351 – 2400), 2001, at 57 (International Covenant on Economic, Social and Cultural Rights), 58 (International Covenant on Civil and Political Rights), 89 (Convention on the Elimination of All Forms of Discrimination against Women), 132 (Convention against Torture), 153 (Convention on the Rights of the Child).

¹⁰ Council of Europe, *Action of the Council of Europe in Montenegro*, available at <http://www.coe.int/en/web/portal/montenegro>; Council of Europe, Parliamentary Assembly, *Accession of the Republic of Montenegro to the Council of Europe*, Opinion 261 (2007), available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17528&lang=en>.

¹¹ These treaties include the European Convention on Human Rights and Fundamental Freedoms, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Council of Europe Convention on Action against Trafficking in Human Beings. Ministry of Foreign Affairs and European Integration of Montenegro, List of the CoE Conventions Signed and Ratified by Montenegro, <http://www.mvpei.gov.me/en/sections/Multilateral-relations/CoE/List-of-the-CoE-Conventions-Signed-and-Ratified-by/>; Council of Europe, Parliamentary Assembly, Accession of the Republic of Montenegro to the Council of Europe, Opinion 261 (2007), available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17528&lang=en>.

¹² Council of Europe, Chart of signatures and ratifications of Treaty 210, Status as of October 27, 2016, available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

The international human rights standards set forth in these treaties condemn domestic violence and obligate states parties to these instruments to prevent and protect women¹³ from violence and discrimination, to hold perpetrators of violence against women accountable for their actions, and to provide compensation and accessible specialized support services for victims of violence. To carry out those obligations, states parties must adopt and implement domestic laws to punish violence against women and to redress the human rights violations that women face when they are subjected to violence. States parties have a due diligence obligation to effectively implement these international human rights standards.

In 2010, Montenegro took an important step toward upholding its international human rights obligations by adopting the Law on Domestic Violence Protection (LDVP).¹⁴ The LDVP addresses domestic violence between family members, broadly defined to include spouses and former spouses, consensual partners and former consensual partners, people who have a child in common, as well as between individuals, children, and other relatives in the family.¹⁵ The law defines domestic violence as “omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred.”¹⁶

The LDVP recognizes that the duty to provide victims of domestic violence with “full and coordinated protection” extends to many governmental institutions, including the police, misdemeanor courts, prosecutors, Centers for Social Welfare (CSWs), health care institutions, and other institutions that act as care providers.¹⁷ Those institutions must prioritize domestic violence and “ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to victim[s] in regaining security in life.”¹⁸

In November 2011, several institutions, including the Ministry of Justice (MoJ), the Supreme Court, the Supreme State Prosecution, the Ministry of Health (MoH), the Police Directorate, the Misdemeanor Council, and the Ministry of Labor and Social Welfare, signed a “Protocol on Actions, Prevention of and Protection Against Family Violence” (Protocol).¹⁹ The Protocol sets forth “[p]rocedures and institutional cooperation regarding family violence and violence against women,” and aims “to establish and encourage establishment of multidisciplinary cooperation with clearly defined procedures to be followed by each system.”²⁰ The Protocol identifies general actions to be taken by responsible

¹³ Women are the primary victims of domestic violence worldwide. Although men are sometimes victims of domestic violence, and women are sometimes perpetrators, this report for purposes of consistency uses feminine pronouns “she,” “her,” and “hers” to describe victims of domestic violence and masculine pronouns “he,” “him,” and “his” to describe perpetrators of domestic violence.

¹⁴ Law on Domestic Violence Protection, Official Gazette of Montenegro, No. 46/10, August 6, 2010 [hereinafter, LDVP].

¹⁵ *Id.* Arts. 2, 3.

¹⁶ *Id.* Art. 2.

¹⁷ *Id.* Art. 5.

¹⁸ *Id.* Art. 5.

¹⁹ Protocol on Actions, Prevention of and Protection Against Family Violence, Nov. 25, 2011 [hereinafter, Protocol].

²⁰ Protocol, Introduction.

institutions in each sector and further identifies a set of obligations for all authorities covered by the Protocol.²¹ Despite extensive input by the relevant stakeholders into the creation of the Protocol, evidence suggests that many sectors have not implemented its provisions, or have implemented them only in part. Officials acknowledged the need to educate citizens, judges, lawyers and others about women's human rights and domestic violence.²²

The LDVP establishes a framework for victim protection under which a victim of domestic violence may obtain an order for protection (OFP), either from the police or misdemeanor court.²³ A police officer may issue an on-the-spot eviction order, valid for a maximum of three days.²⁴ A victim, victim's representative, CSWs, police officer, or prosecutor may petition a misdemeanor court for any of five OFP remedies, and the misdemeanor judge may issue any of these *ex officio*.²⁵ Remedies include: (1) removal from residence (eviction); (2) restraining order; (3) order prohibiting harassment and stalking; (4) mandatory drug or alcohol addiction treatment; and (5) mandatory psycho-social therapy.²⁶ The misdemeanor court also has the authority to impose fines and brief prison terms for domestic violence.²⁷ If the misdemeanor judge finds that an OFP is "necessary to immediately protect [the] victim" of domestic violence, it may issue such an order before or during the proceedings, and must do so within 48 hours of receiving a petition.²⁸ Orders imposing eviction and mandatory psycho-social treatment may last up to six months, while the other remedies may last up to one year.²⁹ A judge may prolong the duration of an OFP for a maximum of two years in total.³⁰

The MoJ's recent evaluation of the LDVP concludes that the law itself is strong and in line with international standards.³¹ The report observes that problems arise in how the law is applied, including problems with how sectors interpret the law, as well as lack of financial, operational, and human resources, and a lack of awareness and education of people responsible for implementing the law.³² The MoJ identified insufficient coordination among institutions as one of the top shortcomings in the implementation of the LDVP.³³ The authors of this report echo many of these concerns.

²¹ Protocol, Police, All Institutions.

²² Interview with Parliament, Podgorica, July 10, 2015; Interview with Gender Equality Committee, Podgorica, June 30, 2015.

²³ LDVP, Arts. 4(2), 26(2), 28(1).

²⁴ *Id.* Art. 28.

²⁵ *Id.* Art. 27.

²⁶ *Id.* Arts. 20–25.

²⁷ *Id.* Art. 36.

²⁸ *Id.* Art. 29.

²⁹ *Id.* Arts. 21–25.

³⁰ *Id.* Art. 26(3).

³¹ Ministarstvo Pravde, Izvještaj O Sprovođenju Zakona O Zaštiti Od Nasilja U Porodici Za Period 2010–2015, September 2016, Kaključci I Preporuke, Section V, available at <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2> [hereinafter, 2016 Ministarstvo Pravde Izvještaj].

³² *Id.* at 19.

³³ *Id.* at 20.

Initial efforts to implement the LDVP have been hampered by reluctance of police officers and misdemeanor judges to issue eviction orders, as well as by institutional lack of awareness of or lack of capacity to use the LDVP’s tools to protect victims and hold offenders accountable. Misdemeanor judges rarely issue OFPs, and police and prosecutors do not enforce compliance with such orders.

Misdemeanor proceedings are generally swift in cases that entail clear risk and physical violence, and judges often determine whether a defendant has committed an offense under the LDVP within days or weeks. The speed of proceedings also reduces the likelihood that the victim will withdraw her statement or bow to family pressure to reconcile with the perpetrator. But sanctions under the LDVP are often little more than a suspended sentence, demonstrating that the LDVP does little in practice to punish offenders. Further, such light sentences also discourage victims from turning to the legal system when domestic violence resumes.

The Criminal Code of Montenegro authorizes basic court judges to impose criminal penalties for domestic violence, and for violations of an LDVP order for protection.³⁴ Those penalties are either the same or less than the penalties for the same conduct in a non-domestic setting.³⁵ In criminal proceedings, judges and prosecutors impose high evidentiary burdens, and prosecutors are reluctant to pursue criminal charges out of fear that a victim will refuse to testify. Investigations do not consistently reflect efforts to thoroughly document evidence of domestic violence. Health care providers express no familiarity with the Protocol and do not effectively document evidence of domestic violence so that it can be used in criminal proceedings. More domestic violence cases are prosecuted as misdemeanor offenses, where proceedings are swifter but sanctions relatively inconsequential.

Prosecutors and basic court judges do not take adequate measures to ensure victim safety during criminal proceedings. During proceedings, victims often face pressure from the perpetrator and his family to reconcile. Judges may also reinforce this expectation, and a recent study found that nearly two-thirds of surveyed judges prioritize family preservation over the protection of individual rights during family crises.³⁶ There are no legal structures to guard against such influences in the domestic violence context. In 2013, Parliament amended the Criminal Code to add two provisions that allow judges to issue restraining and eviction orders against perpetrators convicted of a domestic violence crime.³⁷ These orders are available only after a person is found guilty of domestic violence, however, and judges lack authority to similarly protect victims during criminal proceedings. In practice, judges do not issue such orders even at the time of conviction.

In divorce and custody proceedings, family law judges, mediators, and CSW workers do not screen for domestic violence. Victims express reluctance to raise the issue for fear of prolonging procedures or being labeled uncooperative. As a result, judges compel victims of domestic violence to participate in mediation and reconciliation with their abusers—a process that is not only unsafe but also disregards

³⁴ Criminal Code of Montenegro, Art. 220 [hereinafter, Criminal Code].

³⁵ Compare, e.g., Art. 220(1) with Art. 152 of the Criminal Code.

³⁶ Ipsos Strategic Marketing, at 25 (finding that 59 percent of the judiciary held this opinion).

³⁷ Criminal Code, Art. 77(a), (b).

the power and control dynamics inherent in domestic violence.³⁸ Montenegro's visitation and custody arrangements expose victims to further danger and allow the abuser to continue exerting control through manipulation of the children.

To monitor the implementation of these laws and policies, and to document challenges such as the ones described above, The Advocates for Human Rights, in collaboration with SOS Hotline for Women and Children Victims of Violence-Niksic and the Women's Rights Center, carried out fact-finding in Montenegro in summer 2015 and conducted remote follow-up interviews in 2016 and 2017. The authors conducted 62 interviews with 98 people in 6 cities and towns throughout Montenegro. Interviewees included police officers, prosecutors, judges, government ministry officials, Members of Parliament, non-governmental organizations (NGOs), shelters, CSWs, victims, health care professionals, and lawyers. This report presents findings informed by those interviews, as well as secondary research and the authors' analysis and observations. The report provides recommendations based on international human rights standards, with priority on promoting victim safety and offender accountability.

³⁸ Stop Violence against Women, *Forms of Domestic Violence*, The Advocates for Human Rights, available at http://www.stopvaw.org/forms_of_domestic_violence, last updated August 2013.

POLICE

Police play an important role in the justice system's response to domestic violence. As first responders, police protect victims by arresting perpetrators, issuing temporary eviction orders, and seeking protective measures from the misdemeanor court. They can promote accountability for offenders by conducting a thorough investigation, detaining perpetrators, and communicating with prosecutors to ensure appropriate charges. Finally, police are responsible for monitoring compliance with eviction orders, restraining orders, and orders prohibiting harassment and stalking issued under the LDVP.³⁹

Under Montenegrin law, domestic violence may be charged as a crime under the Criminal Code or a misdemeanor under the LDVP.⁴⁰ Article 220 of the Criminal Code imposes up to one year imprisonment for violence that endangers the "physical or mental integrity of" a family member.⁴¹ It imposes steeper maximum penalties if the offender uses a weapon or tool, inflicts "heavy bodily injury," or seriously impairs the victim's health.⁴² The LDVP's misdemeanor definition of domestic violence is broader, prohibiting the use of physical force, as well as threats, verbal assaults, stalking, and destruction of property, but imposes lower penalties of 60 days in jail and fines.⁴³ In addition to these legal distinctions, other characteristics differentiate the two penal systems. In contrast to criminal cases, misdemeanor proceedings are relatively simple, expedient, and can be completed in a few hours.⁴⁴ Because a victim is less likely to retract her statement immediately following the abuse, the offender is more likely to be sanctioned.⁴⁵ While misdemeanor penalties are lighter, fines can be extremely punitive for families with limited economic means.⁴⁶ Criminal cases take longer partly because of legal requirements, such as requiring the presence of the accused in court,⁴⁷ and evidentiary hurdles may make criminal convictions more difficult.

Police serve as a conduit for charging decisions by gathering and transmitting information to the prosecutor, who determines whether to charge the conduct as a crime or misdemeanor.⁴⁸ NGO staff and victims noted cases, however, where women reported domestic violence to the police, yet the prosecutor had no knowledge of their cases.⁴⁹

In LDVP proceedings, police act as the prosecutor, and statistics show these misdemeanor proceedings are far more frequent than criminal proceedings.⁵⁰ According to the Ministry of Justice, in 2012 police

³⁹ LDVP, Art. 33; *see also* LDVP, Arts. 21-23.

⁴⁰ Criminal Code, Art. 220; LDVP, Art. 36.

⁴¹ Criminal Code, Art. 220(1).

⁴² *Id.* Art. 220(1)-(3).

⁴³ LDVP, Art. 36. Fines may be three times the minimum wage. *Id.*

⁴⁴ Interview with Prosecutor, City B, July 2, 2015; Interview with Police, City C, July 6, 2015; Interview with CSW, City D, July 3, 2015.

⁴⁵ Interview with Prosecutors, City A, July 8, 2015.

⁴⁶ Interview with Misdemeanor Court, City C, July 6, 2015.

⁴⁷ Interview with CSW, City D, July 3, 2015; Interview with Basic Court, City B, July 1, 2015.

⁴⁸ Interview with Police 1, City C, July 6, 2015; Interview with Prosecutor, City C, July 6, 2015.

⁴⁹ Interview with Victim, City A, July 8, 2015; Interview with NGO 1, City B, July 2, 2015.

⁵⁰ Interview with Police 1, City B, July 1, 2015; 2016 Ministarstvo Pravde Izvještaj, Section 4.2.

filed 945 misdemeanor charges under the LDVP.⁵¹ The figure increased to 1,034 in 2013 and 1,249 in 2014, but declined slightly to 1,238 in 2015.⁵² According to a report by the Ministry of Human and Minority Rights,⁵³ in 2015, police registered 1,326 violations of Article 36 of the LDVP, 137 committed by repeat offenders, and submitted 1,238 requests to initiate misdemeanor proceedings.⁵⁴ Misdemeanor courts issued final decisions in 1,090 LDVP proceedings in 2015.⁵⁵ In terms of criminal cases, police registered 180 criminal complaints for domestic violence during that period.⁵⁶ In 2015, 117 indictments were issued, and 94 convictions were obtained.⁵⁷

ATTITUDES OF POLICE

The LDVP requires the police, along with other government bodies, “to provide [the] victim with full and coordinated protection” and expedite such procedures.⁵⁸ Interviews revealed that police often harbor misconceptions about women and domestic violence, which can result in ineffective responses. For example, interviews revealed that some police officers view domestic violence as the norm.⁵⁹ Others mistakenly attribute domestic violence to alcoholism⁶⁰ or the victim’s refusal to be physically intimate with the perpetrator.⁶¹

Many interviewees observed police distrust of the victims or insensitivity toward them. An NGO worker explained that the most common question officers ask in trainings is whether domestic violence reports are manipulation by the woman.⁶² During an interview, one officer reported “an increasing number of these false reports.”⁶³ He explained, “[i]f she says that he hit her, and there’s no bruise, it’s easier to conclude that she lied. If she reports psychological violence, it’s hard to determine that she lied.”⁶⁴

Some interviewees described how police officers trivialize domestic violence. While discussing a specific case at a training, an inspector asked, “What are you talking about? What domestic violence? They got divorced 10 years ago.”⁶⁵ Such attitudes also affect police expectations of the victim. One medical professional reported that for many years, police ignored his reports of domestic violence and refused to go to the scene.⁶⁶ According to this doctor, police dismissed it as a slap to the face and “not a big

⁵¹ 2016 Ministarstvo Pravde Izvještaj, Section 4.2.

⁵² *Id.*

⁵³ *Id.* at 2. This report is produced under Article 34 of the LDVP.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 3.

⁵⁸ LDVP, Art. 5(1), 6.

⁵⁹ Interview with NGO 2, City B, July 2, 2015; Interview with Police, City A, July 8, 2015.

⁶⁰ Interview with Police 1, City C, July 6, 2015; Interview with Police 2, City C, July 6, 2015; Interview with Police, City F, July 7, 2015.

⁶¹ Interview with NGO, City C, July 6, 2015; Interview with NGO 2, City D, July 4, 2015.

⁶² Interview with NGO 1, City B, July 2, 2015.

⁶³ Interview with Police 1, City C, July 6, 2015.

⁶⁴ *Id.*

⁶⁵ Interview with NGO 1, City B, July 2, 2015.

⁶⁶ Interview with Neuropsychiatrist, City E, July 9, 2015.

deal.”⁶⁷ One victim reported how her husband attacked her in the street, in front of her daughter, just 300 meters from the police station.⁶⁸ The police refused to go to her and insisted she come to the station to make a report.⁶⁹

Officers sometimes show greater sympathy for the perpetrator, for instance, worrying about where he will go if they evict him.⁷⁰ An interviewee explained that police “usually look for justification for the abuser.”⁷¹ Another interviewee reported that police have even socialized with offenders after processing their case.⁷²

TRAINING FOR POLICE

Montenegro has been slow to train police officers to implement the LDVP effectively. The Police Directorate is the primary authority responsible for training law enforcement, and in 2012, trained ten specialists.⁷³ More widespread training took place years later.

The Police Directorate relies mainly on citizen complaints to assess whether police officers are properly handling domestic violence cases.⁷⁴ The LDVP establishes misdemeanor penalties for any person who fails to report a violation of an OFP they discover.⁷⁵ NGOs have considered bringing criminal charges against officials who fail to uphold their duties.⁷⁶ In practice, however, there is no readily accessible mechanism to hold officials accountable for failure to implement the LDVP or the Protocol.⁷⁷ The only options available to victims are to file a report to the official’s supervisor, providing he or she is willing to receive it, or file a complaint to the departments of internal control or civic control of the police, which takes time.⁷⁸

Many interviewees identify the police as needing more training on domestic violence.⁷⁹ For example, interviews with police officers show a lack of understanding on how to question victims when responding at the scene.⁸⁰ One officer added there is a need for “more precise procedures.”⁸¹ Trainings

⁶⁷ *Id.*

⁶⁸ Interview with Victim, City A, July 8, 2015.

⁶⁹ *Id.*

⁷⁰ Interview with Misdemeanor Court, City F, July 7, 2015; Interview with NGO 1, City B, July 2, 2015.

⁷¹ Interview with Neuropsychiatrist, City E, July 9, 2015.

⁷² Interview with NGO, City C, July 6, 2015.

⁷³ Interview with Police 2, City B, July 1, 2015.

⁷⁴ *Id.*

⁷⁵ LDVP, Art. 39(2). See also LDVP, Art. 32(2) (establishing the reporting requirement).

⁷⁶ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁷⁷ *Id.*; Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁷⁸ Personal Communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

⁷⁹ Interview with Basic Court, City B, July 1, 2015; Interview with NGO, City C, July 6, 2015; Interview with NGO, City F, July 7, 2015; Interview with Ministry of Justice, Podgorica, June 29, 2015; Interview with NGO 2, City D, July 4, 2015; Interview with NGO 1, City B, July 2, 2015; Interview with Police, City A, July 8, 2015.

⁸⁰ Interview with Police 1, City C, July 6, 2015.

⁸¹ *Id.*

appear to be limited to desk officers who specialize in domestic violence,⁸² leaving patrol officers to respond at the scene without adequate training.⁸³

Some officers continue to insist they do not need training.⁸⁴ But recent focus groups indicated that police often do not consider violence against women to be a human rights violation and lack knowledge of the measures for protection.⁸⁵ Another NGO worker concurred, observing that even “after education and training, [police] do not understand or do not want to understand violence against women.”⁸⁶ One NGO staff member observed, “There are a lot of serious questions that they do not understand. . . . We are . . . very disappointed about how they’re talking about the issues after five years.”⁸⁷

POLICE PROCEDURES IN RESPONDING TO DOMESTIC VIOLENCE AND PROTECTING VICTIMS

A colleague from the SOS Hotline asked us to talk with a female client. The woman had obtained heavy bodily injuries, had an operation for a broken nose The case has not been prosecuted yet. Five days after the day of the violence, the case has still not yet been brought before the prosecution. . . . For all that time . . . there have not been any temporary measures. And there has been no police restraining order. There is no order for protection in any form. . . .⁸⁸

-NGO worker describing a police response

Police are responsible for receiving reports of domestic violence and responding to the scene.⁸⁹ The LDVP requires police to “immediately take action and measures to protect the victim” upon learning of domestic violence.⁹⁰ In other words, the officer’s primary objective is to stop the violence and ensure the victim’s safety.⁹¹ Police do not always do so, nor do they consistently refer victims to services. In one town, police responded by removing the victim and her belongings from the home.⁹² Since the town lacked a shelter, the police simply dropped the victim off at the emergency center and left her possessions outside.⁹³

⁸² Interview with Prosecutor, City E, July 9, 2015.

⁸³ Interview with Basic Court, City B, July 1, 2015.

⁸⁴ Interview with NGO, City F, July 7, 2015.

⁸⁵ Interview with NGO 1, City B, July 2, 2015.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ LDVP, Arts. 9(1), 10(1).

⁹⁰ *Id.* Art. 10(1).

⁹¹ Protocol, Police, ¶2; Interview with Social Worker, City C, July 6, 2015; Interview with Police 1, City C, July 6, 2015; Interview with Police, City F, July 7, 2015; Interview with Police, City D, July 4, 2015; Interview with Police, City B, July 1, 2015. In responding at the scene, officers must use their authority “commensurate to the need to protect the victim of violence . . . and to prevent the abuser from further violent behavior in the family.” Protocol, Police, ¶2.

⁹² Interview with Health Care Providers, City A, July 8, 2015.

⁹³ *Id.*

Interviews revealed police do not consistently follow the Protocol's direction to secure the scene, as well as locate and maintain supervision over the abuser.⁹⁴ During interviews, only one officer referenced the Protocol when responding to questions about their procedures for domestic violence.⁹⁵ And even that officer conceded that "sometimes we cannot respect everything in the Protocol."⁹⁶ One NGO worker described their beneficiary who "completely lost confidence in the government institutions."⁹⁷ She called the NGO, rather than the police, when her spouse repeatedly violated an OFP to initiate contact with the police for her.⁹⁸ Another interviewee expressed her disillusionment with protocols and directives, noting they are never implemented.⁹⁹

Police rarely issue three-day eviction orders

Article 28 of the LDVP authorizes police to issue an eviction order for a maximum of three days "to eliminate risk to victim's physical integrity."¹⁰⁰ Interviewees widely recognized the importance of this order, with one police officer whose jurisdiction issues the most eviction orders praising it as "the best measure in the law to protect the victim."¹⁰¹

Yet, interviews revealed that police are not issuing these orders as often as they should.¹⁰² According to police data submitted to the Ministry of Human and Minority Rights, police officers issued 24 eviction orders in 2015.¹⁰³ According to the MoJ, police are issuing fewer three-day LDVP eviction orders than previously.¹⁰⁴ Eviction orders peaked at 40 in 2013, before declining to 22 in 2014 and 24 in 2015.¹⁰⁵

In addition, use of the eviction remedy varies widely across the country. For example, police in Nikšić issued 74.4 percent of 3-day eviction orders, while police in Podgorica did not issue any.¹⁰⁶ Of the 22 eviction orders issued in 2014, 18 of those orders were issued in Nikšić, and two each were issued in two other jurisdictions.¹⁰⁷

⁹⁴ Protocol, Police, ¶¶ 2(a), (c), (d); Interview with Police, July 4, 2015; See Interview with Victim, City A, July 8, 2015.

⁹⁵ See, e.g., Interview with Police 1, City C, July 6, 2015; Interview with Police 2, City C, July 6, 2015; Interview with Police, City F, July 7, 2015; Interview with Police, City B, July 1, 2015; Interview with Police, City A, July 8, 2015.

⁹⁶ Interview with Police, City D, July 4, 2015.

⁹⁷ Interview with NGO, City C, July 6, 2015.

⁹⁸ *Id.*

⁹⁹ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹⁰⁰ LDVP, Art. 28(1). The LDVP directs the Ministry of Internal Affairs to create a detailed description of the content and layout of the written order. *Id.* Art. 28(6). The order must state the "boundaries of the area within which [the] abuser must not move, reside or come close to the victim, and the address of residence where [the] abuser is staying while the order of removal or prohibition of return is in effect." *Id.* Art. 28(3). The order must also state the date and hour of eviction. *Id.*

¹⁰¹ Interview with Police, City D, July 4, 2015.

¹⁰² Interview with CSW, City B, June 29, 2015; Interview with NGO, City B, July 1, 2015; Interview with NGO, City B, June 30, 2015; Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹⁰³ 2016 Ministarstvo Pravde Izvještaj, Section 4.

¹⁰⁴ *Id.* Section III.

¹⁰⁵ *Id.* Section III.

¹⁰⁶ *Id.* Section III.

¹⁰⁷ Interview with Ministry of Human and Minority Rights, Podgorica, July 2, 2015; Interview with Police Directorate, City B, July 1, 2015.

Interviewees identified many reasons police do not issue eviction orders. First, many police officers and government actors—including in the three jurisdictions where police issued such orders in 2014—are unfamiliar with this remedy.¹⁰⁸ Police officers have not received adequate training on using Article 28 and admitted not knowing how to issue the orders.¹⁰⁹ A Police Directorate official referenced the need for more education and increasing police efficiency in implementation.¹¹⁰ Second, officers are at times reluctant to employ these orders.¹¹¹ Some police oppose eviction out of concern for the abuser, who may lack alternative housing.¹¹² Many interviewees explained their reluctance to issue three-day eviction orders because “we have no established shelters or accommodations for such offenders.”¹¹³ Police often view eviction as a last resort for very serious cases or when they cannot arrest the offender.¹¹⁴ Stakeholders described cultural and institutional resistance, with many expressing the view that eviction is the most drastic consequence for an offender.¹¹⁵ Police also expressed fear that eviction would further endanger the victim.¹¹⁶ They and other institutions asserted that a victim does not want to remain in the family home because it is often shared with the offender’s parents.¹¹⁷

Finally, many officers questioned the legality of their authority to issue three-day eviction orders.¹¹⁸ They instead defer to misdemeanor court judges to issue OFPs through formal proceedings.¹¹⁹ According to one NGO, police officers dislike issuing eviction orders “because people sue us all the time. Their lawyers come here and complain about our work.”¹²⁰ These and related concerns about the offender’s property rights¹²¹ are not novel, but the LDVP, like the laws of many countries, recognize that a victim’s right to be free from violence is more important than an abuser’s right to reside at the property he may own.

¹⁰⁸ Interview with CSW, City C, July 6, 2015; Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City E, July 9, 2015; Interview with Police, City A, July 8, 2015; Interview with Police 2, City C, July 6, 2015; Interview with NGO, City B, July 1, 2015.

¹⁰⁹ Interview with NGO, City B, July 1, 2015.

¹¹⁰ Interview with Police 2, City B, July 1, 2015.

¹¹¹ Interview with NGO, City B, July 1, 2015; Interview with NGO, City D, June 28, 2015.

¹¹² Interview with Police, City F, July 7, 2015; Interview with Police 1, City C, July 6, 2015; Interview with Police, City D, July 4, 2015.

¹¹³ Interview with NGO 1, City B, July 2, 2015; *see also* Interview with Misdemeanor Court, City F, July 7, 2015.

¹¹⁴ Interview with NGO, City C, July 6, 2015; Interview with NGO City B, July 2, 2015; Interview with Police, City E, July 9, 2015; Interview with Misdemeanor Court, City A, July 8, 2015.

¹¹⁵ Interview with Police, City E, July 9, 2015.

¹¹⁶ Interview with Police 1, City B, July 1, 2015; Interview with NGO, City B, July 1, 2015.

¹¹⁷ Interview with CSW, City B, June 29, 2015; Interview with Police, City A, July 8, 2015.

¹¹⁸ Interview with NGO 1, City B, July 2, 2015; Interview with NGO, City B, July 1, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Police, City D, July 4, 2015; Interview with NGO, City B, July 1, 2015.

¹¹⁹ Interview with NGO, City B, July 1, 2015; Interview with NGO City B, June 30, 2015; Interview with Police 1, City B, July 1, 2015.

¹²⁰ Interview with NGO, City B, July 1, 2015; Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹²¹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

Police rarely initiate applications for orders for protection

The LDVP authorizes police officers to petition the misdemeanor court for an OFP, and misdemeanor courts may issue such orders before, during, or at the conclusion of proceedings.¹²² In many jurisdictions, victims rarely initiate requests for protective measures, and police officers file most applications.¹²³ In other jurisdictions, police rarely, if ever, request OFPs at the conclusion of misdemeanor proceedings.¹²⁴ As with three-day eviction orders, some police are simply not familiar with this remedy.¹²⁵ An NGO worker explained, “We have towns where they do not implement orders for protection or don’t even know about orders for protection at all. . . .”¹²⁶ She concluded, “Police and misdemeanor courts are falling down.”¹²⁷ Another NGO worker reported that police seek OFPs at the conclusion of proceedings only “in severe and very serious cases with no other solution but to impose such measures.”¹²⁸

Similarly, requests for emergency orders for protection, or orders issued before and during misdemeanor proceedings, are rare.¹²⁹ Emergency OFPs that are available at all stages of proceedings are important to promote victim safety and reduce the risk of offender pressure on the victim not to testify. Where misdemeanor courts receive applications for emergency OFPs, it is largely victims—not police—who request them¹³⁰ with the help of NGOs.¹³¹ One officer explained emergency OFPs are unnecessary because they bring the offender immediately to the misdemeanor court which can impose a regular, long-term OFP.¹³² This remedy is only available, however, if police have charged the offender with a misdemeanor and after the misdemeanor court has concluded its proceedings.¹³³ This procedure can take substantial time, as police have 60 days to file a misdemeanor charge, and a case can last up to six months.¹³⁴ And in cases where police have not charged the offender, they often still do not seek emergency OFPs for the victim.¹³⁵

When police do file these applications, they often do not follow the case through to the hearing.¹³⁶ There is no formalized procedure in place to ensure the original officer attends the hearing.¹³⁷ “They

¹²² LDVP, Art. 27(1).

¹²³ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with CSW, City A, July 8, 2015.

¹²⁴ Interview with Misdemeanor Court, City C, July 6, 2015.

¹²⁵ Interview with NGO, City B, July 1, 2015; Interview with NGO, City D, June 28, 2015.

¹²⁶ Interview with NGO, City D, June 28, 2015.

¹²⁷ *Id.*

¹²⁸ Interview with NGO, City C, July 6, 2015.

¹²⁹ LDVP, Art. 29; Interview with NGO, City B, July 1, 2015; Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹³⁰ Interview with Misdemeanor Court, City D, July 3, 2015.

¹³¹ Interview with NGO, City D, June 28, 2015; Interview with Police, City D, July 4, 2015.

¹³² Interview with Police, City E, July 9, 2015.

¹³³ Interview with Police 1, City B, July 1, 2015.

¹³⁴ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹³⁵ Interview with NGO, City B, July 1, 2015.

¹³⁶ *Id.*

¹³⁷ *Id.*

don't even appear in the courtroom," one NGO employee explained.¹³⁸ A breakdown in police communication when officers change with each shift further hinders the victim's chances of securing protection. When the officer who filed the application cannot appear in court, there is no process to ensure that case details are communicated to the officer who appears in the first officer's stead.¹³⁹ One confidant summarized, "Every time it's a different officer. It depends on who is on duty."¹⁴⁰

Interviews indicated some good police practices to inform victims of their rights. A police officer stated that, "[m]ost often, officers inform the victim about the possibilities and the rights she has as a victim of domestic violence, especially when it comes to her right to request an OFP."¹⁴¹ This officer reported that his department refers victims to an NGO for assistance in seeking OFPs.¹⁴²

But police in most jurisdictions do not consistently inform victims of their right to seek an OFP or make referrals.¹⁴³ One victim reported domestic violence on five separate occasions, coming to the police station each time to give a statement. On none of those five occasions did a police officer inform her of her right to apply for an emergency OFP.¹⁴⁴ Instead, police officers typically make their own assessment of whether such protection is necessary and the circumstances warrant providing information to the victim.¹⁴⁵ Also, police officers often fail to notify victims of their right to legal aid even though they can provide them with the application form.¹⁴⁶ In misdemeanor proceedings, where the pace means that swift access to legal aid is crucial, victims rarely have legal representation.¹⁴⁷

Some police officers do not seek victim consent before applying for OFPs.¹⁴⁸ According to an inspector in a large city, this practice is very common.¹⁴⁹ Such practices endanger victims because they fail to

¹³⁸ Interview with NGO, City B, July 1, 2015.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Interview with Police, City D, July 4, 2015.

¹⁴² *Id.*

¹⁴³ Interview with NGO 1, City B, July 2, 2015.

¹⁴⁴ Interview with NGO, City B, July 1, 2015.

¹⁴⁵ Interview with NGO 1, City B, July 2, 2015.

¹⁴⁶ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹⁴⁷ *Id.*

¹⁴⁸ Interview with Police, City B, July 1, 2015; Interview with Police 2, City C, July 6, 2015; Interview with Police, City D, July 4, 2015; Interview with NGO 1, City D, July 4, 2015. See UN Division for the Advancement of Women, Handbook for Legislation on Violence against Women, 2010, §3.10.6 (stating that laws should allow other actors to have standing in applications for protection orders, while ensuring that the agency of the victim is respected); *Report of the Special Rapporteur on Violence against Women, its causes and consequences* (advance edited version), Human Rights Council, 35th sess., Agenda Item 3, June 13, 2017, U.N. Doc. A/HRC/35/30, ¶89, 112(e) (stating that other actors should be allowed to have standing to seek applications for protection orders "while ensuring that the agency [of the complainant/survivor/victim] is respected"); UN Women Virtual Knowledge Centre to End Violence against Women and Girls, Legislation: Domestic Violence, Post-Hearing Protection Order Remedy (stating "If the legislation allows other family members, relevant law enforcement officials, or other professionals, such as social service professionals, to apply on behalf of a competent complainant/survivor , the legislation should require that the complainant/survivor consent"), available at <http://www.endvawnow.org/en/articles/413-post-hearing-protection-order-remedy.html?next=414>.

¹⁴⁹ Interview with Police 1, City B, July 1, 2015.

recognize that the victim is best able to assess when she is ready to separate from her abuser—a time of high lethality.

INVESTIGATION

Police investigative practices can re-traumatize victims and discourage victims from reporting and pursuing legal remedies

Police demeanor and treatment of the victim after she reports is essential to gathering information that can ultimately hold an offender accountable.¹⁵⁰ One officer observed that if he does not build trust and encourage women at the interview stage, they are more likely to recant later.¹⁵¹

When registering an act of domestic violence, police are to ensure they do not cause further harm to the victim . . . by asking unnecessary questions.”¹⁵² In practice, however, the process of giving an official statement at the station can be prolonged and stressful for victims.¹⁵³ The reporting process can take an average of three hours.¹⁵⁴ In addition, NGO staff reported that women have to repeat their statements multiple times.¹⁵⁵

Interviewees reported that police sometimes belittle victims when they come to give a statement. One victim was awake all night after reporting domestic violence and receiving medical treatment. When she came to the station to give her statement, nobody offered her a glass of water.¹⁵⁶ Yet when her abuser arrived at the station, well-rested, she overheard an officer ask him if he would like something to drink.¹⁵⁷ “Out of all the things that happened,” the victim recalled, “that was the most humiliating . . . for me, because I really felt that I did something wrong because they were treating me this way and treating him that way.”¹⁵⁸

Confidants described how police officers have ridiculed or demeaned victims at times. A confidant recalled when she brought a victim to the police station to file a report, an officer chided her, “You could at least have washed her face before you came.”¹⁵⁹ These harmful attitudes can carry over beyond the police stations and into the judicial setting. Those same officers allowed the offender—in their presence—to send the confidant and the victim text messages while they met with the misdemeanor judge.¹⁶⁰

¹⁵⁰ See Interview with Police, City E, July 9, 2015.

¹⁵¹ *Id.*

¹⁵² Protocol, Police. The Protocol directs the questioning officer to “[e]ngage in an undisturbed interview with the victim,” starting with the question, “What happened?” and must also “obtain necessary data on the possible need to ensure medical assistance.” Protocol, Police, ¶11.

¹⁵³ Interview with NGO, City B, July 1, 2015; Interview with NGO, City F, July 7, 2015.

¹⁵⁴ Interview with Police, City E, July 9, 2015; Interview with NGO, City B, July 1, 2015.

¹⁵⁵ Interview with NGO, City D, June 28, 2015; Interview with NGO, City B, July 1, 2015; Interview with Police 2, City C, July 6, 2015.

¹⁵⁶ Interview with NGO, City B, July 1, 2015.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Interview with NGO, City C, July 6, 2015.

¹⁶⁰ *Id.*

Interviewees explained that such insensitivity deters victims from reporting further incidents of domestic abuse.¹⁶¹ After one such negative experience, a victim of long-term domestic violence waited nearly four years before reporting violence to the police again. Even then, she only came forward with the assistance of an NGO.¹⁶²

Very often, she leaves the station and does not press charges. Somehow, the police officer pressured her to change her mind. . . . this is our biggest concern. . . . We know how much strength and courage it takes for the woman to go to the police . . . and she never goes back.¹⁶³

Police officers at times encourage victims to reconcile with their abusers.¹⁶⁴ Harmful police attitudes that promote reconciliation can discourage victims from pursuing a case when they do report.¹⁶⁵ One NGO employee recounted how the police told a victim, “You can reconcile. He will not beat you again.”¹⁶⁶ The officer suggested that “maybe she had refused to sleep with her husband and that’s why she was abused.”¹⁶⁷ These reports are consistent with the findings of a recent survey, in which various systems actors and NGO staff reported cases where police encouraged victims to reconcile with their abusers or drop the charges.¹⁶⁸ An interviewee expressed her frustration with police response when victims come to them:

Police pressure not to pursue a case may be more acute when the offender has ties to the police. One victim, whose abuser’s brother is a police inspector, recounted her frustrations with her police interview.¹⁶⁹ When she reported his physical violence to the duty officer, the police took personal information about her husband, instead of her, to confirm they knew her brother-in-law. She recalled, “The police officer threatened me not to report or make a statement and said that I was keeping my children in some kind of jail.”¹⁷⁰ As a result, she no longer reports the abuse, saying, “I don’t trust the police at all.”¹⁷¹

In another case, a woman reported abuse by her husband, a former police officer.¹⁷² When she went to the station to give a statement, “all of them influenced her. They told her that he was a good husband and that he does not cheat on her . . .”¹⁷³ The officers at the station ignored her requests to take her to a shelter.¹⁷⁴ Instead, the duty officer allowed the abuser to meet with the victim privately at the

¹⁶¹ Interview with Victim, City A, July 8, 2015; Interview with NGO, City B, July 1, 2015.

¹⁶² Interview with NGO, City B, July 1, 2015.

¹⁶³ Interview with NGO 1, City D, July 4, 2015.

¹⁶⁴ Interview with NGO 2, City D, July 4, 2015.

¹⁶⁵ Interview with NGO 1, City D, July 4, 2015.

¹⁶⁶ Interview with NGO 2, City D, July 4, 2015.

¹⁶⁷ *Id.*

¹⁶⁸ Ipsos Strategic Marketing, at 63.

¹⁶⁹ Interview with Victim, City A, July 8, 2015.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Interview with NGO 1, City D, July 4, 2015.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

station.¹⁷⁵ Afterward, the woman did not file a charge or report.¹⁷⁶ She ended up going home with her husband instead of to the shelter she requested.¹⁷⁷

Poor investigation practices impede collection of relevant information

The Protocol directs police officers, upon receiving a report of domestic violence, “[t]o send urgently and without delay” at least two police officers to the scene, “preferably a male-female couple of officers.”¹⁷⁸ Police officers report that due to shortages of female police officers, they are rarely able to dispatch female patrol officers to the scene.¹⁷⁹ Yet this requirement instead becomes an excuse for not documenting evidence properly. An officer stated, “because mostly men are employed in our sector, we avoid taking photos of specific parts of the body.”¹⁸⁰

Despite the Protocol’s directive, officers do not always follow the best practice of separating the parties before questioning them.¹⁸¹ One NGO worker reported that police sometimes separate the parties, but more typically offer an excuse, such as “we can’t afford it.”¹⁸² For example, a woman overheard the police response to her neighbor screaming and a child crying.¹⁸³ When the officer arrived, he went to the apartment and rang the doorbell. The interviewee described:

Of course, both of them opened the door, and the police said they had a report of domestic violence. Of course, both of them denied it. Then they closed the door, and the police left. The chief of police called me to say that everything was okay. I asked whether they separated the victim or entered the apartment. They did not. They just stayed at the front door.¹⁸⁴

NGOs reported this practice is not isolated, and another interviewee revealed a nearly identical experience.¹⁸⁵

At the time of fact-finding, police did not have a standard list of questions to aid them in gathering information.¹⁸⁶ As a result, many police officers miss the opportunity to collect important information about the offender’s history, weapons, and other evidence.

Police do not consistently investigate whether the offender has a history of domestic violence. The Protocol directs that, while interviewing the victim, the officer must “establish important circumstances regarding the duration, continuity, behavior of the perpetrator and possible violence exerted in the

¹⁷⁵ *Id.*

¹⁷⁶ Interview with NGO 1, City D, July 4, 2015.

¹⁷⁷ *Id.*

¹⁷⁸ Protocol, Police, ¶1.

¹⁷⁹ Interview with Police, City D, July 4, 2015.

¹⁸⁰ Interview with Police 1, City C, July 6, 2015.

¹⁸¹ Protocol, Police, ¶10. Interview with NGO, City B, June 30, 2015.

¹⁸² Interview with NGO, City F, July 7, 2015.

¹⁸³ Interview with NGO, City B, June 30, 2015.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Interview with Police 1, City C, July 6, 2015.

past.”¹⁸⁷ Inspectors in some jurisdictions reportedly inquire about this history.¹⁸⁸ But a police officer explained they wait to inquire about the history unless and until the prosecutor charges the offense as a crime.¹⁸⁹ More often, duty officers focus on the individual act of domestic violence and discourage women from describing the full context and history of the violence.¹⁹⁰ An NGO worker explained, “When she starts telling her story and describing the event, they interrupt and say ‘don’t tell me what happened two months ago; tell me what happened tonight.’”¹⁹¹

Under the Protocol, officers must “[e]stablish circumstances of possible possession of weapons” and seize them.¹⁹² Officers insisted they ask about weapons, but at least one officer admitted that such inquiries are not always standard procedure. He explained, “This is a small community. If the same family calls about domestic violence frequently, we already know what to expect of them.”¹⁹³ Another officer said they check in criminal cases with severe violence, but their procedures concerning weapons vary from case to case.¹⁹⁴

Such inconsistent practices endanger victims and their children and jeopardize their ability to get protection. In one case, an offender was released from detention pending resolution of a domestic violence case. After his wife filed for divorce, the offender came to the home, found his gun, and shot their daughter in the leg.¹⁹⁵ In another case, a victim received several threatening text messages from her abuser while he was abroad. The victim told the police he owned weapons and she was fearful he would kill her upon his return.¹⁹⁶ The police confiscated the weapons and brought criminal charges for possession of illegal weapons. When the police also brought charges for domestic violence based on his threats, they omitted information on weapons. Because the victim lost the text messages after changing cell phones, the judge dismissed the case for lack of evidence.¹⁹⁷

Police rarely take photographs to document domestic violence,¹⁹⁸ despite the Protocol’s requirement.¹⁹⁹ One prosecutor explained that a lack of resources precludes police from printing photographs or buying CDs.²⁰⁰ Most police officers also admit taking photos is rare.²⁰¹ The head of one NGO could not recall a single domestic violence case in which a police inspector took photographs. She further reported that

¹⁸⁷ Protocol, Police, ¶12.

¹⁸⁸ Interview with Police, City D, July 4, 2015; Interview with Police, City A, July 8, 2015.

¹⁸⁹ Interview with Police, City A, July 8, 2015.

¹⁹⁰ Interview with NGO, City C, July 6, 2015.

¹⁹¹ *Id.*

¹⁹² Protocol, Police, ¶¶5, 6.

¹⁹³ Interview with Police, City F, July 7, 2015.

¹⁹⁴ Interview with Police, City E, July 9, 2015.

¹⁹⁵ Interview with Doctors, City D, July 3, 2015.

¹⁹⁶ Interview with NGO, City B, July 1, 2015.

¹⁹⁷ *Id.*

¹⁹⁸ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹⁹⁹ The Protocol requires the officer responding to the scene of the offense to “[d]raft minutes from the investigation . . . with photo documentation—photo elaboration (premises, furniture and other items, state of the victim...).” Protocol, Police, ¶4; Interview with Police 1, City C, July 6, 2015.

²⁰⁰ Interview with Prosecutor, City E, July 9, 2015.

²⁰¹ Interview with Police, City F, July 7, 2015.

although the NGO itself had photographs of victims' injuries, those photographs could not be used as evidence in court.²⁰² In another town, police take photographs of the scene, but not of the victim.²⁰³

Instead, police refer victims to and rely on medical reports to document physical injuries.²⁰⁴ As a result, medical documentation often becomes vital to offender accountability,²⁰⁵ and without it, prosecutors will not charge a case as a crime.²⁰⁶ One officer observed, "the key element and the strongest facts are her injuries on the body."²⁰⁷ If the victim has serious injuries, the patrol officer may offer to transport the victim to the health center.²⁰⁸ In other cases, however, the police simply refer the victim to an emergency center.²⁰⁹

Police record-keeping is deficient

The Protocol requires the police to register reports of domestic violence and to draft minutes about the violence.²¹⁰ The Protocol further directs the police to establish files of the cases and "provide them for insight, when necessary, to other authorities, with the obligation to keep all data confidential."²¹¹

Officers at times fail to record reports of domestic violence.²¹² One NGO worker described a case in which the police received a telephone report of domestic violence at night. The inspector went home that evening, leaving no record of the call for the next inspector the next day.²¹³

An inspector defended using this practice when victims do not want to file a charge.²¹⁴ Many police stations do not maintain records of domestic violence that are not pursued as misdemeanor or criminal cases.²¹⁵ One police officer explained how domestic violence that is not charged goes unrecorded, and "only the officer knows about [when] it is not officially registered."²¹⁶ As described in the Misdemeanor Section, this can impact sentencing when misdemeanor judges have no access to the offender's history.

NGOs criticize the reports police do prepare for misdemeanor proceedings as lacking.²¹⁷ Regarding a police report, one NGO worker explained:

²⁰² Interview with NGO, City D, Nov. 11, 2016 (via telephone).

²⁰³ Interview with Police, City A, July 8, 2015.

²⁰⁴ Interview with Police 1, City C, July 6, 2015; Interview with NGO, City B, Nov. 1, 2016 (via telephone); Interview with NGO 1, City B, July 2, 2015.

²⁰⁵ Interview with NGO 1, City B, July 2, 2015.

²⁰⁶ Interview with Prosecutor, City B, July 2, 2015; Interview with Prosecutor, City E, July 9, 2015.

²⁰⁷ Interview with Police, City E, July 9, 2015.

²⁰⁸ Interview with Social Worker, City C, July 6, 2015; Interview with Police 1, City C, July 6, 2015; Interview with NGO, City B, July 1, 2015; Interview with Police, City D, July 4, 2015; Interview with Police, City A, July 8, 2015.

²⁰⁹ Interview with NGO 1, City B, July 2, 2015.

²¹⁰ Protocol, Police, ¶¶4, 17. The police officer is obliged to register the denunciation. The police must "[k]eep all the reports about measures taken as a special record/file." Protocol, Police, ¶26.

²¹¹ Protocol, All Institutions.

²¹² Interview with NGO 1, City B, July 2, 2015.

²¹³ Interview with NGO, Nov. 1, 2016 (via telephone).

²¹⁴ Interview with NGO 1, City B, July 2, 2015.

²¹⁵ Interview with Police, City F, July 7, 2015.

²¹⁶ *Id.*

²¹⁷ Interview with NGO 1, City B, July 2, 2015.

You cannot tell what actually happened. I have a woman who comes to me and talks to me about everything that happened. Then I look at the report, and I can see nothing. Honestly, in that situation, if I were a judge, I would not sentence him.”²¹⁸

This particular report stated the husband “maltreated her for years,” but neither explained how nor identified the number of prior reports. There was “nothing.”²¹⁹

Another interviewee described a case in which the police report did not even mention domestic violence, but instead used euphemisms like “problematic family circumstances” and “family situation.”²²⁰ This neutral language subsequently impeded prosecution when the authoring inspector failed to provide any details about the violence in her testimony one year later.²²¹ In the opinion of the NGO worker, the inspector used such neutral language because she “decided not to take a clear stand against domestic violence and not to support a victim of domestic violence.”²²² The NGO reported that these police responses are a recurring problem: “Every time they have the chance to take a clear stance and show they understand what [domestic violence] is about, somehow they miss it.”²²³

Misdemeanor judges rely on the applications submitted by the police officer, as well as the officer’s opinion, in deciding whether to issue an OFP or impose sanctions under the LDVP.²²⁴ But when those reports lack adequate detail, judges complain that the evidence is insufficient to find a guilty verdict.²²⁵ According to one judge, police reports are not written “properly.”²²⁶ One judge admitted the court should be returning most of the requests to police for additional information.²²⁷

When the officer’s misdemeanor investigation rests on the victim’s testimony and she recants, police typically drop the case.²²⁸ Often, misdemeanor cases lack medical documentation to carry them forward.²²⁹ More often, police rely entirely on the victim’s statement, rather than proactively collecting evidence, such as CSW records.²³⁰ One police officer boasted that when the victim gives her statement, “I always trust the victim and respect her wishes. I do not search for witnesses, ever. Of course, the key element and the strongest facts are her bodily injuries.”²³¹ In the absence of adequate evidence, misdemeanor judges report they are often forced to weigh the victim’s word against the offender’s and,

²¹⁸ Interview with NGO 1, City B, July 2, 2015.

²¹⁹ *Id.*

²²⁰ Interview with NGO City D, Nov. 11, 2016 (via telephone).

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ Interview with Misdemeanor Court, City F, July 7, 2015; Interview with NGO 1, City D, July 4, 2015.

²²⁵ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

²²⁶ Interview with NGO, City B, June 30, 2015.

²²⁷ Interview with Misdemeanor Court, City B, June 30, 2015.

²²⁸ Interview with NGO City D, Nov. 11, 2016 (via telephone).

²²⁹ Interview with Prosecutor, City B, July 2, 2015; Interview with Prosecutor, City E, July 9, 2015.

²³⁰ Interview with NGO, City B, July 1, 2015.

²³¹ Interview with Police, City E, July 9, 2015.

as described in the Misdemeanor Section, may use the harmful practice of confrontation to assess truth.²³²

POLICE USE OF WARNINGS

When prosecutors do not pursue criminal prosecution, police often do nothing more than issue a verbal warning to the offender. Interviews revealed that warnings are common. One NGO worker observed, “There are so many warnings. If a woman goes to the police and makes a statement, usually the police choose to issue a warning, and they never send a report to the courts.”²³³ In another case, an older woman called the police five times in two months to report domestic violence.²³⁴ She asked the police to arrest her husband so she could be free from violence.²³⁵ The police went to the home, decided “nothing happened,” and returned to the station without taking action.²³⁶ Another victim of long-term psychological violence began suffering physical violence by her husband.²³⁷ When she reported to the police, they failed to respond effectively. Instead, they merely came to the home and warned him.²³⁸ The police continued to return to the home several times for domestic violence, but never charged the man.²³⁹

Warnings conflict with internationally recognized best practices, diminish victim safety, and do not hold offenders accountable. One NGO employee suggested that institutions issue fewer OFPs because of the many warnings that police use instead. She explained, “Those applications are never processed [by police]. They just say, ‘don’t do that again.’”²⁴⁰

Many interviewees, including police, recognized the ineffectiveness of warnings. Warnings fail to document the history of violence, as many police departments do not keep records of these warnings.²⁴¹ Some police conceded that warnings only temporarily stop the violence and in most cases, the violence recurs. Other police admitted “the warnings have no effect.”²⁴² A psychiatrist observed that when police merely instruct the offender to stop the violence, they usually end up repeating the violence.²⁴³

²³² Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

²³³ Interview with NGO, City D, June 28, 2015.

²³⁴ Interview with NGO, City B, July 1, 2015.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Interview with NGO, City F, July 7, 2015.

²⁴¹ Interview with Police 1, City C, July 6, 2015; Interview with Police, City F, July 7, 2015.

²⁴² Interview with Police 1, City C, July 6, 2015.

²⁴³ Interview with Neuropsychiatrist, City E, July 9, 2015.

CENTERS FOR SOCIAL WORK (CSWS)

The LDVP outlines a coordinated system in which CSWs play a central role in the government's response to domestic violence. CSWs must provide assistance to prevent and detect violence, eliminate its causes, and provide assistance to the victim to regain security.²⁴⁴ In practice, CSW offices vary widely on their level of engagement on domestic violence. Some CSW staff demonstrated a lack of awareness of their responsibilities and reported they rarely handle these cases. Others maintained they bear responsibility for a wide range of issues related to domestic violence.

Along with the police, CSWs are charged with being first responders to victims of domestic violence. In practice, however, few victims directly report domestic violence to the CSW. For example, one CSW worker estimated they receive only one or two domestic violence cases a month.²⁴⁵ CSW workers in other regions indicated higher reporting rates,²⁴⁶ but not at a level that reflects the true magnitude of the problem. One NGO employee noted that official CSW figures on domestic violence, as reported to the MoJ, are lower than figures reported by other institutions, suggesting that CSWs are either not maintaining reliable statistics or not exercising their role as a place of trust and assistance for victims.²⁴⁷ As a coordinating body that receives reports from courts, health institutions, social workers, police, witnesses, schools, and victims,²⁴⁸ CSWs should have the most comprehensive data on domestic violence. In practice, however, they do not.²⁴⁹ The MoJ's September 2016 report noted that the Ministry of Labor and Social Welfare, which oversees CSWs, began collecting comprehensive data on social protection for victims of domestic violence only in 2014.²⁵⁰

The MoJ recently concluded that CSWs lack sufficient capacity and resources to implement the LDVP.²⁵¹ The ministry recommended that the Ministry of Labor and Social Welfare strengthen CSWs' capacity in the field of domestic violence and develop an integrated system for data collection, including indicators for monitoring and evaluation, from all government institutions that have responsibilities under the LDVP.²⁵²

CSW workers throughout Montenegro have participated in various trainings from international organizations, NGOs, and their own agencies. Many NGOs, however, expressed the concern that trainings do not address critical issues integral to victim safety of victims. For example, interviews revealed that women do not take advantage of free legal aid,²⁵³ suggesting that CSW staff are not

²⁴⁴ LDVP, Art. 5.

²⁴⁵ Interview with CSW, City C, July 6, 2015. (noting 22 cases of domestic violence were reported to them in the previous year).

²⁴⁶ Interview with CSW, City D, July 3 (noting 15 reports of domestic violence in January 2015).

²⁴⁷ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

²⁴⁸ Interview with CSW, City F, July 7, 2015; Interview with CSW, City B, June 29, 2015.

²⁴⁹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

²⁵⁰ 2016 Ministarstvo Pravde Izvještaj, Section V.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Interview with NGO, City B, July 1, 2015; Interview with NGO, City B, July 2, 2015.

adequately trained on the law's protections or are simply failing to inform victims of this right.²⁵⁴ Other interviewees complained that victims did not know they could themselves petition for an OFP, indicating a failure on the part of CSW staff to provide this information.²⁵⁵

CSW ATTITUDES

An effective CSW response can foster victim confidence in the system and facilitate protection. But misperceptions, distrust of victims, and fears for their own safety impede effective responses by CSWs. Some CSW workers allow societal myths to influence their work and describe victims with suspicion and little empathy. At times, CSW employees do not believe victims' stories. For example, staff at some CSWs related stories where they concluded the mother fabricated a dramatic story of domestic violence to obtain financial support.²⁵⁶ Another staff member reported that mothers often instruct their children what to say,²⁵⁷ implying that women coach their children to falsely report domestic violence. A neuropsychiatrist suggested that CSW staff do not understand the struggles women victims of violence face.²⁵⁸ For example, a CSW employee described their "huge problem" of victims going back to their abusers.²⁵⁹ The employee lamented how staff "organize everything" for victims and remove them from their families, only to have the women return to their abuser.²⁶⁰

At times, CSW workers' attitudes and actions stem from their fears the offender will harm them in retaliation. One woman recalled how her abuser intimidated CSW staff, stating, "Whatever he wanted, they did."²⁶¹ Under his influence, the CSW threatened to strip the victim of her custody if she did not cooperate with the abuser's demand for an unscheduled visitation.²⁶² The social worker told the victim to produce the children for visitation within 15 minutes, forcing the victim, who lived in the countryside, to take a costly 30-minute taxi ride to meet the CSW's demand.²⁶³ The victim's attorney explained that CSW staff were afraid of the offender because his brother was a police officer.²⁶⁴ Later, the offender even persuaded CSW staff that the mother was mentally ill, causing the CSW to initiate proceedings to deprive her of child custody.²⁶⁵

As described in the Family Law Proceedings section on page 106, CSW staff often are mediators.²⁶⁶ The basic training program for mediators does not address domestic violence.²⁶⁷ According to the Center for

²⁵⁴ *Id.*

²⁵⁵ Interview with NGO, City F, July 7, 2015.

²⁵⁶ See, e.g., Interview with CSW, City C, July 6, 2015.

²⁵⁷ *Id.*

²⁵⁸ Interview with Neuropsychiatrist, City E, July 9, 2015.

²⁵⁹ Interview with CSW, City C, July 6, 2015.

²⁶⁰ *Id.*

²⁶¹ Interview with Victim, City A, July 8, 2015.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Interview with CSW, City B, June 29, 2015; Interview with CSW, City A, July 8, 2015. To be appointed as a mediator, a person must meet the general requirements for work in a governmental body, must hold a university degree, must have at least five years of work experience in the related field of specialization, and must complete a mediator training program established by the Ministry of Justice. Law on Mediation, Arts. 12(1), 13.

Mediation, domestic violence is only addressed in advanced training, of which only 20 to 30 percent of mediators in Montenegro have completed.²⁶⁸ NGOs are not involved in these advanced trainings, but according to the Center for Mediation, experts in the field instead lead these domestic violence components.²⁶⁹

VICTIM SAFETY

The Protocol requires CSWs to undertake a number of steps to protect the victim, in accordance with the severity of the violation.²⁷⁰ For example, in emergency situations, CSWs must provide immediate protection and assistance.²⁷¹ CSW workers may petition for an OFP on behalf of a victim,²⁷² prepare victims for court,²⁷³ and when necessary, escort them to proceedings.²⁷⁴ CSWs can also provide financial assistance.²⁷⁵ As described in the LDVP and Protocol, CSWs must work closely with the police to report incidents of violence and determine appropriate responses.²⁷⁶ For example, CSWs are required to report each case to the police regardless of victims' wishes.²⁷⁷

Two important responsibilities include the completion of a risk assessment and a safety plan for the victim.²⁷⁸ Several CSW workers demonstrated knowledge of their obligation to develop safety plans.²⁷⁹ But the data and interviews demonstrate that CSW staff typically do not conduct risk assessments or create individual plans in all cases of domestic violence.²⁸⁰ At least one interviewee suggested that CSWs never prepare safety plans or conduct risk assessments,²⁸¹ and the MoJ's September 2016 report indicates that those that do, are doing so less frequently.²⁸²

Interviews revealed that when CSWs do develop a safety plan, they do not work together with victims.²⁸³ NGOs have criticized CSWs for not only excluding victims from safety planning but also failing

²⁶⁷ Interview with Center for Mediation, Podgorica, July 10, 2015.

²⁶⁸ Interview with Center for Mediation, Podgorica, July 10, 2015.

²⁶⁹ *Id.*

²⁷⁰ LDVP, Art. 5.

²⁷¹ *Id.* Art. 10.

²⁷² *Id.* Art. 27.

²⁷³ Protocol, CSW, ¶18.

²⁷⁴ *Id.* ¶19.

²⁷⁵ *Id.* Art. 12,

²⁷⁶ *Id.* Art. 9; Protocol, ¶6-7.

²⁷⁷ LDVP, Art. 32.

²⁷⁸ Protocol, CSW, ¶¶13, 14; CSWs are also required to and monitor implementation of the safety plan. Protocol, CSW, ¶15. A safety plan is a plan a woman makes in which she identifies ways she can protect herself during a violent incident and reduce the risk of serious harm. See Stop Violence against Women, http://www.stopvaw.org/safety_planning, The Advocates for Human Rights, for more detail.

²⁷⁹ Interview with CSW, City B, June 29, 2015; Interview with CSW, City C, July 6, 2015.

²⁸⁰ Interview with NGO, City D, June 28, 2015.

²⁸¹ *Id.*

²⁸² 2016 Ministarstvo Pravde Izvještaj, Section 2.1, Table 2. CSWs reported conducting 394 and 337 risk assessments in 2013 and 2014 respectively, but only 138 in 2015. CSWs reported creating 189 and 155 individual plans in 2013 and 2014 respectively, but only 84 in 2015. *Id.*

²⁸³ Interview with NGO, City B, July 1, 2015.

to inform victims what the CSW has decided for them.²⁸⁴ One NGO worker reported that not one of the NGO's beneficiaries had ever received notification from the CSW that a plan had been created.²⁸⁵

Another NGO suggested that CSW staff do not want the victim to "interfere" in her own planning when the CSW is deciding about the best interests of the child.²⁸⁶ As one NGO employee explained, "If they had a plan, it didn't affect the proceedings, and it didn't affect the violent father's visitation rights."²⁸⁷

CSW'S ROLE IN COURT CASES

The LDVP and Protocol set forth close cooperation between the CSW and all courts. The CSW must establish a case file for which CSW staff gather and record information about family violence.²⁸⁸ When necessary, the judiciary must engage the CSW in a domestic violence case, and may "summon the case manager as witness or, if necessary, call the CSW to protect the victim of violence."²⁸⁹ Misdemeanor judges may request an opinion and assistance from CSWs in gathering evidence in an OFP proceeding.²⁹⁰ Family law judges rely heavily on CSW opinions when determining child custody, visitation, and other issues.²⁹¹ In criminal courts, CSWs also provide opinions related to the punishment of perpetrators.²⁹² Finally, CSWs must also participate in court proceedings in cases for which they have conducted a risk assessment.²⁹³

CSWs wield great authority in domestic violence cases involving children, and the reports they provide to courts can be essential in child custody determinations. These reports carry great weight, and judges conceded they usually do not probe beyond the CSW's opinion.²⁹⁴ Some CSW workers insist their opinions take into account domestic violence,²⁹⁵ yet in practice their reports for divorce and child custody cases rarely mention it.²⁹⁶ Judges confirmed they had never seen a CSW report mentioning a family's history of domestic violence.²⁹⁷ When the CSW does not identify or report domestic violence to the court, family law judges may then determine visitation rights without taking into account the safety of the woman and the children.²⁹⁸

CSW reports are general and include little more than what the parties have stated.²⁹⁹ One reason for this lapse is the CSW's omission to conduct an in-depth investigation of domestic violence. One CSW worker explained that in compiling a report for the court, they do not always interview neighbors or

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Protocol, CSW, ¶¶2-3, 5.

²⁸⁹ *Id.* Judiciary, ¶16.

²⁹⁰ LDVP, Art. 29.

²⁹¹ See Family Law discussion on page 103.

²⁹² Interview with CSW, City A, July 8, 2015; *see also* Interview with CSW, City C, July 6, 2015.

²⁹³ Protocol, CSW, ¶22.

²⁹⁴ Interview with Basic Court, City C, July 6, 2015.

²⁹⁵ Interview with CSW, City C, July 6, 2015.

²⁹⁶ Interview with Basic Court, City C, July 6, 2015.

²⁹⁷ *Id.*; Interview with Basic Court, City E, July 9, 2015.

²⁹⁸ Interview with NGO, City B, July 1, 2015.

²⁹⁹ Interview with Basic Court, City E, July 9, 2015.

others to verify if there is domestic violence in divorce and custody cases.³⁰⁰ Rather, the staff member said that they were a small community and could use other sources to make such a determination.³⁰¹ In one case, the victim submitted photographs of her injuries, yet the CSW report failed to mention domestic violence.³⁰²

Other times, CSWs simply fail to provide any report. An interviewee explained that CSW staff sometimes tell the court that the CSW is incapable of giving an official opinion, thereby avoiding responsibility for its duties under the law and the Protocol.³⁰³ A judge explained that victims report domestic violence “to the police, and they inform the CSW, and the CSW never informs the Misdemeanor Court.”³⁰⁴ The CSW’s failure to fulfill its responsibilities can have a major impact. In one case, the first instance court awarded custody to the father because the CSW did not provide a report to the judge.³⁰⁵

An interviewee described CSW reports in divorce cases involving domestic violence as “very neutral. They rarely [support] the victim by saying that visitation rights should be limited or supervised.”³⁰⁶ Victims often are reluctant to raise the issue out of fear their abuser will contest custody and prolong proceedings, increasing the likelihood that the issue of domestic violence will not be raised at all in the courtroom.

Interviews revealed that CSW reports overlook the dynamics of domestic violence. In so doing, CSWs avoid their obligation to protect victims.³⁰⁷ For example, CSWs sometimes fail to identify when a violent parent is using the child to manipulate the victim.³⁰⁸ As one NGO worker explained, CSWs “do not recognize the effects of violence on children in many cases, or the patterns of violent behavior of the father who is using visitation rights to control the victim.”³⁰⁹ In one case, an NGO warned the CSW for nearly a year that the father was attempting to turn the child against the mother; as a result of his manipulation, the child became sick and was hospitalized for one month.³¹⁰ When the mother asked the court to award her custody, the CSW nevertheless issued an opinion without including this critical information.³¹¹ One NGO was involved in three cases where the father manipulated the children during visitation; as a result, the court denied the mother all contact with her children.³¹²

Other times, the CSW prioritizes the welfare of the violent abuser as a parent. As one NGO worker explained, often, the “opinion of the CSW is based on the [attitude] that every child should . . . live with

³⁰⁰ Interview with CSW, City F, July 7, 2015.

³⁰¹ *Id.*

³⁰² Interview with Judges, City A, July 8, 2015.

³⁰³ Interview with NGO, Nov. 1, 2016 (via telephone).

³⁰⁴ Interview with Misdemeanor Court, City C, July 6, 2015.

³⁰⁵ Interview with Judges, City A, July 8, 2015.

³⁰⁶ Interview with NGO, City B, Nov. 1, 2016 (via telephone); *see also* Interview with NGO, City D, Nov. 11, 2016 (via telephone).

³⁰⁷ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

³⁰⁸ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Interview with NGO, City B, July 1, 2015.

both parents.”³¹³ Interviews revealed many CSW workers harbor the “misconception that every parent has an absolute right to visit his children as much as possible, even if the parent is violent.”³¹⁴ As one CSW staff member put it, “Regardless of whether he is an abuser, he is the parent of that child.”³¹⁵ In one example, the CSW was called to provide a custody recommendation during a divorce. Despite evidence of the father’s violence toward the mother, including assaults throughout her pregnancy, the CSW recommended the father retain custody of their infant because it was his only male child.³¹⁶ The mother, who was still breastfeeding, was expected to visit the infant four or five times a day at her abuser’s home for feeding.³¹⁷ Given the great weight CSW opinions carry in court, the judge approved the recommendation.³¹⁸

A CSW worker explained they can recommend a restriction on custody only when children are the direct victims of abuse.³¹⁹ In one case, the abuser attacked his wife on the street in front of their child. Afterward, the child refused to see the father.³²⁰ Despite a psychologist’s report confirming that the violence caused the child trauma, nightmares, and fears of kidnapping, the CSW disregarded the report and recommended the father have the children every weekend.³²¹ Although criminal domestic violence charges were pending against the father, the CSW’s description of the abuser as “a caring father” persuaded the judge to follow the CSW’s recommendation.³²²

Interviews also revealed that CSW staff at times assign blame to nonviolent parents when children are witnesses. One CSW worker described a case where both parents brought charges of domestic violence against each other. The father used physical violence against the mother and accused the mother of verbal violence.³²³ The worker concluded the children were “secondary victims” and removed them from the home “because both parents were actually violent.”³²⁴ The CSW explained that the father was an addict, the mother a recovering addict, and both parents were neglecting their children’s basic needs.³²⁵ In their view, the mother had an obligation to prevent her children from seeing domestic violence and should have initiated penal proceedings against her abuser.³²⁶ Another CSW employee described a case where the children witnessed domestic violence and were removed from the home because the parents continued to reconcile. According to the CSW worker, “both parents did not adequately perform their duties as parents.”³²⁷ While there is a tendency to blame non-violent parents,

³¹³ Interview with NGO, City C, July 6, 2015.

³¹⁴ Interview with NGO, City B, July 1, 2015.

³¹⁵ Interview with CSW, City F, July 7, 2015.

³¹⁶ Interview with NGO, City C, July 6, 2015.

³¹⁷ *Id.*

³¹⁸ *Id.* The father’s family was well-connected, and only after the NGO intervened with the Ministry of Labor did the court reverse its decision and give the mother custody. Interview with NGO, City C, July 6, 2015.

³¹⁹ Interview with CSW, City D, July 3, 2015.

³²⁰ Interview with Victim, City A, July 8, 2015.

³²¹ *Id.*

³²² Interview with Judges, City A, July 8, 2015.

³²³ Interview with CSW, City E, July 9, 2015.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ Interview with CSW, City B, June 29, 2015.

in most cases, victims do not appear to be in danger of losing custody when their children witness domestic violence.³²⁸

When a woman flees domestic violence, institutions may interpret her flight as child abandonment or forfeiture of child custody.³²⁹ This attitude does not take into account the barriers she faces. CSWs do not always provide material support that would allow a victim to keep her children with her after leaving a violent abuser.³³⁰ One NGO worker described a case where a victim fled the violence, leaving her three children behind.³³¹ Her husband then abused their children, who managed to escape by taxi to the mother. She took them to the hospital, where they were hospitalized for several days for their injuries.³³² The mother's parents, however, refused to let the children stay with them after their hospital release.³³³ Rather than provide the victim with material support to establish herself in her own home, the CSW worker blamed the victim for leaving her children with her abuser.³³⁴

CSWs also neglect their obligation to carry out court orders. The Protocol requires CSWs to “[d]raft special plans for children” in households experiencing domestic violence and to participate in court proceedings “in cases when the center assesses the risk.”³³⁵ In one case, a court granted child custody to the mother.³³⁶ The CSW staff, however, did not prepare the children for the transfer and refused to take responsibility for enforcing the court’s order.³³⁷

Supervised Visitation

The CSW is responsible for providing “for contacts between children and the abusers in [a] controlled environment.”³³⁸ Supervised visitation is rare, but when courts order it, CSW staff are often charged with supervising the abusive parent’s visitation with his children. Interviews revealed a need to continue improving the standards and conduct of CSW workers in this area. A Member of Parliament acknowledged the need “to work on the professionalism of staff of the CSW” in the context of supervised visitation.³³⁹ For example, after a woman and her children fled domestic violence to a shelter, CSW staff took the children from the shelter to their office for visitation. They did not seek the mother’s permission.³⁴⁰

³²⁸ Interview with NGO, City B, July 1, 2105; Interview with CSW, City C, July 6, 2015; Interview with NGO, City B, July 2, 2015.

³²⁹ Interview with NGO 1, City D, July 4, 2015.

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ Protocol, CSW, ¶¶20, 22.

³³⁶ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

³³⁷ *Id.*

³³⁸ Protocol, CSW, ¶23.

³³⁹ Interview with Gender Equality Committee, Podgorica, June 30, 2015

³⁴⁰ Interview with NGO, City D, June 28, 2015.

As mentioned above, CSWs rarely recommend supervised visitation.³⁴¹ Despite the court's reliance on CSW reports, one CSW worker insisted they lack authority to recommend whether visitation should be supervised because that arrangement is worked out between the parents.³⁴² CSW employees sometimes pressure minor children to agree to visitation, even when they do not want to meet with their violent parent.³⁴³ As described earlier, the violent parent may use the child to control the other parent during these visitations.³⁴⁴

CSWs must provide a safe place for supervised visitation between children and abusers.³⁴⁵ Interviews revealed that CSWs do not take their supervisory role seriously, noting that CSW staff do not always remain in the room during visitation.³⁴⁶ In one case, the victim obtained a restraining order against the offender. Yet during visitation, the CSW staff left the victim, abuser, and child alone in the room together.³⁴⁷ In another case, the victim was residing in a shelter and came to the CSW for visitation with her children.³⁴⁸ During visitation, the abuser insisted on speaking with the victim, which the CSW staff allowed, and he persuaded her to reconcile.³⁴⁹ Within a month, the abuser inflicted severe physical violence again, breaking her nose and causing other injuries all over her body.³⁵⁰

A lack of protection during child transfers has resulted in harm to victims, including during supervised visitation.³⁵¹ Abusers may threaten or stalk victims as they approach or leave the CSW building.³⁵² One NGO employee reported that an abuser beat his victim in front of the CSW after she had dropped off their infant for a supervised visitation.³⁵³ While courts can order third-party transfers, even these lack adequate safeguards against further manipulation and control.³⁵⁴ One woman declined a third party transfer because the offender threatened to keep the children.³⁵⁵

When CSW employees learn of a violation of an OFP, they must notify the misdemeanor court, police, or prosecutor.³⁵⁶ But in some jurisdictions, CSWs do not view a restraining order as applicable during supervised visitation.³⁵⁷ Instead, they give precedence to the conflicting court order that allows for supervised visitation in spite of an OFP.

³⁴¹ Interview with NGO, City B, June 30, 2015.

³⁴² Interview with CSW, City D, July 3, 2015.

³⁴³ Interview with NGO 1, City B, July 2, 2015; Interview with Victim, City A, July 8, 2015; Interview with NGO, City B, July 1, 2015.

³⁴⁴ Interview with NGO 1, City B, July 2, 2015; Interview with NGO, City B, June 30, 2015.

³⁴⁵ Protocol, CSW, ¶23.

³⁴⁶ Interview with NGO, City B, July 1, 2015; NGO, City B, Nov. 1, 2016 (via telephone).

³⁴⁷ Interview with NGO, City B, June 30, 2015.

³⁴⁸ Interview with CSW, City D, July 3, 2015.

³⁴⁹ *Id.*

³⁵⁰ Interview with CSW, City D, July 3, 2015.

³⁵¹ Interview with NGO, City B, July 1, 2015.

³⁵² *Id.*

³⁵³ Interview with NGO, City C, July 6, 2015.

³⁵⁴ Interview with NGO 1, City D, July 4, 2015.

³⁵⁵ *Id.*

³⁵⁶ LDVP, Art. 32.

³⁵⁷ Interview with NGO, City B, June 30, 2015.

MULTIDISCIPLINARY TEAM (MDT)

In appropriate cases, the LDVP provides that a multidisciplinary team (MDT) be set up by the CSW. The MDT is an expert team composed of representatives of local government, service agencies, police, NGOs, and other experts in family issues.³⁵⁸ The expert team addresses specific domestic violence cases as needed, designs a victim assistance plan, and coordinates activities based on her needs and preferences.³⁵⁹ This assistance includes both material and nonmaterial support, accommodation, and social work services.³⁶⁰ For example, one CSW founded a MDT in its city in November 2012. The team meets at least once or twice a month to review new cases and assign tasks to members.³⁶¹

Guidelines issued in 2015 outline the rules, procedures, and roles for MDT members.³⁶² The head of one NGO commented that, in spite of the guidelines and training for MDT members, “Those teams should be dismissed. They are totally useless. Those people don’t understand gender-based violence. They don’t understand any standards protecting victims of domestic violence. They don’t read anything.”³⁶³

The MDT process does not function in a way that promotes safety for victims. For example, NGOs are not uniformly invited to participate in MDTs for the cases the NGOs are following.³⁶⁴ One NGO worker reported that the NGO attempted to join the MDT to represent its beneficiaries’ needs, but CSW staff refused to allow them to participate because it feared NGO criticism.³⁶⁵ Likewise, NGO staff opined that the MDT is not uniformly effective, especially because their recommendations are non-binding, and they are unable to address all cases.³⁶⁶ A recent report found that even members of these MDTs are not satisfied with the way these teams are established and run.³⁶⁷ Moreover, MDTs focus on fixing individual case breakdowns rather than assessing and address systemic failures as a whole.

One example highlights the multiple breakdowns in the system that continue despite an MDT. A woman sought police help after her abuser inflicted heavy injuries and broke her nose. The police referred her to an emergency room (ER) doctor in one city, who subsequently told her to go a doctor in a different city. Both health practitioners dismissed her broken nose as “nothing...just a little blood.”³⁶⁸ The second doctor told her if she was unhappy with his medical assessment, she should go to Podgorica. In Podgorica, doctors operated immediately to repair her nose. The prosecution was ostensibly notified, but no one provided information to the victim about the status of her case.³⁶⁹ Finally, a hotline staff member asked the CSW to involve the MDT.³⁷⁰ The MDT psychologist then asked the victim to meet her

³⁵⁸ LDVP, Art. 11.

³⁵⁹ *Id.*

³⁶⁰ *Id.* Art. 12.

³⁶¹ Interview with CSW, City F, July 7, 2015.

³⁶² Interview with NGO, City D, Nov. 11, 2016 (via telephone).

³⁶³ *Id.*

³⁶⁴ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

³⁶⁵ *Id.*

³⁶⁶ Interview with NGO, City B, July 1, 2015.

³⁶⁷ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

³⁶⁸ Interview with NGO 1, City B, July 2, 2015.

³⁶⁹ *Id.*

³⁷⁰ Interview with NGO 1, City B, July 2, 2015.

in yet a different town.³⁷¹ During all this time, the victim, a mother with a young special-needs child, received no support, no protection and was forced to travel from city to city for treatment.³⁷² Despite the presence of the MDT, “no one did his job properly...”³⁷³

The authors had the opportunity to observe an MDT meeting convened in response to a woman facing a dangerous family law judge decision authorizing her violent husband to have visitation with their children.³⁷⁴ After she obtained a protective measure and initiated misdemeanor proceedings, he avoided service of the OFP and initiated proceedings for divorce and custody.³⁷⁵ The judge in that second proceeding ordered a temporary measure ordering the children to spend five days with the abuser.³⁷⁶ The victim disappeared from the shelter with her children rather than handing them over to her abuser.³⁷⁷ In advance of the MDT meeting, a worker from the NGO representing the victim asked the organizers what would be discussed, and they responded, “We don’t know. We will inform you.”³⁷⁸ But by the start of the meeting, the NGO had received no information.³⁷⁹ Two NGO representatives, a lawyer from the CSW, a police officer, and a pediatrician attended, but the meeting quickly devolved into multiple side conversations with people arguing and debating the case with people nearest them at the table.³⁸⁰ At several points, participants called out frustrated comments, such as “we cannot hear,” and “this is impossible.”³⁸¹ There were no clear outcomes from the meeting, other than the decision to wait for the judge’s decision in the divorce and custody proceeding.³⁸²

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ MDT, City D, July 10, 2015.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

MISDEMEANOR COURTS AND JUDGES

Misdemeanor courts in Montenegro play an important role in combating domestic violence. They can respond quickly to domestic violence to issue OFPs to keep victims safe and impose penalties on offenders.³⁸³ In 2015, the non-judicial misdemeanor organs became misdemeanor courts and formally integrated into the judiciary.³⁸⁴ According to the MoJ, misdemeanor courts “registered” 4,878 victims of domestic violence between 2010 and 2015, of which 3,280 were women and 321 were children.³⁸⁵ The number of victims registered per year has increased steadily from 2010 to 2014, reaching a peak at 1,273, and declining to 1,121 in 2015.³⁸⁶

In a recent survey, 41 percent of responding judges opined the LDVP is not being implemented properly.³⁸⁷ Respondents cited insufficient knowledge of the law, weak protection for victims, and lack of institutional capacity as the main reasons for poor implementation.³⁸⁸

OVERVIEW OF MISDEMEANOR COURT FUNCTIONS UNDER THE LDVP

Misdemeanor judges implement hundreds of misdemeanor laws, including the LDVP.³⁸⁹ They follow the Misdemeanor Law of Montenegro, which contains standards for determining misdemeanors and their sanctions,³⁹⁰ as well as certain provisions of the Criminal Code and Criminal Procedure Code.³⁹¹ With regard to the LDVP, the government has been slow to adopt policies on this law, leaving misdemeanor courts without the needed guidance to interpret it. Bylaws to implement the LDVP were to have been adopted within six months of the law’s 2010 adoption,³⁹² including rules of procedure for implementing OFPs.³⁹³ In 2012, rules of procedure for mandatory drug and alcohol treatment were promulgated.³⁹⁴ Not until late 2012 or 2013 were rules of procedure to direct misdemeanor judges and other actors on how to implement restraining orders and orders prohibiting stalking and harassment created.³⁹⁵

All procedures under the LDVP are considered “expedited procedure[s],”³⁹⁶ and judicial authorities are to engage in “[u]rgent action and decision making” in domestic violence cases.³⁹⁷ The LDVP establishes five types of remedies that misdemeanor courts may issue in an OFP: 1) eviction orders; 2) restraining orders; 3) orders prohibiting harassment and stalking; 4) orders for mandatory addiction treatment; and

³⁸³ LDVP, Art. 26(2), 36-39.

³⁸⁴ Interview with Council for Misdemeanors, Podgorica, June 30, 2015; Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Ministry of Justice, Podgorica, June 29, 2015.

³⁸⁵ 2016 Ministarstvo Pravde Izvještaj, Section IV, 4.1.

³⁸⁶ *Id.*

³⁸⁷ Ipsos Strategic Marketing, at 43.

³⁸⁸ *Id.* at 45.

³⁸⁹ Interview with Misdemeanor Court, City B, June 30, 2015.

³⁹⁰ Misdemeanor Law, Art. 1.

³⁹¹ *Id.* Art. 14, 160 (applicability of the Criminal Procedure Code).

³⁹² Interview with Misdemeanor Court, City C, July 6, 2015.

³⁹³ *Id.*

³⁹⁴ Interview with Misdemeanor Court, City D, July 3, 2015.

³⁹⁵ Interview with Misdemeanor Court, City C, July 6, 2015.

³⁹⁶ LDVP, Art. 6.

³⁹⁷ Protocol, Judiciary, ¶11.

5) orders for mandatory psycho-social therapy.³⁹⁸ Several entities may file a petition for an OFP, including the victim, the victim’s representative, the CSW, a social and child care institution, police, or the prosecutor.³⁹⁹ Misdemeanor courts may also grant OFPs *ex officio*.⁴⁰⁰

Importantly, misdemeanor judges may issue an OFP at different stages, including before, during, and at the conclusion of LDVP proceedings.⁴⁰¹ First, they may issue an OFP *before* a party files an application under the LDVP or *during* the proceedings.⁴⁰² These “emergency orders for protection” may last until the end of the proceeding.⁴⁰³ Within five days of submitting the petition for an emergency OFP, the petitioner must file an application to initiate the misdemeanor LDVP proceeding.⁴⁰⁴ If she fails to do so, the misdemeanor court suspends the emergency OFP.⁴⁰⁵ At the *conclusion* of proceedings, misdemeanor court judges may issue a long-term OFP.⁴⁰⁶

ATTITUDES OF MISDEMEANOR COURT JUDGES

“The biggest cause of these [domestic violence] offenses is weakening of the family as an institution.”

-Misdemeanor Judge⁴⁰⁷

During interviews, some judges questioned the seriousness of domestic violence in Montenegro. For example, an appellate misdemeanor judge viewed domestic violence statistics as nothing more than “the correct collection of incorrect data” and asserted “[w]e do not know if it’s a certain problem.”⁴⁰⁸ He denied that weapons are used in domestic violence, explaining it “is a tradition of Montenegrins to have weapons in the house that are inherited from the father or grandfather and not to commit violence with those weapons.”⁴⁰⁹

These findings are consistent with a recent survey conducted in cooperation with the UN Development Programme (UNDP) Montenegro. The study found that members of the judiciary report that, “among their colleagues it is not [an] uncommon opinion that there are some cases when violence against women is justified.”⁴¹⁰ Indeed, 41 percent of respondents stated that a victim of domestic violence may be partly to blame for the violence.⁴¹¹

³⁹⁸ LDVP, Art. 20.

³⁹⁹ *Id.* Art. 27(1).

⁴⁰⁰ *Id.* Art. 27(2).

⁴⁰¹ *Id.* Art. 26(2), 29.

⁴⁰² *Id.* Art. 29(1).

⁴⁰³ *Id.* Art. 31(1).

⁴⁰⁴ *Id.* Art. 29(3) (in cases where the petition is filed before the proceedings begin).

⁴⁰⁵ *Id.* Art. 29(4).

⁴⁰⁶ *Id.* Art. 26(1).

⁴⁰⁷ Interview with Misdemeanor Court, City F, July 7, 2015.

⁴⁰⁸ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁴⁰⁹ *Id.*

⁴¹⁰ Ipsos Strategic Marketing, at 6, 34–35.

⁴¹¹ *Id.* at 36.

Interviews and the survey indicate attitudes that prioritize family preservation. Most survey respondents expressed the opinion that reporting violence “leads to divorce or to destruction of [the] family as a system.”⁴¹² At times, misdemeanor judges pressure victims to reconcile or assume an informal role as mediator in LDVP proceedings.⁴¹³ One interviewee observed how judges “mak[e] efforts to reconcile the two parties . . . without exception. That is their mission and their goal.”⁴¹⁴ Several judges expressed satisfaction when LDVP proceedings “preserved the family.”⁴¹⁵ Some misdemeanor judges prefer marriage counseling as a solution to domestic violence.⁴¹⁶

Many misdemeanor judges excuse perpetrators of domestic violence for their conduct, blaming substance abuse, psychological problems, the poor economic climate, or poverty.⁴¹⁷ One judge explained that “the primary cause of this phenomenon is a very bad economic situation,” and referenced statistics showing that most perpetrators are unemployed.⁴¹⁸ Forty-five percent of judiciary survey respondents identified drug and alcohol addiction as the main cause of domestic violence, and 35 percent identified a family’s financial circumstances as the main cause.⁴¹⁹ One Member of Parliament criticized misdemeanor judges for failing to understand the phenomenon of domestic violence instead of finding mitigating circumstances for it.⁴²⁰ Moreover, judges may incorrectly conclude that domestic violence is the result of psychological or mental illness.⁴²¹

Several misdemeanor judges expressed more sympathy for violent perpetrators than for victims. One judge suggested that an eviction order would result in divorce or “ruin the family,” and opined “there is little possibility that [the police] would be able to enforce such an eviction order.”⁴²² In his view, it would be “a dramatic situation” because the offender “would be placed on the street because the man has nowhere to go. . . . The problem is moved from the family to the street.”⁴²³ Another misdemeanor judge chastised a police officer for issuing a three-day eviction order, because the offender “hardly works during the day and at the end, he must drink something alcoholic. His wife talks too much.”⁴²⁴ A third misdemeanor judge expressed concern because the offender did not have a shelter to go to and admitted that, while they can legally evict an abuser, “where will we put him?”⁴²⁵

⁴¹² *Id.* at 6.

⁴¹³ Interview with NGO, City B, June 30, 2015.

⁴¹⁴ Interview with NGO, City C, July 6, 2015.

⁴¹⁵ See also Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Court, City E, July 9, 2015.

⁴¹⁶ Interview with Misdemeanor Court, City F, July 7, 2015.

⁴¹⁷ Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015.

⁴¹⁸ Interview with Misdemeanor Court, City F, July 7, 2015.

⁴¹⁹ Ipsos Strategic Marketing, at 32.

⁴²⁰ Interview with Gender Equality Committee, Podgorica, June 30, 2015.

⁴²¹ Interview with NGO, City B, July 1, 2015.

⁴²² Interview with Misdemeanor Court, City F, July 7, 2015.

⁴²³ *Id.*

⁴²⁴ Interview with Police, City E, July 9, 2015.

⁴²⁵ Interview with Misdemeanor Judge, City A, July 8, 2015.

TRAINING FOR MISDEMEANOR COURT JUDGES

Misdemeanor judges are responsible for handling domestic violence cases immediately after they assume office.⁴²⁶ A few NGOs reported providing trainings for the courts.⁴²⁷ Some misdemeanor judges received NGO-facilitated training via Skype from a foreign judge familiar with Montenegro's LDVP.⁴²⁸ Such training appears to be effective. In that jurisdiction, an NGO noted that most requests are now granted following the training.⁴²⁹ The Supreme Court collaborates with another NGO to provide domestic violence training, which is part of the regular judicial education,⁴³⁰ but it remains dependent on the NGO's own financial resources.⁴³¹

Several misdemeanor judges in first-instance courts reported they never received training on the LDVP. NGOs similarly perceived that misdemeanor judges have not received any relevant training.⁴³² As one NGO worker observed, "misdemeanor judges need someone to show them how to use [the LDVP] and encourage them."⁴³³ One judge acknowledged "how hard it is because we are not sufficiently educated [and] because we implement 240 laws," not only the LDVP.⁴³⁴ This judge identified the lack of training as a "huge problem."⁴³⁵

OVERVIEW OF MISDEMEANOR COURT RESPONSES

Misdemeanor court judges do not provide adequate information to victims

The misdemeanor court is obligated to "ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to [the] victim in regaining security in life."⁴³⁶ Like police, victims may apply for OFPs and initiate LDVP proceedings.⁴³⁷ Interviews revealed the biggest barrier to victim-initiated requests is the lack of victim awareness of these mechanisms and how to use them.⁴³⁸ Indeed, judges and lawyers overwhelmingly reported in a recent

⁴²⁶ Interview with Misdemeanor Court, City E, July 9, 2015.

⁴²⁷ Interview with NGO 1, City B, July 2, 2015; Interview with NGO 3, July 4, 2015.

⁴²⁸ Interview with NGO, City B, July 1, 2015; Interview with Misdemeanor Court, City D, July 3, 2015; Interview with NGO, City D, June 28, 2015.

⁴²⁹ Interview with NGO 1, City D, July 4, 2015.

⁴³⁰ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁴³¹ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

⁴³² Interview with Misdemeanor Court, City B, June 30, 2015; Interview with NGO, City C, July 6, 2015; Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁴³³ Interview with NGO, City D, June 28, 2015.

⁴³⁴ Interview with Misdemeanor Court, City B, June 30, 2015.

⁴³⁵ *Id.*

⁴³⁶ LDVP, Art. 5.

⁴³⁷ LDVP, Art. 27(1).

⁴³⁸ Interview with NGO, City F, July 7, 2015; Interview with NGO, City B, June 30, 2015.

survey that the public does not know enough about the LDVP.⁴³⁹ Only 13 percent of judicial survey respondents expressed satisfaction with the level of public familiarity with the law.⁴⁴⁰

An interviewee reported that misdemeanor judges do not inform victims of their right to free legal aid.⁴⁴¹ In the absence of this information, NGOs play a valuable role in assisting victims who want to initiate these requests themselves.⁴⁴² In jurisdictions without a strong NGO presence, misdemeanor judges reported they have never had a victim-initiated proceeding.⁴⁴³

Misdemeanor court judges do not regularly conduct risk assessments

Article 5 of the LDVP states that misdemeanor courts “have the duty to provide [the] victim with full and coordinated protection, within their respective powers and depending on the severity of violation.”⁴⁴⁴ Yet, misdemeanor judges do not always fulfill their obligations under this provision. The head of the misdemeanor appellate court, for example, opined that “[t]he court has no obligation to [provide this protection] in the way it is written” in Article 5.⁴⁴⁵ He further asserted that “[t]he court has to provide everyone with *judicial* protection, not to provide *coordinated* protection” [emphasis added].⁴⁴⁶

Most misdemeanor judges did not express familiarity with risk assessments.⁴⁴⁷ Those judges who claimed they conduct risk assessments had difficulty describing the risk assessment factors they consider.⁴⁴⁸ They explained they seek to determine how fearful the victim is,⁴⁴⁹ observe the parties’ behavior,⁴⁵⁰ or gauge their personal perception of the risk.⁴⁵¹ One judge stated that it is impossible to assess the risk in cases involving low-level violence,⁴⁵² a practice that overlooks threats, long-term violence, and violence that does not leave visible injury. Some judges place the responsibility on other institutions, like the CSW and the police, to make risk assessments.⁴⁵³ As described in the CSW and police sections above, however, these institutions are also acting in the absence of a uniform risk assessment protocol. The MoJ has not created a risk assessment bench guide for judges that would

⁴³⁹ Ipsos Strategic Marketing, at 43. Twenty-one percent stated that the public does not know anything at all about the law. 38% of lawyers included in the survey expressed the view that the public does not know anything about the law. *Id.*

⁴⁴⁰ Ipsos Strategic Marketing, at 43.

⁴⁴¹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁴⁴² Interview with NGO, City C, July 6, 2015. See the discussion on page 114.

⁴⁴³ Interview with Misdemeanor Court, City E, July 9, 2015.

⁴⁴⁴ LDVP, Art. 5.

⁴⁴⁵ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁴⁴⁶ *Id.*

⁴⁴⁷ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Court, City E, July 9, 2015.

⁴⁴⁸ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City E, July 9, 2015; Misdemeanor Court, City D, July 3, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015.

⁴⁴⁹ Interview with Misdemeanor Court, City C, July 6, 2015.

⁴⁵⁰ Interview with Misdemeanor Court, City E, July 9, 2015.

⁴⁵¹ Interview with Misdemeanor Court, City D, July 3, 2015.

⁴⁵² Interview with Misdemeanor Court, City C, July 6, 2015.

⁴⁵³ Interview with Misdemeanor Court, City D, July 3, 2015.

mandate and standardize the practice.⁴⁵⁴ In the absence of a risk assessment tool, one judge simply warns “the police and the CSW to take note” and heed future behavior.⁴⁵⁵

Misdemeanor courts rarely issue emergency OFPs

Unlike criminal protective measures, misdemeanor OFPs have the potential to keep the victim safe before and during proceedings via an emergency order.⁴⁵⁶ An interviewee explained that emergency OFPs are particularly effective because they grant the victim immediate protection, as well as enable her to continue the proceedings with protection against the offender.⁴⁵⁷ Once issued, an emergency OFP may last no longer than the date the misdemeanor proceedings conclude.⁴⁵⁸

The court must issue a decision on emergency OFPs within 48 hours of receiving the application.⁴⁵⁹ Because of this timeframe, judges are on call over weekends and expressed familiarity with the 48-hour deadline.⁴⁶⁰ When judges do issue emergency OFPs, interviewees lauded their timely response. One NGO worker reported receiving an emergency OFP the day after filing an application.⁴⁶¹

When a misdemeanor court denies an emergency OFP, however, the victim must wait until the procedure concludes before she can receive any protection.⁴⁶² A barrier to victim safety during proceedings is the absence of a right to appeal the denial of an emergency OFP.⁴⁶³ According to the Council for Misdemeanors, the victim has no reason to appeal at that time because “[t]he procedure is in process.”⁴⁶⁴ Moreover, if the police request the OFP, the victim has no right to appeal because she did not initiate the request.⁴⁶⁵ But misdemeanor courts’ failure to protect victims during LDVP proceedings increases the likelihood that the victim will abandon the case because she lacks protection.⁴⁶⁶

The LDVP authorizes judges to issue an emergency OFP when “necessary to immediately protect [the] victim.”⁴⁶⁷ Nevertheless, interviews revealed that misdemeanor court judges often wait until the end of proceedings to issue orders as long-term OFPs. One NGO worker observed that misdemeanor judges are “quite reluctant” to issue emergency OFPs and delay issuing protection until the conclusion.⁴⁶⁸ A study conducted between 2013 and 2014 confirmed that, in practice, most victims remained without any

⁴⁵⁴ Interview with Ministry of Justice, Podgorica, June 29, 2015.

⁴⁵⁵ Interview with Misdemeanor Court, City F, July 7, 2015.

⁴⁵⁶ Interview with Basic Court, City B, July 1, 2015.

⁴⁵⁷ Interview with NGO, City B, July 1, 2015.

⁴⁵⁸ LDVP, Art. 31(1).

⁴⁵⁹ *Id.*; Interview with NGO, City B, July 1, 2015.

⁴⁶⁰ Interview with Misdemeanor Court, City D, July 3, 2015; Interview with NGO, City B, July 1, 2015; Interview with Misdemeanor Court, City E, July 9, 2015; LDVP, Art. 29(1);

⁴⁶¹ MDT, City D, July 10, 2015.

⁴⁶² Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁴⁶³ See *Id.*; LDVP, Art. 30(1), (2). The court’s decision to grant an OFP is subject to appeal within three days of service, and the second instance body must decide on the appeal within three days of receipt.

⁴⁶⁴ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁴⁶⁵ *Id.*

⁴⁶⁶ Interview with NGO, City B, July 1, 2015.

⁴⁶⁷ LDVP, Art. 29(1).

⁴⁶⁸ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

protection throughout the LDVP proceedings.⁴⁶⁹ Interviews revealed that those courts that regularly issue emergency OFPs are concentrated in just one jurisdiction, while in other parts of Montenegro, “they are not issuing emergency orders almost at all.”⁴⁷⁰

Judges decline applications for emergency OFPs for a variety of reasons. For example, judges who fail to issue emergency OFPs may simply be unfamiliar with this remedy.⁴⁷¹ One NGO employee explained how a judge’s lack of understanding delayed even the shortened procedure under the LDVP far beyond the 48 hours:

[T]he judge was totally lost because she never before got that kind of request; she didn’t know what to do, so she went to the president [of the misdemeanor court] to ask him what to do, and he probably told her to proceed. And then she said, ‘You know what, I don’t know what to do. Please can you come with your lawyer on Monday? And then I will decide . . .’ So finally after five days, she came with the lawyer.⁴⁷²

Under the LDVP, misdemeanor courts may issue an OFP at the end of the proceeding “either in addition to a sanction or as a sanction in itself.”⁴⁷³ Interviews indicated that judges refuse to issue emergency OFPs because they interpret the LDVP as requiring a determination of guilt and view an OFP as a sanction.⁴⁷⁴

In some cases, judges express skeptical attitudes toward emergency OFP applications. One judge implied that victims who apply for emergency OFPs are exploiting the system.⁴⁷⁵ “Every right has its abuse,” the judge added.⁴⁷⁶ This judge issues emergency OFPs if the abuser might reoffend, but cautioned that “[i]f the offender is a good actor sometimes, before we even examine the victim, one should wonder why she is here.”⁴⁷⁷ At times, judges decline to issue an order because they prioritize offenders’ welfare over victims’ safety. A misdemeanor judge asked a victim whether she was “really going to throw out that poor man from the house who [had broken] his leg.” The interviewee recalled how the judge asked the victim:

‘Are you sure that you want me to issue the protection eviction order for him?’ Because in the meantime, he said that he broke his leg and he couldn’t move from home. . . . [T]he judge was asking her several times if she really wants that sick man evicted from home, and in the end our client said, ‘Okay. No, let him be there . . .’

⁴⁶⁹ Interview with NGO, City B, July 1, 2015.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² Interview with NGO, City B, July 1, 2015.

⁴⁷³ LDVP, Art. 26(1).

⁴⁷⁴ Interview with NGO 1, City B, July 2, 2015. See the discussion on Orders for Protection Issued by Misdemeanor Judges on page 60.

⁴⁷⁵ Interview with Misdemeanor Court, City B, June 30, 2015.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

Ultimately, the judge succeeded in persuading her to withdraw her request for an emergency OFP.⁴⁷⁸

Judges rely on criminal records provided by the police, the victim's application, and the CSW's opinion to issue emergency OFPs.⁴⁷⁹ The judge may determine whether an OFP is appropriate based on these records and the judge's personal perception of whether there was violence.⁴⁸⁰ For victims who have never visited the police or CSW, NGOs must play a critical liaison role between institutions to help secure an OFP.⁴⁸¹

Due to evidentiary disputes, most misdemeanor judges wait until the end of proceedings to issue an OFP, thereby negating the emergency OFP process by relegating an emergency OFP application to the long-term OFP process.⁴⁸² One judge acknowledged issuing an emergency OFP on one occasion "without a professional, but usually it requires a formal procedure."⁴⁸³ One reason misdemeanor courts may decline to issue emergency OFPs may be the legal direction from the misdemeanor appellate court head, who contends that courts cannot issue these emergency orders "in cases where you have two persons and one word against the other."⁴⁸⁴ He suggests that, before issuing an OFP, a misdemeanor judge must fully assess all of the evidence on culpability under the LDVP to determine to whether domestic violence occurred.⁴⁸⁵ He continued, "The right to defense would be violated if you issue protective measures immediately—they are in effect before the court decision," and would therefore violate the European Convention on Human Rights.⁴⁸⁶ By allowing a misdemeanor court to impose OFPs without first finding the perpetrator committed domestic violence, the LDVP, he asserts, "is not in accordance with the Misdemeanor Law and Criminal Code."⁴⁸⁷ He argued that judges must have evidence from the CSW, the police, medical documentation, and other evidence to issue an emergency OFP.⁴⁸⁸ Given these expectations, one judge regretted that "it is impossible to gather all the information in one day" to issue an emergency OFP.⁴⁸⁹

Courts and police lack tools to address avoidance of service

Another barrier to victim safety during proceedings is the failure to enforce an OFP when an offender avoids service.⁴⁹⁰ When a misdemeanor court issues an OFP, it must immediately serve the decision "to the body or institution in charge of enforcement, within maximum three days of the delivery of decision."⁴⁹¹ In one case, the victim obtained an emergency restraining order and order prohibiting

⁴⁷⁸ Interview with NGO, City B, July 1, 2015.

⁴⁷⁹ Interview with Misdemeanor Court, City D, July 3, 2015.

⁴⁸⁰ *Id.*

⁴⁸¹ Interview with NGO 1, City D, July 4, 2015.

⁴⁸² Interview with NGO, City C, July 6, 2015; Interview with NGO, City B, July 1, 2015.

⁴⁸³ Interview with Misdemeanor Court, City C, July 6, 2015.

⁴⁸⁴ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ Interview with Misdemeanor Court, City C, July 6, 2015.

⁴⁹⁰ MDT, City D, July 10, 2015.

⁴⁹¹ LDVP, Art. 33(1).

stalking and harassment against her abuser, a former police officer.⁴⁹² Six days after their issuance, the offender forced the victim into his car and held her there for more than 30 minutes, threatening her and commanding her to return home.⁴⁹³ Yet police did not file a criminal charge for the violation because the offender maintained he did not receive the court's decision issuing the OFP.⁴⁹⁴ According to the NGO that represented the victim, the offender received notification from the police, but he knew he could avoid formal notice as a strategy. She described:

Simply, he was not at home. He was not at that address. Formally, he did not receive and he did not sign the decision. . . . [H]e used the fact that he did not sign it formally, and his former colleagues accepted that as the reason not to prosecute him.⁴⁹⁵

In the absence of issuing emergency OFPs, misdemeanor judges may impose detention during the proceedings if there is a risk of reoffense.⁴⁹⁶ Some misdemeanor judges reported using this procedure to protect victims during misdemeanor proceedings.⁴⁹⁷

Judges also reported that they may refer the victim to a safe house, if one is available,⁴⁹⁸ in lieu of granting an emergency OFP. This practice of sending victims to shelters instead of evicting perpetrators reflects the prioritization of perpetrators' interests over those of victims. A judge commented, "if it *really* is domestic violence, it is *really* an emergency, then I refer the victim to a shelter."⁴⁹⁹ But even this narrow protection leaves a gap for women in the many towns without a shelter. In these cases, a CSW worker in a city without a shelter asserted that victims can remain protected by remaining in contact with the CSW, but conceded, "Since we have a lot of duties and few employees, maybe we are not in a condition to do it as well as necessary."⁵⁰⁰ An NGO worker observed that without emergency OFPs, victims "are not safe but they manage by themselves" during these proceedings.⁵⁰¹

Most misdemeanor judges divert responsibility and look to police to protect victims during proceedings.⁵⁰² As one interviewee observed, misdemeanor courts fail to act proactively within their authority to issue an emergency OFP *sua sponte* and instead depend too much on the police.⁵⁰³ One misdemeanor judge, when asked how a victim remains protected during proceedings, redirected expectations to the police, explaining, "We don't have the ability to protect them. A restraining order is

⁴⁹² MDT, City D, July 10, 2015.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ NGO 1, City D, July 4, 2015.

⁴⁹⁶ Law on Misdemeanors, Art. 229(1); Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁴⁹⁷ Interview with Misdemeanor Court, City D, July 3, 2015. Orders for protection are here executed before entry into force of the decision in accordance with Article 229(1), item 2 of the misdemeanor procedure; Interview with Misdemeanor Court, City B, June 30, 2015.

⁴⁹⁸ Interview with CSW City C, July 6, 2015; Interview with CSW, City D, July 3, 2015.

⁴⁹⁹ Interview with Misdemeanor Judge, City A, July 8, 2015 (emphasis added).

⁵⁰⁰ Interview with CSW, City F, July 7, 2015.

⁵⁰¹ Interview with NGO, City C, July 6, 2015.

⁵⁰² Interview with CSW, City A, July 8, 2015.

⁵⁰³ Interview with NGO, City B, July 1, 2015.

performed by the police.”⁵⁰⁴ This judge added, “I have never had a request for protection measures. I think the police should frequently submit such requests, but they never do.”⁵⁰⁵

SECURITY IN MISDEMEANOR COURTROOMS AND WAITING AREAS

The Protocol requires courts to “[p]rovide security measures for the victim of violence when entering the court” and to “[s]ecure a special room for the victim of violence to wait for giving a statement (physically separate from the abuser).”⁵⁰⁶ Misdemeanor courts do not meet these requirements, and judges reported lacking appropriate mechanisms to physically separate the victim from the offender before or during court proceedings.⁵⁰⁷

Misdemeanor courtrooms are typically small offices that force the victim and offender into close proximity.⁵⁰⁸ In some offices, there are seats for only two people, and additional persons must either stand or find another seat.⁵⁰⁹ At times, even the parties must stand throughout the proceedings in such small spaces.⁵¹⁰ Such proximity can place the victim and anyone accompanying her in physical danger.⁵¹¹ Confidants can serve as a physical “buffer” in such close vicinity,⁵¹² but even they face threats from offenders.⁵¹³ A judge explained, “If we are scared there will be conflict, I call the police officer, and he sits between them” in the office.⁵¹⁴ There are no other factors that mandate police presence other than the judge’s opinion. The judge explained, “There are no other conditions. I can see from [the] protocol that we should separate them, especially when there are children involved, to prevent them from meeting, but we do not have the conditions for that.”⁵¹⁵

Victims face threats to their safety as they wait outside the courtroom in a hallway with the offender. One NGO employee observed that when the offender is not detained, the victim could be forced to wait as close as one meter from her abuser.⁵¹⁶ The offender “could attack her if he wants. He could insult her or threaten her or anything if she’s alone” in the hallway.⁵¹⁷ Again, confidants can provide victims with an enhanced sense of security in such settings outside the courtroom.⁵¹⁸ The confidant’s presence is insufficient to deter attacks without appropriate judicial intervention. A confidant described how she and a victim had to sit near the abuser in a hallway in front of the judge’s chambers waiting for a hearing. The offender jumped up from a bench and kicked the confidant in the chest in the presence of

⁵⁰⁴ Interview with Misdemeanor Court, City C, July 6, 2015.

⁵⁰⁵ *Id.*

⁵⁰⁶ Protocol, Judiciary ¶¶3-4.

⁵⁰⁷ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City F, July 7, 2015.

⁵⁰⁸ Interview with NGO, City B, July 1, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁵⁰⁹ Interview with NGO, City B, July 1, 2015; Interview with NGO City B, June 30, 2015.

⁵¹⁰ Interview with Misdemeanor Court, City D, July 3, 2015.

⁵¹¹ Interview with NGO, City B, July 1, 2015.

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ Interview with Misdemeanor Court, City C, July 6, 2015.

⁵¹⁵ *Id.*

⁵¹⁶ Interview with NGO, City B, July 1, 2015.

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*; Interview with NGO City B, June 30, 2015.

a police officer.⁵¹⁹ The offender then threatened to kill the victim and “make kebabs out of” the confidant.⁵²⁰ Instead of using her authority to hold the offender accountable, the misdemeanor judge looked to the confidant and asked, “What are we going to do with him?”⁵²¹

EVIDENTIARY REQUIREMENTS FOR LONG-TERM OFPS

As with applications for emergency OFPs, applications for long-term OFPs face numerous barriers. The most common legal challenge to securing an OFP is the sufficiency of the evidence.⁵²² Misdemeanor judges primarily rely on three sources of evidence to decide whether to issue OFPs: the victim’s testimony; medical documentation of injuries; and the CSW’s opinion.⁵²³

Judges lack sensitivity in hearing testimony from victims

The victim’s statement is a crucial piece of evidence in misdemeanor proceedings, particularly when there is no medical documentation.⁵²⁴ Victims who testify may feel intimidated and confused, and may forget to tell the judge important details.⁵²⁵ The pressure of being in court, judicial insensitivity, the offender’s presence, or even the passage of time can contribute to gaps in her testimony.⁵²⁶ An interviewee overheard a judge tell a victim that “they would really like to help her but they can’t use anything she is saying” when she forgets details.⁵²⁷

Some judges lack sensitivity in dealing with victims who may be appearing in court for the first time and may feel unsafe.⁵²⁸ One NGO worker explained:

It’s not pleasant, especially when there are strict questions and when they are interrupting. It happens often that somebody is interrupting the victim, because women sometimes want to tell the whole story from the beginning and for them it’s very hard to determine what is important and what is not. Sometimes they are interrupted and sometimes it is very unpleasant by itself, even when the perpetrator is not there.⁵²⁹

Judges expressed reluctance to take a victim at her word, with one appellate judge asserting, “to make a decision on [a victim’s] words, it is impossible.”⁵³⁰ Another appellate judge cited an example of a Serbian woman who accused her Montenegrin husband of domestic violence.⁵³¹ The judge criticized the first instance court for “trust[ing] her because there was no other evidence.”⁵³² The appellate court

⁵¹⁹ Interview with NGO, City C, July 6, 2015.

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁵²³ Interview with CSW, City B, June 29, 2015.

⁵²⁴ Interview with Police 1, City C, July 6, 2015.

⁵²⁵ Interview with NGO, City B, July 1, 2015.

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁵³¹ *Id.*

⁵³² *Id.*

ultimately concluded the woman was the abuser and her husband the victim, and the lower court erred in fining him 150€.⁵³³ The judge explained, “This is an example of what happens if you only trust without evidence.”⁵³⁴

The accused has a right to be present during the testimony of the victim and any other witnesses.⁵³⁵ Judges may also grant the offender the opportunity to ask the victim questions after she gives her statement⁵³⁶ and may use confrontation, as described below. Some judges, however, are willing to exclude the accused while the victim gives her statement.⁵³⁷ One judge explained:

I recognized the victim was afraid to say it in front of him. She has the right to pose some questions and the right to pass through everything once again. After that, they read the statement of the victim to the offender, because they do not want to violate his right to defend himself.⁵³⁸

Conversely, judges typically exclude the victim from the courtroom when the offender testifies.⁵³⁹

LENGTH OF LDVP PROCEEDINGS

Misdemeanor proceedings are generally “simpler and more efficient” than criminal proceedings.⁵⁴⁰ Misdemeanor courts have shortened and regular procedures, depending on whether the police have a legal basis to detain the offender.⁵⁴¹ With misdemeanor court authorization, police may arrest the offender and bring him before the misdemeanor judge who can initiate a “shortened procedure.”⁵⁴² Under the shortened procedure, the misdemeanor judge may hear the case, impose a sanction, and issue an OFP immediately.⁵⁴³ In some shortened proceedings the court completes the procedure at the first hearing or the following day.⁵⁴⁴ Some misdemeanor judges almost always handle LDVP cases under the shortened procedure.⁵⁴⁵ In one large city, a judge estimated that at least 80 percent of domestic

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City E, July 9, 2015.

⁵³⁶ Interview with Misdemeanor Court, City E, July 9, 2015.

⁵³⁷ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵³⁸ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵³⁹ Interview with NGO, City B, July 1, 2015; Interview with Misdemeanor Court, City E, July 9, 2015.

⁵⁴⁰ Interview with Police 1, City C, July 6, 2015.

⁵⁴¹ Interview with NGO, City B, July 1, 2015.

⁵⁴² Misdemeanor Law, Art. 225; Interview with Police 1, City C, July 6, 2015; Interview with Misdemeanor Court, City D, July 3, 2015; Interview with Police, City A, July 8, 2015. See also Law on Misdemeanors, Art. 225(1)(3); Interview with NGO, City B, July 1, 2015. In addition to detention, whether a misdemeanor court treats an LDVP case as a shortened procedure or a regular procedure depends on factors such as: whether the offender appears in court or cooperates; whether the offender is hiding from authorities; whether there is a risk assessment demonstrating a high risk of future violence; and whether the victim has sustained serious injuries. Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁵⁴³ Interview with NGO, City B, July 1, 2015. If the offender requests the hearing be postponed, the misdemeanor judge allows him eight days to prepare a defense. Interview with Misdemeanor Court, City E, July 9, 2015.

⁵⁴⁴ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵⁴⁵ Interview with Misdemeanor Court, City E, July 9, 2015.

violence cases proceed under the shortened procedure.⁵⁴⁶ In other jurisdictions, judges only use the shortened procedure for acts of physical violence, while routing other forms of violence through the regular procedure.⁵⁴⁷

Under the regular procedure, the police must file a charge within 60 days.⁵⁴⁸ A regular procedure case may last more than six months and, in practice, the judge typically does not issue an OFP until the proceedings conclude, despite the option of issuing an emergency OFP before or during proceedings.⁵⁴⁹ As a result, the victim may be unnecessarily exposed to additional danger for up to several months while she awaits the final verdict.

The head of the misdemeanor appellate court has directed judges to handle all LDVP cases quickly.⁵⁵⁰ But this directive leaves much to judicial discretion, meaning that cases can last anywhere from “a couple [of] days to a couple [of] months.”⁵⁵¹ An NGO worker reported that, even under the shortened procedure, cases can be prolonged up to seven or eight months.⁵⁵² One judge recalled a case that took nearly five months from the date it was initiated to the judge’s decision.⁵⁵³ The assumption that misdemeanor courts conclude proceedings swiftly affects other actors’ decisions to pursue OFPs before and during proceedings. One police officer reported never seeking emergency OFPs because judges act so quickly on applications for long-term OFPs.⁵⁵⁴ “The reaction is immediate,” the officer added.⁵⁵⁵

Several other factors may prolong LDVP proceedings. As with the avoidance of service of an OFP, an offender may evade service of process and cause delays in misdemeanor proceedings.⁵⁵⁶ For example, after an offender failed to appear for a hearing, the judge simply stated, “I can’t get him here.”⁵⁵⁷ The victim’s confidant asked the judge to request the police arrest and bring the offender to court.⁵⁵⁸ The judge responded, “It’s not necessary. We’ll wait. We’ll schedule another hearing.”⁵⁵⁹ Yet, throughout the misdemeanor proceedings, the offender threatened the entire family and even struck his adult son in the chest while he was recovering from a heart operation.⁵⁶⁰

⁵⁴⁶ Interview with Misdemeanor Court, City B, June 30, 2015. In some jurisdictions, the police typically arrest the offender and seek a shortened procedure. Interview with Police, City D, July 4, 2015. In other jurisdictions, however, it requires encouragement by an NGO advocate or confidant. Interview with NGO, City B, July 1, 2015.

⁵⁴⁷ Interview with Police, City B, July 1, 2015.

⁵⁴⁸ *Id.*

⁵⁴⁹ Interview with NGO, City B, July 1, 2015; LDVP, Art. 29(1); Interview with Misdemeanor Court, City B, June 30, 2015.

⁵⁵⁰ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵⁵¹ Interview with NGO, City C, July 6, 2015.

⁵⁵² *Id.*

⁵⁵³ Interview with Misdemeanor Court, City E, July 9, 2015.

⁵⁵⁴ Interview with Police, City E, July 9, 2015.

⁵⁵⁵ *Id.*

⁵⁵⁶ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵⁵⁷ Interview with NGO, City B, July 1, 2015.

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.*

The CSW's opinion, which judges view as integral to their decision, may also cause delays in the proceedings. The LDVP states that the misdemeanor court may request CSW assistance "in collecting evidence and presenting the opinion" for the requested OFP.⁵⁶¹ Some misdemeanor judges even viewed the opinion as obligatory. One judge explained, "You have to wait until you get that [CSW] opinion and that takes a couple days."⁵⁶² But these opinions may not always be provided so swiftly to judges; one judge admitted it could take three to six months to receive the CSW's opinion.⁵⁶³

In the meantime, these delays threaten the victim's safety. One NGO worker described the impact of protracted proceedings on the victim:

She reported to the police twice. The first time they scheduled a hearing in misdemeanor court, and it was postponed because some of the evidence, which was recorded by the police, should have been given to the judge but the one who filed the request was not present. So we waited for the next hearing. The next hearing was first delayed for next two months because the judge was sick [and then by another month to get all of the witnesses]. . . . In the meantime, he committed violence again⁵⁶⁴

In the case described on page 23, the misdemeanor court took three months under the shortened procedure to issue a regular OFP. The victim had endured domestic violence for many years. When her children were young, they hid her in their bedroom among clothes so their father could not find her. When he did find her, he would beat her so severely she could not move for days.⁵⁶⁵ She began reporting to the police years later, once she perceived that her grandchildren were in danger.⁵⁶⁶ While she waited for the misdemeanor court to issue the OFP, the husband threatened the entire family, forcing the victim, her children, and her grandchildren to "lock[] themselves into their bedrooms again because they were afraid that during the night he might do something."⁵⁶⁷ During those three months when no one requested an emergency OFP, she reported five additional acts of domestic violence.⁵⁶⁸

Prompt adjudication increases the likelihood that victims will cooperate and testify

Many interviewees reported that victims often withdraw their statements and give up on the misdemeanor case.⁵⁶⁹ In a recent survey, judiciary representatives identified victims' economic dependence, patriarchal values, and shame as the primary reasons victims refuse to testify in domestic violence cases.⁵⁷⁰ If the victim does not cooperate, the misdemeanor judge discharges the offender⁵⁷¹

⁵⁶¹ LDVP, Art. 29(2).

⁵⁶² Interview with Misdemeanor Court, City F, July 7, 2015.

⁵⁶³ Interview with Misdemeanor Judge, City A, July 8, 2015.

⁵⁶⁴ Interview with NGO, City B, July 1, 2015.

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ Interview with Police 1, City C, July 6, 2015; Interview with Police 2, City C, July 6, 2015; Interview with Misdemeanor Court, City D, July 3, 2015. In many cases the victim does not want to testify. They are most likely to do so under the regular procedure. Interview with Police 1, City B, July 1, 2015.

⁵⁷⁰ Ipsos Strategic Marketing, at 64.

⁵⁷¹ Interview with Police 1, City B, July 1, 2015.

unless there is other evidence, such as a medical certificate, documentation, or witnesses.⁵⁷² Without her testimony or other evidence, a judge stated, “we don’t have anything else to do except release the offender.”⁵⁷³ In other cases, the misdemeanor judge issues an admonition.⁵⁷⁴

When misdemeanor courts act promptly, however, victims have a smaller window to reconsider and recant, and the offender has a more limited opportunity to pressure her withdrawal from the proceedings. As one police officer observed, “[i]n shortened procedures, every victim testifies.”⁵⁷⁵ A prosecutor described the situation for victims who decide to pursue misdemeanor proceedings, “it is because we don’t have time spent between the act itself and the trial.”⁵⁷⁶

As described earlier, some LDVP cases proceed through the regular procedure, where they may last several months.⁵⁷⁷ Because LDVP cases often hinge on the victim’s statement and her cooperation, adjudicating a case under the regular, rather than shortened, procedure increases the likelihood that she will recant and the case will be dismissed or otherwise fail.⁵⁷⁸

EVIDENTIARY ISSUES

Confrontation imposes unnecessary burdens on victims

The Criminal Procedure Code provides for the use of confrontation between the accused person and a witness “if their statements regarding relevant facts do not correspond.”⁵⁷⁹ Under this procedure, “[t]he confronted persons shall be placed one towards the other and shall be requested to repeat to each other their statements regarding each disputable circumstance and to argue whether their statements are true.”⁵⁸⁰ According to judges, the victim and accused stand between one-half and two meters apart and look each other in the eye as they recount their testimony.⁵⁸¹ As they testify, the judge relies on “their posture, whether they turn their eyes to the side, and their attitude” to draw a conclusion as to the parties’ veracity.⁵⁸² One judge emphasized that “non-verbal [communication] really is especially important,” adding, “sometimes it says a lot more.”⁵⁸³

Misdemeanor judges typically use confrontation in domestic violence cases.⁵⁸⁴ When asked whether the practice is common in domestic violence cases, a misdemeanor judge responded, “Absolutely.”⁵⁸⁵ This

⁵⁷² Interview with Misdemeanor Court, City D, July 3, 2015.

⁵⁷³ Interview with Misdemeanor Court, City C, July 6, 2015.

⁵⁷⁴ Interview with Misdemeanor Court, City D, July 3, 2015.

⁵⁷⁵ Interview with Police 1, City B, July 1, 2015.

⁵⁷⁶ Interview with Prosecutors, City A, July 8 2015.

⁵⁷⁷ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁵⁷⁸ *Id.*

⁵⁷⁹ Criminal Procedure Code, Art. 102(1).

⁵⁸⁰ *Id.* Art. 102(2).

⁵⁸¹ Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with Misdemeanor Court, City E, July 9, 2015; Interview with Misdemeanor Court, City D, July 3, 2015; Interview with NGO, City B, June 30, 2015.

⁵⁸² Interview with Misdemeanor Court, City E, July 9, 2015.

⁵⁸³ Interview with Misdemeanor Court, City D, July 3, 2015.

⁵⁸⁴ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with CSW, City B, June 29, 2015; Interview

judge explained that although judges believe victims more than the perpetrator, confrontation will always show the victim is not lying in “100 percent of cases.”⁵⁸⁶ Another judge justified the use of confrontation as a way to respect the “human rights of everyone.”⁵⁸⁷

Interviewees emphasized, however, how difficult confrontation is for victims.⁵⁸⁸ A police officer observed that victims often are unable to explain because of the pressure of being in front of the offender.⁵⁸⁹ Another NGO employee explained that often “the victim is very confused. She forgets to tell many important things that she should say to the judge.”⁵⁹⁰ A confidant recalled a case where two victims were forced to confront the abuser. She explained:

They were so confused, they couldn’t say a word. And [the accused] continued to attack them all the time, asking them questions during the hearing. At one point, I said, ‘Judge, please, what is going on here? I mean they are not accused, but him.’ And she [the judge] just gave me the sign not to speak. . . . [A]fter the hearing, she told me it was the only way she could give him a punishment because it was their words against his, she didn’t have any other evidence, and she wanted to see how he actually behaved on a daily basis.⁵⁹¹

But when confrontation traumatizes and impedes a victim’s ability to recall details, it can result in the misdemeanor judge rejecting her testimony altogether.⁵⁹²

A few misdemeanor judges stated that they do not use confrontation in all domestic violence cases.⁵⁹³ For example, they only resort to confrontation when other evidence is insufficient.⁵⁹⁴ Some misdemeanor judges suggested they consider the victim’s state of mind in deciding whether confrontation is appropriate. For example, a judge explained he only uses the procedure when he perceives that the victim has the “courage” or “intention” to do so.⁵⁹⁵ Yet NGO staff reported that misdemeanor judges use confrontation “almost in all cases, even if there is other evidence present.”⁵⁹⁶

⁵⁸⁵ Interview with Misdemeanor Court, City F, July 7, 2015.

⁵⁸⁶ Interview with Misdemeanor Court, City F, July 7, 2015.

⁵⁸⁷ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵⁸⁸ Interview with NGO, City D, June 28, 2015.

⁵⁸⁹ Interview with Police, City D, July 4, 2015.

⁵⁹⁰ Interview with NGO, City B, July 1, 2015.

⁵⁹¹ Interview with NGO, City B, July 1, 2015.

⁵⁹² *Id.*

⁵⁹³ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City C, July 6, 2015.

⁵⁹⁴ Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City E, July 9, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁵⁹⁵ Interview with Misdemeanor Court, City B, June 30, 2015.

⁵⁹⁶ Interview with NGO, City B, July 1, 2015.

Misdemeanor judges sometimes require medical documentation

Victims may present medical evidence of their health conditions and psychological problems related to the stress of domestic violence.⁵⁹⁷ Misdemeanor judges' requirements for this documentation vary.

Some judges describe a medical report as "very important" and require it for even minor physical injuries, such as a scratch.⁵⁹⁸ And with a medical report, the victim's testimony may be unnecessary to obtain an OFP.⁵⁹⁹

Medical documentation is needed for issuing remedies of addiction treatment under the LDVP. In practice, misdemeanor courts are prohibited from issuing an OFP requiring drug or alcohol treatment without a medical diagnosis requiring it.⁶⁰⁰ But misdemeanor judges report that they "don't always have time to gather [a] medical opinion" to assess the need for addiction treatment.⁶⁰¹

Medical documentation requirements also delay proceedings. Until the court receives these opinions, hearings are postponed, further protracting the process and placing victims at risk.⁶⁰² One judge described a case that required four judicial hearings to decide on mandatory treatment.⁶⁰³ One misdemeanor judge found this rule rendered OFPs "not sustainable."⁶⁰⁴

Misdemeanor judges often fail to consider the offender's history of domestic violence

Interviewees expressed concern that misdemeanor judges do not consider the history of domestic violence in spite of its potential impact on sentencing.⁶⁰⁵ Without an offender's history, judges typically impose lighter sanctions on individuals they perceive to be first-time offenders.⁶⁰⁶

Misdemeanor judges often rely on CSW reports to learn if the offender is a recidivist,⁶⁰⁷ and in some cities, always request a CSW opinion regardless of whether victim has visited the center.⁶⁰⁸ Reliance on CSW reports can delay cases, particularly in urgent misdemeanor hearings.⁶⁰⁹ One NGO explained that when police refer the victim to the CSW and the victim cannot schedule a timely meeting, it prolongs the process.⁶¹⁰ In other cities, courts do not consistently request a CSW opinion.⁶¹¹ As noted in the preceding section, the Protocol grants judges discretion to engage the CSW only "[w]hen necessary."⁶¹²

⁵⁹⁷ *Id.*

⁵⁹⁸ Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with NGO City D, June 28, 2015, Interview with NGO City B, July 2, 2015.

⁵⁹⁹ Interview with Misdemeanor Judge, City A, July 8, 2015.

⁶⁰⁰ Interview with Misdemeanor Court, City E, July 9, 2015.

⁶⁰¹ Interview with Misdemeanor Court, City C, July 6, 2015.

⁶⁰² *Id.*

⁶⁰³ Interview with Misdemeanor Court, City E, July 9, 2015.

⁶⁰⁴ *Id.* This rule was set down by appellate court. *Id.*

⁶⁰⁵ Interview with NGO, City D, June 28, 2015; Interview with Police, City D, July 4, 2015.

⁶⁰⁶ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City F, July 7, 2015.

⁶⁰⁷ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁶⁰⁸ Interview with NGO City D, Nov. 11, 2016 (via telephone).

⁶⁰⁹ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

⁶¹⁰ *Id.*

⁶¹¹ Interview with CSW, City B, June 29, 2015.

⁶¹² Protocol, Judiciary, ¶16.

Furthermore, as described in the CSW section, CSW workers prepare the report using their records, but generally rely on the victim for information.⁶¹³ Misdemeanor judges expressed concern that the CSWs do not include any history of domestic violence in their reports.⁶¹⁴ When judges depend exclusively on CSW reports and fail to inquire independently, as described below, they may overlook the history of a dangerous abuser.

If neither the court nor CSW has a record of the offender's prior conduct, it is up to the judge to question the offender and victim to learn if there is a history of domestic violence.⁶¹⁵ It is not clear whether such inquiries are a common practice. When judges rely on the CSW or police to share the offender's records,⁶¹⁶ that practice fails to take into account the many incidents victims endured but did not report.⁶¹⁷ One judge reported that victims disclose a history of violence in only a small number of cases.⁶¹⁸ When victims do share information, judges do not always accept their testimony about past abuse.⁶¹⁹ A judge explained they cannot consider domestic violence occurring more than two years prior to the offense in question.⁶²⁰ In some cases, judges have even cut the victim short if she attempts to describe the history of domestic violence.⁶²¹

One difficulty in determining whether an offender has a prior history is the separation of the misdemeanor and criminal court systems. The Ministry of the Interior (MoI) maintains misdemeanor records, while the MoJ maintains criminal records.⁶²² As one misdemeanor judge explained, "I do not have the report for his criminal record. It does exist, but not in the misdemeanor procedure."⁶²³ Another judge concurred, "I can only have the records from the misdemeanor court, because this is the misdemeanor organ."⁶²⁴ One misdemeanor judge, however, admitted it is possible to investigate if he has been punished in Montenegro at all, giving each criminal case greater insight.⁶²⁵

An additional complication is the absence of consistent and shared record-keeping among misdemeanor judges in the same jurisdiction.⁶²⁶ One victim made five separate reports of domestic violence. The interviewee recalled "all five reports were given to five different judges, and none of them among themselves knew that she reported already and that there is something that was already finished."⁶²⁷

⁶¹³ Interview with CSW, City B, June 29, 2015.

⁶¹⁴ Interview with Misdemeanor Court, City C, July 6, 2015.

⁶¹⁵ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City E, July 9, 2015.

⁶¹⁶ Interview with Misdemeanor Court, City D, July 3, 2015.

⁶¹⁷ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Police 2, City C, July 6, 2015; Interview with Neuropsychiatrist, City E, July 9, 2015; Interview with Police, City E, July 9, 2015; Interview with Police, City A, July 8, 2015.

⁶¹⁸ Interview with Misdemeanor Court, City F, July 7, 2015.

⁶¹⁹ Interview with NGO 1, City D, July 4, 2015.

⁶²⁰ Interview with Misdemeanor Court, City E, July 9, 2015.

⁶²¹ Interview with NGO 1, City D, July 4, 2015.

⁶²² Interview with Police 1, City C, July 6, 2015.

⁶²³ Interview with Misdemeanor Court, City E, July 9, 2015; Interview with Misdemeanor Court, City F, July 7, 2015.

⁶²⁴ Interview with Misdemeanor Court, City E, July 9, 2015.

⁶²⁵ Interview with Misdemeanor Judge, City A, July 8, 2015.

⁶²⁶ Interview with NGO, City B, July 1, 2015.

⁶²⁷ *Id.*

The judge handling the second case did not have any information about the offender's history. It was only when the victim recalled that she had appeared in a neighboring judge's office two months earlier that an NGO could ask the first judge for that decision.⁶²⁸ The first judge responded, "Yes, I gave the conviction. It's a suspended sentence."⁶²⁹ The second judge never knew of the offender's conviction until the NGO took steps to track down this information for him.⁶³⁰

A further difficulty is that domestic violence can sometimes be charged under the Law on Public Order and Peace, rather than the LDVP.⁶³¹ In such circumstances, the misdemeanor judge adjudicating the LDVP case will not consider a prior conviction under the Law on Public Order and Peace to be an aggravating factor.⁶³² Similarly, an offender who is issued an LDVP OFP is not necessarily considered a repeat offender if his second charge arises under the Law on Public Order and Peace.⁶³³ One misdemeanor judge who handled such a case suspected that the offender had violated the OFP, but did not press the police to pursue the violation as a crime instead of an offense under the Law on Public Order and Peace.⁶³⁴ In deferring to the charging decision, the judge stated, "I cannot teach them how to act, and I cannot act in their place."⁶³⁵ Other misdemeanor judges, however, insist that the LDVP offers better protection and strive to use it instead.⁶³⁶

Another challenge arises if an offender receives legal rehabilitation for a prior act of domestic violence.⁶³⁷ In such cases, the court treats the offender "as a person who has never been punished."⁶³⁸ Neither judges nor prosecutors have ready access to information about a prior conviction after the offender receives legal rehabilitation.⁶³⁹

Judges create barriers to the admission of additional evidence

Judges may consider photographs or witness testimony, but often erect barriers to receiving such evidence in LDVP proceedings. For example, photographs of injuries are rarely used in misdemeanor proceedings,⁶⁴⁰ where the judge only allows photos with the victim's consent.⁶⁴¹ Witness testimony can also be important in misdemeanor proceedings. At times, however, judges' attitudes reportedly cause witnesses to feel as though they are on trial.⁶⁴² In one case, the parties' teenage children had to testify. The confidant observed that "[t]hey were so confused, they couldn't say a word. And [the judge]

⁶²⁸ *Id.*

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ Interview with Misdemeanor Court, City E, July 9, 2015.

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ *Id.*

⁶³⁵ *Id.*

⁶³⁶ Interview with Misdemeanor Court, City B, June 30, 2015.

⁶³⁷ Criminal Code, Arts. 118-23.

⁶³⁸ Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁶³⁹ Interview with Prosecutor, City D, July 3, 2015.

⁶⁴⁰ Interview with NGO, City C, July 6, 2015.

⁶⁴¹ *Id.*

⁶⁴² Interview with NGO, City B, July 1, 2015.

continued to attack them all the time, asking them questions during the hearing.” The confidant recalled, “for the children, it was awful because she was accusing them of different kinds of things.”⁶⁴³

ORDERS FOR PROTECTION ISSUED BY MISDEMEANOR JUDGES

The MoJ concedes that data collection under the LDVP is inadequate and notes that most institutions lack electronic systems for data collection.⁶⁴⁴ Police bodies have electronic data collections systems, but they have not been updated to align with the LDVP.⁶⁴⁵ According to the MoJ, the number of OFPs issued reached its peak in 2013, with 273 orders granted that year.⁶⁴⁶ Since 2011, the most frequently issued protective measure is the prohibition against harassment and stalking, and the second most frequently issued is the restraining order.⁶⁴⁷ Misdemeanor courts rarely issue orders for psycho-social treatment.⁶⁴⁸ Orders for addiction treatment have remained relatively steady, while eviction orders have increased slightly since the LDVP took effect.⁶⁴⁹

In 2015, representatives of the justice sector reported that they most frequently use the protective measures of addiction treatment and restraining orders, while opining that addiction treatment and psycho-social treatment are the most effective measures.⁶⁵⁰ Judges reported that, among the protective measures available under the LDVP, they were least likely to issue eviction orders.⁶⁵¹

In some jurisdictions, misdemeanor judges rarely issue OFPs in LDVP proceedings. For example, in one jurisdiction, police filed 139 cases under the LDVP, but the court issued only 13 OFPs.⁶⁵² In another jurisdiction, police submitted 54 cases under the LDVP over a three-year period, but the misdemeanor court issued just 33 OFPs.⁶⁵³ Some misdemeanor judges even overstep their judicial authority under the LDVP to bar an order; one judge issued a stay against enforcement of a police-issued three-day eviction order, despite no provision in the LDVP allowing such an action.⁶⁵⁴ When the court does not issue an OFP, domestic violence often continues after proceedings, even with other punishments.⁶⁵⁵

LDVP Penalties

Article 36 states that LDVP penalties “shall be imposed” for committing specified violations of the LDVP, such as using physical force upon a family member, or issuing verbal assaults, committing sexual abuse, or stalking a family member.⁶⁵⁶ Despite this mandatory language, Article 26 states that an order for protection may be issued “as a sanction in itself,” which some misdemeanor judges interpret as not

⁶⁴³ *Id.*

⁶⁴⁴ 2016 Ministarstvo Pravde Izvještaj, Section V.

⁶⁴⁵ *Id.*

⁶⁴⁶ *Id.* Section III.

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

⁶⁵⁰ Ipsos Strategic Marketing, at 50.

⁶⁵¹ *Id.* at 51.

⁶⁵² Interview with Police 2, City C, July 6, 2015.

⁶⁵³ Interview with Misdemeanor Court, City F, July 7, 2015.

⁶⁵⁴ Interview with Police, City D, July 4, 2015.

⁶⁵⁵ Interview with Social Worker, City C, July 6, 2015; Interview with CSW, City D, July 3, 2015.

⁶⁵⁶ LDVP, Art. 36(1).

requiring the imposition of a fine or prison term if they issue an OFP.⁶⁵⁷ As a result, misdemeanor judges at times issue an OFP with an admonition because of uncertainty over whether they can issue an OFP without a sanction.⁶⁵⁸ The head of the Council for Misdemeanors contended it is unlawful to issue OFPs—with the exception of psycho-social treatment—without simultaneously issuing sanctions.⁶⁵⁹ A health care provider explained “the sanctions are actually weak and that is why offenses are repeated.”⁶⁶⁰

The LDVP does not expressly require judges to inform victims of their right to seek an OFP, but it does require misdemeanor courts, along with other institutions, to provide the victim with “full and coordinated protection.”⁶⁶¹ In some jurisdictions, victims submit applications after the judge proposes that they do so.⁶⁶² A misdemeanor judge explained she does not inform the victim of her right to seek an OFP but draws her own conclusions if an order is needed. In this case, she issues it on her own initiative.⁶⁶³ This conduct diminishes victim autonomy and puts assessment of the victim’s danger in the judge’s hands. Yet, as described on page 45, there is no formal risk assessment for judges to assess for future harm.

The LDVP sets a minimum and a maximum term for eviction orders, which may last between thirty days and six months,⁶⁶⁴ and restraining and harassment and stalking orders, which may last between thirty days and one year.⁶⁶⁵ Addiction treatment may last up to one year, and psycho-social therapy up to six months.⁶⁶⁶ A judge may prolong an OFP “if reasons for measures imposing [it] still exist, but no longer than for [a] period of two years.”⁶⁶⁷ Those OFPs issued typically last for a period of three to six months.⁶⁶⁸ Some police officers express frustration that OFPs do not last longer.⁶⁶⁹

Currently, the LDVP does not provide a remedy of financial support to the victim. In cases involving minor victims, however, the misdemeanor court has a duty to notify the CSW, which could provide financial assistance.⁶⁷⁰ A health care provider described a case where the misdemeanor court judge imposed several fines as well as sentenced the offender to one month in jail for continuing domestic

⁶⁵⁷ “An order of protection may be issued either in addition to a sanction or as a sanction in itself.” LDVP, Art. 26(1).

⁶⁵⁸ Interview with Misdemeanor Court, City D, July 3, 2015.

⁶⁵⁹ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

⁶⁶⁰ Interview with Neuropsychiatrist, City E, July 9, 2015.

⁶⁶¹ LDVP, Art. 5(1).

⁶⁶² Interview with Misdemeanor Court, City C, July 6, 2015.

⁶⁶³ Interview with Misdemeanor Court, City E, July 9, 2015.

⁶⁶⁴ LDVP, Art. 21(3).

⁶⁶⁵ *Id.* Art. 22(3), 23(2).

⁶⁶⁶ *Id.* Art. 24(2), 25(2).

⁶⁶⁷ *Id.* Art. 26(3).

⁶⁶⁸ Interview with CSW, City B, June 29, 2015; Interview with NGO City B, June 30, 2015; Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Police 2, City C, July 6, 2015; Interview with NGO 1, City D, July 4, 2015; Interview with Police, City D, July 4, 2015.

⁶⁶⁹ Interview with Police, City D, July 4, 2015.

⁶⁷⁰ LDVP, Art. 9(3).

violence.⁶⁷¹ The couple divorced, but due to lack of financial resources, the victim lives with the offender.⁶⁷² The offender continues to commit domestic violence against her.⁶⁷³

MONITORING COMPLIANCE WITH OFPS

Police bear the bulk of the responsibility for monitoring compliance with eviction, restraining, and harassment and stalking OFPs.⁶⁷⁴ One misdemeanor judge explained that after issuing an OFP, the judge always warns the police and CSW to monitor the offender's behavior.⁶⁷⁵ Overall, interviews indicate no institution is stepping up, and one NGO worker observed that "nobody is controlling the protection measures."⁶⁷⁶ A police officer suggested they could achieve better protection if an official institution worked with victims after the outcome,⁶⁷⁷ as victims rarely report violations of OFPs.⁶⁷⁸ Instead, police typically wait for the victim to make a report, and even in those cases, police do not always treat it as an urgent matter.⁶⁷⁹ One officer explained that they do not have time to check on the victim, although there are times when they would like to do so.⁶⁸⁰

OFPs have been described as "just existing in written form, but nothing else."⁶⁸¹ Members of Parliament and CSWs acknowledged the need for better monitoring of the implementation of OFPs.⁶⁸² For example, an interviewee observed that misdemeanor judges do not supervise OFPs and often do not inform the victim of their issuance.⁶⁸³

One case depicts the systemic gaps in enforcing OFPs, where a victim of long-term physical violence and threats fled to a shelter. When her abuser's threats continued, the shelter wrote to the police, prosecutor, and CSW, warning them that it was a high-risk case and the offender had threatened to murder the victim and her family.⁶⁸⁴ The NGO eventually persuaded the misdemeanor court to issue an OFP.⁶⁸⁵ Despite this protection, the woman was afraid to leave the shelter because the offender had hidden firearms.⁶⁸⁶ When the offender violated the OFP, the prosecutor declined to prosecute the offender.⁶⁸⁷ The police then failed to locate the firearms, so she fled to her parents' home in another town.⁶⁸⁸ While en route, she and her father stopped at a police station in another city, but the inspector

⁶⁷¹ Interview with Health Center, City F, July 7, 2015.

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ LDVP, Art. 33(2); Interview with Police, City F, July 7, 2015.

⁶⁷⁵ Interview with Misdemeanor Court, City F, July 7, 2015.

⁶⁷⁶ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁶⁷⁷ Interview with Police, City F, July 7, 2015,

⁶⁷⁸ Interview with NGO, City B, June 30, 2015.

⁶⁷⁹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁶⁸⁰ Interview with Police, City F, July 7, 2015.

⁶⁸¹ Interview with NGO, City F, July 7, 2015; Interview with NGO, City B, July 1, 2015.

⁶⁸² Interview with Gender Equality Committee, Podgorica, June 30, 2015; Interview with CSW, City F, July 7, 2015.

⁶⁸³ Interview with NGO, City F, July 7, 2015.

⁶⁸⁴ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁶⁸⁵ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁶⁸⁶ *Id.*

⁶⁸⁷ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁶⁸⁸ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

instructed them to return to the victim's town to file a report.⁶⁸⁹ The offender then showed up at the parents' home and fired gunshots, killing the woman's father, shooting and injuring the woman and her mother, and attempted to ignite explosives.⁶⁹⁰ The NGO requested an investigation into the institutional responses, but the prosecutor did not find any wrongdoing.⁶⁹¹ The NGO is now planning to file a civil lawsuit to ask for compensation from the state.⁶⁹²

PERPETRATOR TREATMENT REMEDIES IN AN ORDER FOR PROTECTION

Addiction treatment measures are ineffective, yet judges continue to order them

Article 24 of the LDVP authorizes misdemeanor judges to issue an order for addiction treatment if the abuser "commits violence under the influence of alcohol, addictive substances or psychotropic substances, and where due to such addiction there is a risk of reoffending."⁶⁹³ Such orders "may last for as long as there is need for treatment, limited to one year."⁶⁹⁴ The LDVP directs the MoH to promulgate a more detailed description of the enforcement of such orders.⁶⁹⁵

Overall, misdemeanor judges order substance addiction treatment infrequently, but their issuance varies regionally. According to the Ministry for Human and Minority Rights, of 247 OFPs issued in 2014, 22 were for mandatory treatment for alcoholism and 2 were for mandatory drug addiction treatment.⁶⁹⁶ At the regional level, the frequency of these orders vary. Approximately half of all OFPs issued from 2013 through mid-2015 were for alcohol treatment in one region,⁶⁹⁷ while addiction treatment constituted just 10 percent of all OFPs in another region.⁶⁹⁸ The MoJ identified the lack of incentives for offender cooperation as one reason for the low use of these measures.⁶⁹⁹

The misdemeanor court may prolong the order "if reasons for measures imposing [it] still exist, but no longer than for [a] period of two years."⁷⁰⁰ Misdemeanor judges in only one jurisdiction, however, reported cooperation with health care providers to inform the court about treatments' progress and whether it should be continued.⁷⁰¹

Neither inpatient nor outpatient treatment are effective measures to protect victims.⁷⁰² Even judges who commonly order addiction treatment acknowledge that treatment is ineffective.⁷⁰³ One judge

⁶⁸⁹ *Id.*

⁶⁹⁰ Interview with NGO, City B, Nov. 1, 2016 (via telephone); Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁶⁹¹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁶⁹² Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁶⁹³ LDVP, Art. 24(1).

⁶⁹⁴ *Id.* Art. 24(2).

⁶⁹⁵ *Id.* Art. 33(4).

⁶⁹⁶ Interview with Ministry of Human and Minority Rights, Podgorica, July 2, 2015.

⁶⁹⁷ Interview with Misdemeanor Court, City C, July 6, 2015.

⁶⁹⁸ Interview with Misdemeanor Court, City F, July 7, 2015.

⁶⁹⁹ 2016 Ministarstvo Pravde Izvještaj, Section III.

⁷⁰⁰ LDVP, Art. 26(3).

⁷⁰¹ Interview with Misdemeanor Court, City D, July 3, 2015.

⁷⁰² Interview with NGO, City C, July 6, 2015.

⁷⁰³ Interview with Misdemeanor Court, City C, July 6, 2015.

admitted, “[f]or medical treatment of alcohol, they almost never get cured or treated and they continue to drink.”⁷⁰⁴ An interviewee recalled a case where a man came for his court-ordered treatment: “He stated, ‘Oh great, I get my rest there. I will go there. Just don’t punish me with a fine.’ Did he reoffend? Of course. Always.”⁷⁰⁵ When he returned from treatment, the domestic violence continued. He fractured his wife’s arm and was subsequently criminally charged.⁷⁰⁶ In one case, the offender was addicted to drugs and ordered to undergo addiction treatment.⁷⁰⁷ The offender beat his wife, causing bruises.⁷⁰⁸ Their older son began modeling his father’s behavior and acting aggressively toward his younger brother.⁷⁰⁹ The first misdemeanor order for treatment lasted three months.⁷¹⁰ The offender continued to commit acts of domestic violence, and with each new act of violence during the treatment, the police brought the offender to his psychologist.⁷¹¹ According to the CSW worker, “it went on for years.”⁷¹²

One NGO employee suggested that the only treatment that is somewhat effective is to confine the offender in a closed institution, adding:

[T]hat’s the only way to really protect the victim. . . . But the problem is that many judges don’t understand the phenomenon of family violence, and then sometimes they [are] taught that alcoholism or addiction is the cause of violence. By default, they think that somebody who is obsessively jealous or who is an alcohol addict has some psychological, mental illness, or something like that.⁷¹³

Indeed, as described earlier, some misdemeanor judges view substance abuse as a cause of domestic violence, and therefore favor the protective measure of addiction treatment.

But judges are also aware of the limited spaces and facilities available, particularly for inpatient treatment.⁷¹⁴ Only seven health centers report having the personnel to execute the measures.⁷¹⁵ The Kotor psychiatry hospital is the only facility that provides mandatory addiction treatment under the LDVP, and it has conducted such treatment in five cases since 2010.⁷¹⁶ One judge recalled how a colleague tried to send one person to an inpatient facility with only nine beds. The center responded they would make an exception this time, but that the judge should not send more people because they

⁷⁰⁴ *Id.*

⁷⁰⁵ Interview with NGO, City C, July 6, 2015.

⁷⁰⁶ Interview with NGO, City C, July 6, 2015.

⁷⁰⁷ Interview with CSW, City C, July 6, 2015.

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.*

⁷¹⁰ *Id.*

⁷¹¹ *Id.*

⁷¹² *Id.*

⁷¹³ Interview with NGO, City B, July 1, 2015.

⁷¹⁴ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁷¹⁵ 2016 Ministarstvo Pravde Izvještaj, Section III.

⁷¹⁶ *Id.* Section III.

would be rejected.⁷¹⁷ Another court ordered two offenders for treatment but the treatment facility had no open spaces. While the offenders waited to be admitted, they committed domestic violence again.⁷¹⁸

The alternative, outpatient addiction treatment, does not promote victim safety, either.⁷¹⁹ Under Article 32 of the LDVP, a person must notify a misdemeanor court, the police, prosecutor, or CSW if that person “is informed during the discharge of his affairs that [the] abuser does not comply with the order of protection.”⁷²⁰ Instead of communicating with the misdemeanor court or pursuing criminal charges for repeat violence, police officers merely return offenders to treatment. In one case, the judge ordered two months of addiction treatment, during which the offender continued to commit domestic violence, hitting his wife and pulling her hair to drag her out of the house.⁷²¹ In response to this continuing violence, the police returned him to treatment.⁷²²

Numerous barriers render psycho-social therapy an ineffective remedy for victim protection and perpetrator behavior change

Article 25 of the LDVP states that “[m]andatory psycho-social therapy may be issued to [the] abuser to eliminate the cause of violent behaviour and reform [the] abuser; and to diminish or eliminate risk of reoffending.”⁷²³ Psycho-social therapy may last “for as long as reasons for which it was ordered are present,” but no longer than six months.⁷²⁴ The misdemeanor court may prolong the order “if reasons for measures imposing [it] still exist, but no longer than for [a] period of two years.”⁷²⁵

While efforts to change the behavior of the batterer have been successful in some countries, they are based on research and best practices that focus on keeping victims safe and holding offenders accountable for their criminal conduct. In Montenegro, adequate policies and facilities to administer these programs are largely absent. As with addiction treatment, only seven health centers have the capacity to execute the measures.⁷²⁶ An NGO reported that, as a result, “[e]veryone treats it as [an] additional duty but [they] don’t get paid extra.”⁷²⁷ Interviews revealed there are no effective regulations directing the creation, structure, and implementation of psycho-social therapy. An NGO worker explained the means to implement the measure are limited because the MoH and Ministry of Social Welfare have yet to provide the experts and venue to conduct the treatment.⁷²⁸ Consequently, an interviewee reported that “[h]ealth institutions are not providing the treatment.”⁷²⁹

⁷¹⁷ Interview with Misdemeanor Court, City B, June 30, 2015.

⁷¹⁸ Interview with Misdemeanor Court, City D, July 3, 2015.

⁷¹⁹ Interview with CSW, City C, July 6, 2015.

⁷²⁰ LDVP, Art. 32(2).

⁷²¹ Interview with CSW, City C, July 6, 2015.

⁷²² *Id.*

⁷²³ LDVP, Art. 25(1).

⁷²⁴ *Id.* Art. 25(2).

⁷²⁵ *Id.* Art. 26(3).

⁷²⁶ 2016 Ministarstvo Pravde Izvještaj, Section III.

⁷²⁷ Interview with NGO 3, City D, July 4, 2015.

⁷²⁸ Interview with NGO City B, Nov. 1, 2016 (via telephone).

⁷²⁹ Interview with NGO, City B, July 1, 2015.

The MoH promulgated rules of procedure for psycho-social therapy under the LDVP.⁷³⁰ The regulation calls for each mental health center to establish a four-person team, consisting of a psychiatrist, a psychologist, a nurse, and a social worker, to implement the measure.⁷³¹ NGO staff expressed sharp criticism, however, of the regulations.⁷³² In September 2014, a working group concluded the regulations “cannot be implemented successfully” because they are too short and lack sufficient guidance.⁷³³ The group further found that the regulations do not provide any methodology for the treatment, including a recommended duration, information on training, procedures for monitoring, or methods for institutional cooperation.⁷³⁴ Interviewees expressed concern over these issues and even surmised that “maybe it’s better not to have it than to have it done wrong.”⁷³⁵

While some misdemeanor judges continue to order psycho-social therapy, even with the knowledge it cannot be implemented,⁷³⁶ overall, judges avoid this remedy. According to the Ministry for Human and Minority Rights, of 247 OFPs issued in 2014, only two were for mandatory psycho-social therapy.⁷³⁷ Given these concerns, an NGO worker expressed relief that judges are not issuing these measures, asking “Why should they issue something when it’s obvious it’s not going to be implemented?”⁷³⁸

Misdemeanor judges generally do not order psycho-social therapy because there are no programs for perpetrators.⁷³⁹ Some judges view the protective measure as simply “impossible” because the rules have not been implemented.⁷⁴⁰ According to an NGO, misdemeanor courts received a ministry directive not to issue orders for psycho-social therapy as institutions are not yet ready to implement the measure.⁷⁴¹ As the interviewee explained, “they do not order it, because they know there is no team.”⁷⁴²

Existing psycho-social therapy programs do not meet best practice standards

Despite the dearth of regulations, qualified therapists, and trainings, interviews revealed that handful of psycho-social treatment programs are attempting to function. These limited programs do not meet the best practice standards for effective perpetrator programs. Instead, they function as ad hoc therapy sessions without any connection to criminal justice or victim services. One interviewee explained, “What they provide is maybe [a] general remark, but not something which we can say for sure that some

⁷³⁰ Interview with Council for Misdemeanors, Podgorica, June 30, 2015; LDVP, Art. 33(4).

⁷³¹ Interview with NGO 3, City D, July 4, 2015.

⁷³² *Id.*; Interview with NGO, City D, June 28, 2015.

⁷³³ Interview with NGO 3, City D, July 4, 2015.

⁷³⁴ *Id.* One NGO worker observed that psycho-social therapy cannot be implemented successfully “due to no clear regulations, no methodology, no specified duration [of treatment], no information about training, no information about procedures for monitoring of the measures, and no methods for institutional cooperation.” *Id.*

⁷³⁵ Interview with NGO, City B, July 1, 2015.

⁷³⁶ *Id.*

⁷³⁷ Interview with Ministry of Human and Minority Rights, Podgorica, July 2, 2015.

⁷³⁸ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁷³⁹ Interview with NGO 3, City D, July 4, 2015.

⁷⁴⁰ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

⁷⁴¹ Interview with NGO 3, City D, July 4, 2015.

⁷⁴² *Id.*

individual session with a psychologist or something like that.”⁷⁴³ Moreover, they lack oversight, monitoring, and accountability. As a result, they do not fulfil the purpose of this protective measure to protect victims and change perpetrator behavior.

First, the programs lack protocols to prioritize and protect the needs of victims. When asked whether there are measures to ensure victim safety while the perpetrator undergoes psycho-social therapy, an MoH representative responded, “Of course. If the victim is not safe, she should contact the police.”⁷⁴⁴

Second, there is no system-wide structure for the process, and as a result, treatment programs vary widely. Medical providers charged with administering LDVP psycho-social therapy explained that each judge determines the therapy’s duration and frequency.⁷⁴⁵ But neither courts nor the regulations dictate the length of each therapy session, leaving the timing largely unstructured. One such provider admitted that for each monthly treatment, they might only allocate 20 minutes for a session. He explained, “The time of our exam is limited, and we must comply with that because we have many patients.”⁷⁴⁶ Other medical providers provided what they call psycho-social therapy on an ad hoc basis.⁷⁴⁷ In addition, a treatment period of six months is far too short to ensure that the offender’s behavior has changed. Providers who currently administer the therapy report that the treatment does “[n]ot sufficiently” change the offender’s behavior, and the therapy program needs stronger substantive content.⁷⁴⁸

Third, systems actors lack training on psycho-social treatment. Misdemeanor judges need training to provide guidance about best practice standards and effective court monitoring of offender participation in therapy programs.⁷⁴⁹ Some judges view psycho-social treatment as an appropriate protective measure for people with mental disorders, “[b]ecause they had a mental disorder, they are not responsible.”⁷⁵⁰ Research, however, does not support the theory that mental illness causes domestic violence.⁷⁵¹ Researchers have found that batterers’ behavior is inconsistent with profiles of mental illness.⁷⁵² For example, batterers often only attack their intimate partners, whereas people who suffer from mental illnesses such as schizophrenia often do not limit their violence to their intimate

⁷⁴³ Interview with NGO, City B, July 1, 2015.

⁷⁴⁴ Interview with Ministry of Health, Podgorica, June 29, 2015.

⁷⁴⁵ Interview with Doctors, City D, July 3, 2015. For example, they report that the court may order monthly therapy for up to two years. *Id.*

⁷⁴⁶ Interview with Doctors, City D, July 3, 2015.

⁷⁴⁷ Interview with Health Center, City B, July 1, 2015.

⁷⁴⁸ Interview with Doctors, City D, July 3, 2015.

⁷⁴⁹ Interview with NGO 3, City D, July 4, 2015.

⁷⁵⁰ Interview with Misdemeanor Court, City B, June 30, 2015.

⁷⁵¹ Shirelle Phelps and Jeffrey Lehman, *Domestic Violence*, West’s Encyclopedia of American Law, Vol. 3. 2nd ed., 504 (Mar. 2005); Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, Contemporary Economic Policy, Vol. 21 Iss. 2, 158 (Nov. 2003) (explaining that initial estimates of domestic violence were lower than the reality because the crime was significantly underreported).

⁷⁵² Edward W. Gondolf, MCM-III results for Batterer Program Participants in Four Cities: Less “Pathological Than Expected 14(1) *Journal of Family Violence* 12 (Mar. 1999).

partners.⁷⁵³ Medical professionals who provide opinions to misdemeanor courts may reinforce judges' misperceptions that domestic violence is actually the product of psychiatric disorders.⁷⁵⁴

Finally, there is no protocol to monitor and report compliance with the psycho-social therapy. As with orders for addiction treatment, the court must provide the OFP "to the body or institution in charge of enforcing orders in accordance with the law governing treatment and rehabilitation of addicts to psychoactive substances . . . and persons with other behavioral disorders."⁷⁵⁵ And as with other protective orders, a person must notify a misdemeanor court, the police, prosecutor, or the CSW if that person "is informed during the discharge of his affairs that [the] abuser does not comply with the order of protection."⁷⁵⁶ Medical providers submit reports to the misdemeanor court after the offender appears for each monthly therapy session.⁷⁵⁷ According to the MoH, these providers must inform the police if the offender does not comply with the order for psycho-social therapy.⁷⁵⁸ But medical providers explained that if the offender does not appear for therapy, they do not notify the court on their own initiative. They explained, "The court monitors that, and if there were no monthly reports, they contact us and we give our response whether they came or not."⁷⁵⁹ They also did not identify a process to notify the misdemeanor court if the offender appears for therapy but does not cooperate.⁷⁶⁰ Yet, providers should be able to inform courts of an offender who does not cooperate in a therapy session.⁷⁶¹ Without properly trained professionals and without an effective monitoring system, there is a danger that offenders will manipulate the system and enter into psycho-social therapy to avoid punishment.⁷⁶²

Until these issues are addressed, this protective measure will remain a remedy for victims that exists only on paper.

⁷⁵³ See generally Lundy Bancroft et al., *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, 24 (SAGE Publications, 2011).

⁷⁵⁴ Interview with Doctors, City D, July 3, 2015; Interview with Neuropsychiatrist, City E, July 9, 2015.

⁷⁵⁵ LDVP, Art. 33(3).

⁷⁵⁶ *Id.* Art. 32(2).

⁷⁵⁷ Interview with Doctors, City D, July 3, 2015.

⁷⁵⁸ Interview with Ministry of Health, Podgorica, June 29, 2015.

⁷⁵⁹ Interview with Doctors, City D, July 3, 2015.

⁷⁶⁰ *Id.*

⁷⁶¹ Interview with NGO 3, City D, July 4, 2015.

⁷⁶² Interview with NGO, City B, July 1, 2015.

Recommended Best Practice Standards for Batterer Intervention Programs

The Advocates for Human Rights report on *Recommendations for Effective Batterer Intervention Programs in Central & Eastern Europe and the Former Soviet Union* describes essential elements of an effective government intervention program for batterers and makes recommendations for developing and reviewing batterer intervention program in countries around the world.¹

Increasingly, laws are calling for programs into which to direct aggressors or the perpetrators of domestic violence in addition to or in place of jail. The direction of these programs has begun to take various forms and follow different models. Some of these efforts have evolved into formal programs, called Batterer Intervention Programs (BIPs) or perpetrator programs² that are designed to end batterers' use of violence by changing their underlying beliefs. Other responses have focused primarily or solely on treating batterers or psychological problems or working with both the batterer and the victim to address relationship dynamics.

Both research and recognized best practices support formal programs that prioritize two goals: victim safety and offender accountability. Offender programs, the Duluth Model of batterer programs being a well-known example, are usually victim-centered, court-mandated programs. They are typically grounded in the understanding that domestic violence is a form of violence against women that stems from the historically unequal power relations between women and men. Maintaining victim safety is the program's first priority. The goal of the offender program is to end the violence by holding offenders accountable to accept responsibility and modify their underlying beliefs of entitlement. Stand-alone counseling approaches, on the other hand, typically focus on addressing a batterer's mental health, substance abuse, or relationship dynamics. Under the counseling approaches, ending the violence is a by-product of solving the underlying psychological or relationship problem.

The Advocates has identified five essential elements of an effective program based on this human rights framework.

- 1) **Be part of an overall human rights-based system response.** First and foremost, batterer programs should not exist in isolation. Instead, they should be part of an existing system's overall response to domestic violence. At a minimum, that system should include criminal sanctions for batterers, civil remedies for victims, prevention strategies, and protective measures including shelters and other services for victims. The various organizations that are part of the domestic violence response should coordinate their efforts to ensure the overall system is working effectively.³ Furthermore, the various parts of the system should share a common theory of domestic violence grounded in a human rights analysis with mechanisms to create systems change when necessary. A shared philosophy across system actors as well as perpetrator programs is necessary to create consistent program responses.⁴ The reality is that not every country has a functioning, coordinated system within which a batterer

¹ The Advocates for Human Rights, *Recommendations for Effective Batterer Intervention Programs in Central & Eastern Europe & Former Soviet Union*, January 2016. Available at:

http://www.theadvocatesforhumanrights.org/uploads/bip_report_january_2016.pdf.

² In the United States, programs for batterers are often referred to as Batterer Intervention Programs (BIPs). However, that same term is not as prevalent in other parts of the world. In our research, The Advocates also uses the term "Batterer Interventions", "programs for batterers/perpetrators", or "batterer/perpetrator programs."

³ These efforts are often called a coordinated community response (CCR).

⁴ This shared philosophy includes a victim-centered, gendered approach that recognizes the dynamics of power and control in relationships and encourages perpetrators to change behavior by taking responsibility and forgoing beliefs of entitlement to use violence.

program can effectively operate. In such situations, priority should be focused on improving the systems' overall response before expecting batterer programs to function.

- 2) **Maintain formal links to the criminal justice system and victim advocacy.** An effective batterer program, as any intervention based on best practices, will emphasize accountability while prioritizing victim safety. To meet these goals, an effective batterer program will maintain formal links to the criminal justice system and victim services through the coordinated system response. The link to the criminal justice system promotes accountability and compliance with a program by ensuring consequences for offenders' use of violence and failure to comply with the terms of the program. The batterer program's links to victim advocacy groups facilitates focusing on the victim's needs and providing her with necessary information to allow her to make decisions that improve her safety and the safety of her children. Systems must hold offenders accountable for their use of violence, and the system itself must be accountable to victims.⁵
- 3) **Avoid dangerous practices.** While counseling approaches can provide important services, they should not be a substitute for an offender program that is based on a gendered understanding of power and control dynamics in a relationship and adequately tied to the criminal justice system. Counseling approaches, used alone, do not hold batterers accountable and do not focus on changing their underlying beliefs that validate the use of violence in the first place. While some counseling approach techniques could serve as a supplement to an offender program, focusing solely on these techniques can be dangerous because they avoid addressing the real causes of battering and become another means for the batterer to control his partner.⁶ In addition, batterers may in fact retaliate with more violence in response to the counseling.⁷
- 4) **Make referrals.** The truth is that many batterers need other services, including treatment for substance abuse or past trauma. It is harmful to victims, however, to assume abusers must be healthy before they can be expected to stop battering their partners. Domestic violence is not caused by substance abuse or mental illness. As such, substance abuse or mental health treatment does not "cure" domestic violence. In cases where batterers need mental health services or substance abuse treatment, they should receive referrals as a supplement—never a substitute—to an offender program.

⁵ To this end, effective programs make perpetrators waive their right to confidentiality, so program facilitators can share threats to victim's safety or other non-compliance with the criminal justice center and victim advocates. This prioritization of a victim's right to safety over a perpetrator's right to confidentiality, is a hallmark difference from a counseling approach based on traditional patient/counselor relationship.

⁶ Anger management training is a popular response to domestic violence but is not a substitute for a perpetrator program. Perpetrators may feel angry if they are unable to control their partners, but anger is not the cause of domestic violence. Perpetrators, many of whom are able to control anger outside the home, also show patterns of coercive and abusive behavior when they are not angry. Furthermore, while batterers may "appear" out of control, they, in fact, strategically use a showing of anger as a means of control.

⁷ Couples counseling, for example, is often ineffective in domestic violence cases, and it can be extremely harmful. Power cannot be redistributed in the relationship if the batterer is unwilling to give up control and the victim is afraid of retaliation if she speaks freely about relationship issues and the violence. The reality is that some couples stay together after domestic violence has occurred. For these couples, counseling may be appropriate only if certain limited criteria can be met, including: that a counselor trained to understand the dynamics of domestic violence is convinced that the violence has ended; the offender has successfully completed a reputable offender program; the victim has worked with an advocate and developed a safety plan; the victim feels safe and enters counseling voluntarily; the counselor has discussed the risks of counseling and is convinced that violence will not resume as a result of the counseling sessions.

- 5) **Conduct ongoing risk assessment and risk management by well-trained practitioners.** Accurate risk assessment may help protect victims by identifying which batterers are most likely to reoffend and risk management techniques can apply increased accountability and supervision to dangerous offenders. However, accurate risk assessment or categorization of types of domestic violence can be very difficult, and incorrectly assessing risk can prove fatal for victims. Moreover, if risk management is not reliable and ongoing, victims may be lulled into a false sense of security, exposing them to greater risk. Facilitators of batterer programs and system stakeholders at all levels should be well-trained in conducting ongoing risk assessment and risk management.

MISDEMEANOR PENALTIES

Article 36 of the LDVP sets forth a schedule of available penalties, including fines and prison, for domestic violence.⁷⁶³ The minimum penalties range from ten to sixty days in prison and fines of three to twenty times the minimum wage.⁷⁶⁴ The LDVP also includes misdemeanor penalties for violation of the three-day eviction order issued by the police under Article 28 of the LDVP.⁷⁶⁵ Conduct ranging from the use of physical force to threats, verbal insults, sexual abuse, stalking, and damaging property are subject to “[a] fine amounting to minimum three-fold [minimum wage] or a prison term of minimum ten days.”⁷⁶⁶

Many interviewees criticized the penalty scheme under the LDVP as too lenient.⁷⁶⁷ According to a recent report, representatives of the judiciary believe the LDVP’s punitive measures must be strengthened.⁷⁶⁸ Criticism of the LDVP has highlighted that punishment for domestic violence is lower than that for other violence.⁷⁶⁹ For example, a misdemeanor judge observed that the LDVP’s fines are not as heavy as those for other misdemeanors.⁷⁷⁰ In practice, the most common fine is €150.⁷⁷¹ Moreover, judicial reluctance to order jail sentences renders punishments even lighter.

The most common penalties are fines and suspended sentences. According to the MoJ, between 2010 and 2015 the most common punishments were fines (33.1 percent) and suspended sentences (11.12 percent).⁷⁷² In only 8.76 percent of cases did the offender receive a prison sentence, while 9.59 percent of offenders received warnings.⁷⁷³ The court suspended proceedings in 223 cases, or 5.17 percent of the

⁷⁶³ LDVP, Art. 36.

⁷⁶⁴ *Id.* Art. 36(1), (4). Heightened minimum penalties apply if a minor child witnesses the conduct or is the victim, or if the offense involves a family member with special needs. *Id.* Art. 36(2)–(4).

⁷⁶⁵ *Id.* Art. 38; see *Id.* Art. 28(1).

⁷⁶⁶ *Id.* Art. 36(1).

⁷⁶⁷ Interview with Misdemeanor Court, City E, July 9, 2015; Interview with Police, City D, July 4, 2015; Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Neuropsychiatrist, City E, July 9, 2015; Interview with Police, City E, July 9, 2015; Interview with Parliament, Podgorica, July 10, 2015.

⁷⁶⁸ Ipsos Strategic Marketing, at 51.

⁷⁶⁹ Interview with NGO, City B, July 1, 2015; Interview with NGO, City F, July 7, 2015.

⁷⁷⁰ Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁷¹ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City C, July 6, 2015; Misdemeanor Court, City E, July 9, 2015.

⁷⁷² 2016 Ministarstvo Pravde Izvještaj, Section IV, 4.1.

⁷⁷³ *Id.*

total LDVP caseload.⁷⁷⁴ In that same time period, misdemeanor courts acquitted the defendant in 22.76 percent of LDVP cases.⁷⁷⁵

Year	Fines	Suspended Sentences	Jail	Other
2014	252	133	94	N/A
2015	334	148	75	74 warnings 8 corrective measures

Source: Ministarstvo za Ljudska i Manjinska Prava Crna Gora, Podaci o slučajevima nasilja nad ženama i nasilja u porodici iz različitnih izvora za 2015. godinu, March 2016, at 6, <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=235073&rType=2&file=FINAL%20godisnji%20podaci%20o%20nasilju.pdf>; see also Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Ministry of Human and Minority Rights, Podgorica, July 2, 2015.

Some interviewees reported that misdemeanor judges place the burden on the victim to decide the offender's punishment. Judges have asked victims, in their offender's presence, how the court should sanction him.⁷⁷⁶ Such practices undermine victim safety by forcing her to take on the state's responsibility and expose her to retaliation by the offender as she expresses her views to the court.

Fines are the most common penalty, but they often harm victims or are so small that they fail to hold offenders accountable

Multidisciplinary teams frequently suggest the court impose a fine as a sanction.⁷⁷⁷ Misdemeanor Law allows fines of up to €4,000 for misdemeanors related to domestic violence.⁷⁷⁸ Despite the minimum fine amounts set forth in the LDVP,⁷⁷⁹ judges perceived they lack discretion to set it higher than the minimum.⁷⁸⁰ Judges contend the law should be amended to authorize them to issue larger fines.⁷⁸¹ A recent report also found that judges would like to adjust fines to the family's socio-economic circumstances.⁷⁸²

Many interviewees, including misdemeanor judges, expressed negative views of fines.⁷⁸³ For offenders who are financially secure, fines are too small to influence their behavior, and for offenders of poor families, the fine punishes the victim.⁷⁸⁴ In the former situation, the offender may see the trivial fine as a

⁷⁷⁴ *Id.*

⁷⁷⁵ *Id.*

⁷⁷⁶ Interview with NGO, City B, June 30, 2015.

⁷⁷⁷ Interview with Social Worker, City C, July 6, 2015.

⁷⁷⁸ Misdemeanor Law, Art. 24(2), (4).

⁷⁷⁹ See, e.g., LDVP, Art. 36(1) ("A fine amounting to minimum three-fold minimum salary in Montenegro . . ."). In Montenegrin: "najmanje trostrukog iznosa minimalne zarade."

⁷⁸⁰ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Police, City D, July 4, 2015.

⁷⁸¹ Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁸² Ipsos Strategic Marketing, at 51.

⁷⁸³ Interview with NGO, City B, June 30, 2015.

⁷⁸⁴ Interview with NGO 1, City B, July 2, 2015; Interview with Misdemeanor Court, City F, July 7, 2015.

license to commit further acts of domestic violence.⁷⁸⁵ As one judge observed, “[t]he one who is rich or wealthy—he will slap his wife and give €150, and it is nothing for him. It does not harm him.”⁷⁸⁶

In families that are not well off, fines punish the victim and children, but less so the offender, who is more likely to be the breadwinner and control the family finances.⁷⁸⁷ As one judge explained, “[i]f the victim and offender remain living together, the punishment influences the victim more than the perpetrator. They take from them the funds for living.”⁷⁸⁸ Another judge explained that a fine “does not affect the offender but the whole family. Instead of buying food with their money, the state takes it.”⁷⁸⁹ Misdemeanor judges observed the victim even ends up paying the offender’s fine herself.⁷⁹⁰ In one case, a longtime abuser admitted to striking his victim on her back with a stick.⁷⁹¹ The victim confirmed the abuse, but pleaded with the judge not to punish him.⁷⁹² The judge later recalled:

When I punished him, the woman took out the money from her pocket and paid the fine. This was true. She begged me, ‘Please don’t punish me.’ And he was saying, ‘Please punish me.’ . . . And yet she paid the fine. She put the money on the table.⁷⁹³

The threat of a fine can also prompt victims to withdraw their statement.⁷⁹⁴ One misdemeanor judge explained, “Most of the time, the victim recants her testimony. She says that the relations between the offender and victim are good, and there aren’t any problems. She is aware that any punishment, and especially a fine, will punish her and affect her and their children.”⁷⁹⁵ Similarly, fines that are handed down deter victims from reporting future violence.⁷⁹⁶

Fines also do not effectively deter future acts of domestic violence.⁷⁹⁷ One NGO worker described a repeat offender who committed domestic violence every other month, including physical, economic, sexual, and psychological violence.⁷⁹⁸ Most recently, he physically attacked the victim and damaged her internal organs, requiring surgery.⁷⁹⁹ When asked whether he had ever been punished before, the interviewee responded that he had “so many fines.”⁸⁰⁰

⁷⁸⁵ Interview with NGO 1, City B, July 2, 2015; Interview with Police, City D, July 4, 2015.

⁷⁸⁶ Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁸⁷ Interview with Police 1, City C, July 6, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with NGO City B, June 30, 2015.

⁷⁸⁸ Interview with Misdemeanor Court, City B, June 30, 2015.

⁷⁸⁹ Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁹⁰ Interview with Misdemeanor Court, City D, July 3, 2015; Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁹¹ Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁹² *Id.*

⁷⁹³ *Id.*

⁷⁹⁴ Interview with Misdemeanor Court, City F, July 7, 2015.

⁷⁹⁵ Interview with Misdemeanor Court, City F, July 7, 2015.

⁷⁹⁶ Interview with Social Worker, City C, July 6, 2015; Interview with Misdemeanor Court, City C, July 6, 2015.

⁷⁹⁷ Interview with CSW, City C, July 6, 2015; Interview with CSW, City D, July 3, 2015; Interview with Health Center, City F, July 7, 2015.

⁷⁹⁸ Interview with NGO, City C, July 6, 2015.

⁷⁹⁹ *Id.*

⁸⁰⁰ Interview with NGO, City C, July 6, 2015.

A CSW worker described a case in which the offender had received misdemeanor fines multiple times, as well as an order prohibiting harassment and stalking and restraining order. Yet his violence continued to escalate.⁸⁰¹ The offender began physically abusing his wife.⁸⁰² The victim fled to a shelter, after which the CSW facilitated visitation with her children, who remained with her abuser.⁸⁰³ During visitation, the offender persuaded the victim to reconcile, and approximately one month later, the offender inflicted very harsh physical violence on the victim for a week, including breaking her nose, punching her stomach, and beating her with a shoe all over her body.⁸⁰⁴ He was criminally prosecuted for violating a restraining order and an order prohibiting harassment and stalking.⁸⁰⁵ He is also facing criminal charges for physical assault.⁸⁰⁶

Judges rarely order imprisonment

If misdemeanor courts do not impose a fine, the LDVP requires them to impose a jail term.⁸⁰⁷ Jail sentences are relatively uncommon.⁸⁰⁸ Judges issued nearly three times as many fines as jail sentences for domestic violence under the LDVP.⁸⁰⁹ In one jurisdiction, for example, of the 54 cases misdemeanor judges handled in 2012, judges issued just 7 jail sentences.⁸¹⁰ Minimum terms range from 10 to 60 days, depending on whether a minor child was present or whether the victim had certain vulnerabilities.⁸¹¹

Judges typically require repeat violence, physical violence, threats, or a risk of recidivism before they impose imprisonment.⁸¹² But judges shared multiple reasons behind their hesitation to order imprisonment. Some judges observed that imprisoning the offender is a punishment that can harm the victim and children.⁸¹³ A judge explained, “If I send him to jail, then the children will not have a father.”⁸¹⁴ One misdemeanor judge expressed reluctance, cautioning that “in prison, he learns how to fight even better. . . [and] everything in prison is free-of-charge.”⁸¹⁵

WARNING MEASURES

The Misdemeanor Law allows judges to impose two types of “warning measures:” suspended sentences and admonitions.⁸¹⁶ The Misdemeanor Law allows such warning measures “when a warning

⁸⁰¹ *Id.*

⁸⁰² *Id.*

⁸⁰³ *Id.*

⁸⁰⁴ *Id.*

⁸⁰⁵ *Id.*

⁸⁰⁶ *Id.*

⁸⁰⁷ LDVP, Art. 36(1).

⁸⁰⁸ Interview with Police, City D, July 4, 2015.

⁸⁰⁹ Interview with Ministry of Human and Minority Rights, Podgorica, July 2, 2015.

⁸¹⁰ Interview with Misdemeanor Court, City F, July 7, 2015.

⁸¹¹ LDVP, Art. 36-38; Interview with Misdemeanor Court, City C, July 6, 2015. Under the Misdemeanor Law, a judge may not impose a sentence of more than 60 days’ imprisonment. Misdemeanor Law, Art. 23(1); interview with Misdemeanor Court, City C, July 6, 2015.

⁸¹² Interview with Misdemeanor Court, City D, July 3, 2015; Interview with Misdemeanor Court, City E, July 9, 2015.

⁸¹³ Interview with Misdemeanor Court, City F, July 7, 2015.

⁸¹⁴ Interview with NGO, City B, June 30, 2015.

⁸¹⁵ Interview with Misdemeanor Judge, City A, July 8, 2015.

⁸¹⁶ Misdemeanor Law, Art. 32.

(admonition) or warning with the threat of punishment (suspended sentence) will suffice to influence the offender enough that he does not commit misdemeanors in the future.”⁸¹⁷

Suspended sentences fail to protect victims

By issuing a suspended sentence, the court establishes a prison sentence but delays execution for three months to one year.⁸¹⁸ If, during that probation, the offender commits another misdemeanor of the same type or severity or fails to fulfill other conditions imposed by the court, the court may revoke the suspended sentence and reinstate the jail sentence.⁸¹⁹ One danger, however, is that the judge who hears the new case may be unaware of the prior case’s suspended sentence because the judge either does not have access to a database with that judgment or fails to check the database.⁸²⁰ Victims may not have received notification that the court imposed a suspended sentence and therefore cannot inform the court themselves.⁸²¹ After one judge imposed a one-month suspended sentence, the next judge who heard the case did not know of his earlier conviction and suspended sentence. Without that information, the judge imposed just one month imprisonment for the new offense.⁸²²

Judiciary members reported they most frequently impose suspended sentences, although they perceived that prison is the most effective sanction.⁸²³ Surveyed judges identified the need to preserve the family and the perpetrator’s role as breadwinner, the opportunity to rehabilitate the offender, reconciliation, and the lack of prior convictions as reasons for imposing suspended sentences under the LDVP.⁸²⁴ Several interviewees confirmed this preference, citing the need for the offender to work and support his family.⁸²⁵ Suspended sentences are also common when the victim and offender reconcile during the LDVP procedure.⁸²⁶ Others reported never issuing suspended sentences under the LDVP,⁸²⁷ especially in cases of physical violence.⁸²⁸

In some cases, misdemeanor judges impose suspended sentences even when there is a high risk of recidivism.⁸²⁹ For example, a couple lived in the woman’s apartment during divorce proceedings, during which she suffered coercive and controlling behavior.⁸³⁰ The offender was:

continuously asking the children with whom their mother sleeps, pushing the table, [breaking] things around the house. There was no physical violence against her, because he

⁸¹⁷ *Id.* Art. 33.

⁸¹⁸ Interview with Misdemeanor Court, City B, June 30, 2015; Misdemeanor Law, Art. 35(1).

⁸¹⁹ Interview with Misdemeanor Court, City B, June 30, 2015; Misdemeanor Law, Arts. 35(1), 37(1), (2), (5).

⁸²⁰ Interview with NGO, City B, July 1, 2015.

⁸²¹ *Id.*

⁸²² *Id.*

⁸²³ Ipsos Strategic Marketing, at 50; *see also* Police 1, City C, July 6, 2015; Police, City E, July 9, 2015.

⁸²⁴ Ipsos Strategic Marketing, at 52.

⁸²⁵ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with NGO 1, City B, July 2, 2015.

⁸²⁶ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015.

⁸²⁷ Interview with Misdemeanor Court, City D, July 3, 2015; Interview with Misdemeanor Court, City F, July 7, 2015.

⁸²⁸ Interview with Misdemeanor Court, City E, July 9, 2015; Misdemeanor Court, City D, July 3, 2015.

⁸²⁹ Interview with NGO, City B, June 30, 2015.

⁸³⁰ *Id.*

was aware if she reports physical violence, he would be obliged to leave the apartment. But she was psychologically tortured.⁸³¹

Despite this conduct, the court handed down a suspended sentence under the justification that he would not repeat his behavior and did not need any OFP remedies. The judge placed the responsibility on the victim to keep him in line, stating, “[i]t’s necessary only that the victim say he should leave, and he will do it.”⁸³²

Yet, interviews revealed that many perpetrators reoffend during the probation period.⁸³³ In one case, a divorced couple was arguing over child visitation. During the dispute, the ex-husband committed non-physical domestic violence.⁸³⁴ During the misdemeanor proceeding, the couple reconciled and the judge imposed a suspended sentence of 20 days, with a one-year probation period.⁸³⁵ During that period, the offender told the victim he loved her, could not live without her, and then attempted to rape her.⁸³⁶ The court then reinstated the 20-day sentence plus an additional sentence for the new act of domestic violence. Even though the two sentences were for two different acts of violence, the judge explained they are cautious not to exceed a total prison term of 60 days as allowed by law.⁸³⁷

Admonitions do not hold offenders accountable

As noted in the previous section, the Misdemeanor Law allows judges to issue an admonition if it “will suffice to influence the offender enough that he does not commit misdemeanors in the future.”⁸³⁸ An admonition is appropriate “in the case of an especially minor form of the misdemeanor,” and in “circumstances which significantly diminish the responsibility of the offender, so that it can be expected that in the future he will refrain from committing offenses without the imposition of the prescribed penalty.”⁸³⁹ In some areas, judges favor admonition and have issued twice as many admonitions as jail sentences.⁸⁴⁰

Misdemeanor judges reported issuing admonitions when the parties reconcile, the victim asks for leniency, or the victim recants.⁸⁴¹ Some judges issue admonitions even for physical violence, if any of the

⁸³¹ *Id.*

⁸³² *Id.*

⁸³³ Interview with Misdemeanor Court, City B, June 30, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015.

⁸³⁴ Interview with Misdemeanor Court, City B, June 30, 2015.

⁸³⁵ *Id.*

⁸³⁶ *Id.*

⁸³⁷ *Id.*

⁸³⁸ Misdemeanor Law, Art. 33.

⁸³⁹ Misdemeanor Law, Art. 34(1).

⁸⁴⁰ Interview with Misdemeanor Court, City F, July 7, 2015.

⁸⁴¹ Interview with Misdemeanor Court, City F, July 7, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

above factors are present.⁸⁴² Misdemeanor judges may ask for the victim's consent to issue an admonition;⁸⁴³ in these cases, the victim may agree to prevent the court from imposing a fine.⁸⁴⁴

Interviews revealed the preference for admonitions at times stems from desires to preserve the family. One judge explained that admonitions:

[have] a good impact on the offender. If we chose some stricter punishment or measure, we would just make the relations in the marriage even worse. And we would disrupt marital relations for an even longer period of time. Admonitions show to be positive punishment.⁸⁴⁵

Another judge affirmed that admonition "leads to calming the relations within the family. It happened in all the cases that we made a good assessment, and we preserved the family."⁸⁴⁶ But other judges did not view admonition as effective in stopping the violence. One judge observed "usually they're fighting again" afterward.⁸⁴⁷

VIOLATIONS OF ORDERS FOR PROTECTION

Offenders who violate OFPs may be prosecuted under Article 220(5) of the Criminal Code.⁸⁴⁸

Misdemeanor courts play an indirect role in enforcement by, for example, notifying the basic court of an OFP.⁸⁴⁹ For example, good communication facilitated prosecution for an offender who violated an OFP. Once the misdemeanor court explained he had an OFP, the basic court responded immediately to begin criminal proceedings for the violation.⁸⁵⁰ Most misdemeanor judges, however, reported being unaware whether the OFPs they issue are ever violated.⁸⁵¹

⁸⁴² Interview with Misdemeanor Court, City D, July 3, 2015.

⁸⁴³ *Id.*

⁸⁴⁴ *Id.*

⁸⁴⁵ Interview with Misdemeanor Court, City F, July 7, 2015.

⁸⁴⁶ *Id.*

⁸⁴⁷ Interview with Misdemeanor Judge, City A, July 8, 2015; *see also* Interview with Misdemeanor Court, City D, July 3, 2015 (describing an offender who committed violence again after an admonition).

⁸⁴⁸ *See, e.g.*, Interview with Prosecutor, City C, July 6, 2015.

⁸⁴⁹ Interview with Misdemeanor Court, City B, June 30, 2015.

⁸⁵⁰ Interview with Misdemeanor Court, City B, June 30, 2015.

⁸⁵¹ Interview with Misdemeanor Court, City C, July 6, 2015; Interview with Misdemeanor Court, City F, July 7, 2015; Interview with NGO, City F, July 7, 2015; Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with Misdemeanor Court, City D, July 3, 2015.

PROSECUTORS

“[A]nyone who knows anything about domestic violence could see that nothing is functioning very well.”

-NGO worker⁸⁵²

PROSECUTOR RESPONSIBILITIES

Article 44 of the Criminal Code authorizes prosecutors to direct police activities and investigations, personally investigate, make prosecution decisions, present indictments before the courts, and conclude agreements on admissions of guilt. Some prosecutors also reported they represent victims in court as part of their role.⁸⁵³

There are no specialized domestic violence prosecutors, and all prosecutors handle these cases.⁸⁵⁴ One NGO worker opined that prosecutors in particular fail to receive adequate training on domestic violence.⁸⁵⁵ According to this interviewee, prosecutors “should be more educated on gender-based violence and on international standards in this field.”⁸⁵⁶ She elaborated, “Sometimes it feels like everything depends on one person, and if that one person is ignorant about what is going on in the field, everything fails.”⁸⁵⁷

Interviewees complained that prosecutors are usually traditionalists who encourage reconciliation.⁸⁵⁸ For example, women are often pressured into mediation rather than prosecution.⁸⁵⁹ Personal connections may also influence the prosecution and outcome of a domestic violence case.⁸⁶⁰

CHARGING DECISIONS

Domestic violence is a crime in Montenegro. Article 220 punishes violent acts that “endanger [the] physical or mental integrity” of a family member with a fine or imprisonment up to one year.⁸⁶¹ Aggravating factors, including the use of weapons or infliction of heavy bodily injuries or death, increase the punishment.⁸⁶²

⁸⁵² Interview with NGO, City B, July 1, 2015.

⁸⁵³ Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutors, City F, July 7, 2015.

⁸⁵⁴ Interview with Prosecutor, City D, July 3, 2015.

⁸⁵⁵ Interview with NGO, City D, June 28, 2015; Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁸⁵⁶ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁸⁵⁷ *Id.*

⁸⁵⁸ Interview with NGO, City C, July 6, 2015.

⁸⁵⁹ Interview with NGO, City D, June 28, 2015.

⁸⁶⁰ Interview with NGO, City C, July 6, 2015.

⁸⁶¹ Criminal Code, Art. 220.

⁸⁶² Where the perpetrator uses “weapons, dangerous tools or other means suitable for inflicting heavy bodily injuries or for seriously impairing health,” he may be imprisoned from three months to three years. If the violent acts cause heavy bodily injury, serious health impairment, or the victim is a minor, the perpetrator “shall” be sentenced to one to five years in prison. Where the acts result in the death, the perpetrator “shall” be sentenced to imprisonment of to prison for three to twelve years. Criminal Code, Arts. 220(2)-(4).

After police notification of domestic violence,⁸⁶³ prosecutors decide whether to qualify the violence as a misdemeanor or crime.⁸⁶⁴ When deemed a crime, police begin an investigation and gather evidence as described on page 24.⁸⁶⁵ The prosecutor has eight days from beginning the investigation to file charges.⁸⁶⁶ If the prosecutor deems the violence a misdemeanor, the police assume responsibility as prosecutor in misdemeanor proceedings.

Prosecutors favor charging domestic violence as a misdemeanor under the LDVP

Judges noted that following the adoption of the LDVP and revision of the Criminal Code, the number of domestic violence cases brought before criminal courts has decreased.⁸⁶⁷ Cases are increasingly routed to the comparatively more efficient misdemeanor courts.⁸⁶⁸ These observations are consistent with MoJ statistics that show that, while the number of domestic violence criminal charges has remained steady, criminal charges as a percent of total domestic violence charges are declining, suggesting a shift toward misdemeanor prosecutions.⁸⁶⁹

The table below shows the proportion of domestic violence cases charged as crimes from 2012 to 2015:

Domestic Violence Cases Charged as Criminal Offenses in Montenegro			
	Cases	Charged as Criminal Offenses	Percent
2015	1,405	167	11.89
2014	1,451	202	13.9
2013	1,198	164	14
2012	1,099	154	14

Source: Ministarstvo Pravde, Izvještaj O Sprovođenju Zakona O Zaštiti Od Nasilja U Porodici Za Period 2010–2015, September 2016, at IV, 4.2 (Prekršajni Postupci), available at <http://www.gov.me/ResourceManager/FileDownload.aspx?rid=253391&rType=2>.

Interviews revealed that prosecutors classify even very severe violence as misdemeanors.⁸⁷⁰ Prosecutors insisted they always charge offenders under Article 220 of the Criminal Code when there is sufficient evidence.⁸⁷¹ Despite Article 220(1)'s broad language that includes "[a]nyone who by use of violence endangers physical or mental integrity of members of his family or family unit. . . .", prosecutors

⁸⁶³ Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutors, City A, July 8, 2015.

⁸⁶⁴ Interview with Prosecutor, City C, July 6, 2015; Interview with Police, City A, July 8, 2015; Interview with Prosecutors, City F, July 7, 2015.

⁸⁶⁵ Interview with Police, City A, July 8, 2015.

⁸⁶⁶ Interview with Prosecutor, City B, July 2, 2015.

⁸⁶⁷ Ministarstvo za Ljudska i Manjinska Prava Crna Gora, Podaci o slučajevima nasilja nad ženama i nasilja u porodici iz različitnih izvora za 2015. godinu, March 2016, at 4, available at <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=235073&rType=2&file=FINAL%20godisnji%20podaci%20o%20nasilju.pdf>; Interview with Basic Court, City B, July 1, 2015.

⁸⁶⁸ Interview with Prosecutor, City B, July 2, 2015; Interview with NGO, City B, July 1, 2015; Interview with Judges, City A, July 8, 2015.

⁸⁶⁹ 2016 Ministarstvo Pravde, Section IV, 4.2.

⁸⁷⁰ Interview with NGO, City B, July 1, 2015.

⁸⁷¹ Interview with Prosecutor, City C, July 6, 2015.

generally categorize first-time violence, violence committed under the influence of alcohol, or light injuries as misdemeanors.⁸⁷² If the victim “provoked” the offender, the case may also be charged as a misdemeanor.⁸⁷³ While the Criminal Code’s language does not specify “severe” violence, in practice, only the most serious cases under Article 220(3) comprising “heavy bodily injury” or ongoing violence go to the criminal court.⁸⁷⁴ For example, even bruises that cover the victim’s body are considered light injuries.⁸⁷⁵ Without heavy bodily injury, violence will not be prosecuted under Article 220(1).⁸⁷⁶

One NGO employee observed charging decisions often depend not on the facts but the individual prosecutor, including how the particular case reflects on him and what he expects to be the consequences of his decision.⁸⁷⁷ Interviews also revealed prosecutors typically rely solely on the police officer’s verbal report to make a charging decision.⁸⁷⁸ As discussed in the Police section, these verbal reports often downplay violence and can therefore lead prosecutors to misroute a case.⁸⁷⁹

In other cases, prosecutors fail to pursue any charges. For example, prosecutors do not always see threats, including threats to kill, as dangerous enough to arise to a crime. During one visitation, a father attempted suicide in front of the child. The father threatened the child that he would kill him if the child returned to his mother. Yet, the prosecutor told the mother that there was no basis for any kind of report or charges.⁸⁸⁰ In another case, a victim had faced physical violence and threats for many years. When she moved to a shelter and the threats continued, the prosecutor declined to charge the abuser.⁸⁸¹

Existing law does not require prosecutors to consider the history of abuse in charging. Yet, police acknowledged that many women who report violence for the first time have experienced it before,⁸⁸² and stressed the importance of determining if the violence is ongoing.⁸⁸³ Prosecutors insisted they inquire into the history and ask police and victims if the violence is part of a continuing pattern.⁸⁸⁴ One prosecutor maintained that prosecutors take into account the victim’s “overview of the whole situation she survived.”⁸⁸⁵

As with threats, discounting an offender’s history can result in unprosecuted cases. Shelter workers reported a case in which a woman was badly beaten for years.⁸⁸⁶ Upon realizing her children and

⁸⁷² Interview with Prosecutor, City C, July 6, 2015.

⁸⁷³ Interview with Basic Court, City D, July 3, 2015.

⁸⁷⁴ Interview with Prosecutor, City C, July 6, 2015; Interview with Basic Court, City B, July 1, 2015.

⁸⁷⁵ Interview with Prosecutors, City F, July 7, 2015.

⁸⁷⁶ Interview with Basic Court, City D, July 3, 2015.

⁸⁷⁷ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁸⁷⁸ *Id.*

⁸⁷⁹ *Id.*

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.*

⁸⁸² Interview with Police, City E, July 9, 2015.

⁸⁸³ Interview with Police, City A, July 8, 2015.

⁸⁸⁴ Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutor, City D, July 3, 2015.

⁸⁸⁵ Interview with Prosecutors, City A, July 8, 2015.

⁸⁸⁶ Interview with NGO, City B, July 1, 2015.

grandchildren were in danger, she finally reported the abuse.⁸⁸⁷ After the first report, the physical violence stopped, but the man made daily threats against his wife and family, stating, “All. I’m going to kill them all. I will kill you.”⁸⁸⁸ Yet, prosecutors did not bring any criminal charges against him.⁸⁸⁹ In another case, a husband was never prosecuted for his years of violence, because, the prosecutor maintained, “the family did not want that.”⁸⁹⁰

Prosecutors charge victims with domestic violence, ignoring evidence they acted in self-defense

Interviews revealed that prosecutors do not always recognize the use of self-defense in domestic violence, which can result in charges against the victim.⁸⁹¹ One prosecutor related a case in which a woman was accused of hitting her husband’s hand with a board. As she was prosecuted, the prosecutor learned that the man was a violent alcoholic who abused his wife for several years and that she hit him to prevent him from throwing her. The couple’s son testified at trial about the long-term abuse, and the family asked the prosecutor not to prosecute the wife.⁸⁹² The prosecutor acknowledged, “She was a victim for a long period of time, and she wanted to defend herself because he attacked her.”⁸⁹³ Despite this evidence, the prosecutor charged the woman and obtained a conviction under Article 152.⁸⁹⁴ The prosecutor explained her action was not self-defense as “she committed a crime because he had an injury on the hand.”⁸⁹⁵

PRESENTATION OF THE CASE IN COURT

Prosecutors rely heavily on victim testimony and do not gather sufficient additional evidence to obtain convictions

According to the MoJ, the biggest obstacle to successful criminal prosecution of domestic violence is the lack of evidence.⁸⁹⁶ Prosecutors can order police to collect information but may themselves take witness statements, obtain medical records, and engage medical experts.⁸⁹⁷ The current law does not, however, mandate the collection of all evidence. NGOs have criticized prosecutors for failing to actively direct police investigations to obtain sufficient evidence of a crime.⁸⁹⁸ Some police officers also criticized prosecutors for not collecting additional evidence in domestic violence cases “as they do with other

⁸⁸⁷ Interview with NGO, City B, July 1, 2015.

⁸⁸⁸ *Id.*

⁸⁸⁹ *Id.*

⁸⁹⁰ Interview with Prosecutor, City D, July 3, 2015.

⁸⁹¹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁸⁹² Interview with Prosecutor, City D, July 3, 2015.

⁸⁹³ *Id.* She received a suspended sentence. *Id.*

⁸⁹⁴ Criminal Code, Art. 152; Interview with Prosecutor, City D, July 3, 2015. The prosecutor declined to charge the woman under Article 220 because “she was a victim.” *Id.*

⁸⁹⁵ Interview with Prosecutor, City D, July 3, 2015.

⁸⁹⁶ Interview with Ministry of Justice, Podgorica, June 29, 2015.

⁸⁹⁷ Interview with Prosecutor, City D, July 3, 2015.

⁸⁹⁸ Interview with NGO, City D, June 28, 2015.

criminal offenses.”⁸⁹⁹ Instead, prosecutors often leave it to the police to take the case to the misdemeanor courts, where the penalties are far lighter.⁹⁰⁰

In practice, most criminal domestic violence cases are based on statements and medical assessments.⁹⁰¹ Adult victims of domestic violence are not required to testify against their abusers.⁹⁰² A prosecutor further explained that if the victim refuses to testify at trial, they drop the charges, and the court dismisses it.⁹⁰³ When victims exercise their legal right not to testify, judges do not consider the victims’ original statements to police or prosecutors, thus eviscerating the case.⁹⁰⁴

There are many reasons why victims choose not to testify or cooperate with prosecution. According to prosecutors, victims often do not want to press charges or fail to attend the hearing, especially when they have children or are financially dependent on their abuser.⁹⁰⁵ Victims often lack support and may be pressured, discouraged, or even threatened from proceeding.⁹⁰⁶ One prosecutor acknowledged that “in our environment, it is not easy to go on a report of violence, because one needs courage to do so. . . .”⁹⁰⁷ Despite this recognition, when the victim and abuser give contrary statements, prosecutors sometimes decline to prosecute without any other evidence.⁹⁰⁸

Interviews revealed that prosecution delays contribute to victim recantation.⁹⁰⁹ Police reported that victims who immediately press charges often change their minds months later when “there is calm” and family pressure to drop charges.⁹¹⁰ Victims may give prosecutors statements during the investigation, but later change their statement or simply refuse to testify.⁹¹¹

Prosecutors in three cities admitted that victim refusal to testify often dooms the prosecutions to failure.⁹¹² One judge reported that prosecutors “give up” when a victim refuses to testify and no other evidence is available.⁹¹³ In one city, prosecutors dismissed 34 cases within a two-year period for lack of evidence, including cases where the victim refused to give an initial statement or testify at trial.⁹¹⁴

⁸⁹⁹ Interview with Police, City D, July 4, 2015.

⁹⁰⁰ Interview with NGO, City D, June 28, 2015.

⁹⁰¹ Interview with Prosecutors, City A, July 8, 2015.

⁹⁰² Interview with Judges, City A, July 8, 2015; Interview with Basic Court, City D, July 3, 2015; Interview with Prosecutor, City E, July 9, 2015.

⁹⁰³ Interview with Prosecutor, City B, July 2, 2015; Interview with Prosecutor, City E, July 9, 2015.

⁹⁰⁴ Interview with Basic Court, City D, July 3, 2015; Interview with Judges, City A, July 8, 2015.

⁹⁰⁵ Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutor, City D, July 3, 2015; Interview with Police, City A, July 8, 2015; Interview with Police, City E, July 9, 2015; Interview with Police 2, City C, July 6, 2015.

⁹⁰⁶ Interview with NGO, City B, July 1, 2015.

⁹⁰⁷ Interview with Prosecutor, City D, July 3, 2015.

⁹⁰⁸ Interview with Basic Court, City C, July 6, 2015.

⁹⁰⁹ Interview with NGO 1, City B, July 2, 2015; Interview with Police, City D, July 4, 2015

⁹¹⁰ Interview with Police, City A, July 8, 2015.

⁹¹¹ Interview with Prosecutor, City E, July 9, 2015; Interview with Prosecutor, City D, July 3, 2015.

⁹¹² Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutor, City D, July 3, 2015.

⁹¹³ Interview with Judges, City A, July 8, 2015.

⁹¹⁴ Interview with Prosecutor, City E, July 9, 2015.

Interviewees reported that a new law allows the admission of a victim's original statement into evidence, providing she receives notice that her statement may be used in court.⁹¹⁵ Interviews did not reveal, however, that this law is being implemented in domestic violence cases. One interviewee commented that many officials are unaware of the new provision.⁹¹⁶ Another interviewee reported that, since the adoption of the law, a victim in a case involving murder refused to testify. The prosecutor decided that there was insufficient evidence to charge the offender, so "it seems like [the new law] doesn't function."⁹¹⁷

Police criticize prosecutors who give up, saying prosecutors should ask police to investigate further, obtain additional evidence, and involve civil society to support victims.⁹¹⁸ Prosecutors maintain they collect what data they can, but there are rarely witnesses.⁹¹⁹ Medical reports and expert opinions are helpful where victims decline to participate, but are not sufficient to convict without corroborating evidence of injuries and the offender's presence.⁹²⁰ Where appropriate, prosecutors may photograph a victim's injuries to show the judge.⁹²¹ Yet, even marshaling photographic evidence is not easy under current conditions. According to prosecutors, neither they nor the police always have the printers, CDs, or other equipment to document injuries.⁹²² Moreover, victim permission is required to submit photos to the court, presenting the same obstacles as victim testimony.⁹²³

Prosecutors fail to show the court the context of a history of domestic violence

Similar to the pre-charging stage noted above, there is no indication that prosecutors present evidence of a history of violence for judges to consider. This has severe consequences on the outcome of each case. One judge declared, "We prosecute only the case that was presented that day. We do not consider what happened 20 years ago. We are limited to the thing the prosecutor charged."⁹²⁴ The judge explained that prosecutors do not use history because they have "no evidence and facts."⁹²⁵

Prosecutors, in turn, deflect responsibility to judges to gather prior criminal records for sentencing considerations.⁹²⁶ A judge affirmed they indeed consider earlier *convictions* to impose higher sentences on recidivists.⁹²⁷ But this practice limits the history to those cases where the case has proceeded completely to conviction.

⁹¹⁵ Interview with NGO, City D, Nov. 11, 2016 (via telephone); Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁹¹⁶ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

⁹¹⁷ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

⁹¹⁸ Interview with Police, City D, July 4, 2015.

⁹¹⁹ Interview with Prosecutor, City E, July 9, 2015; Interview with Prosecutor, July 2, 2015, Podgorica.

⁹²⁰ Interview with Prosecutor, City E, July 9, 2015; Interview with Basic Court, City C, July 6, 2015; Interview with Prosecutors, City F, July 7, 2015; Interview with Judges, City A, July 8, 2015; Interview with Basic Court, City D, July 3, 2015.

⁹²¹ Interview with Prosecutor, City E, July 9, 2015.

⁹²² *Id.*

⁹²³ Interview with NGO, City C, July 6, 2015.

⁹²⁴ Interview with Basic Court, City D, July 3, 2015.

⁹²⁵ *Id.*

⁹²⁶ Interview with Prosecutor, City B, July 2, 2015.

⁹²⁷ Interview with Basic Court, City D, July 3, 2015.

Moreover, according to one prosecutor, most criminal judges lack data about misdemeanor convictions.⁹²⁸ When prosecutors inform them of an outstanding misdemeanor OFP, judges take that into consideration in sentencing,⁹²⁹ but it is up to prosecutors to bring these misdemeanor orders to the judges' attention. When prosecutors themselves dismiss the importance of misdemeanor histories, judges in criminal proceedings also disregard those histories. One prosecutor stated:

It is not significant for me at the moment whether the offender was previously accused . . . he can be accused many times, ten times. But for me, it is not important [what happens] in the misdemeanor procedure, because every case has its own strengths.⁹³⁰

SENTENCING

In cases that do proceed, first-time offenders typically receive suspended sentences.⁹³¹ In 2015, courts issued punishments in 128 criminal cases, with 69 cases resulting in a suspended sentence and just 45 resulting in a prison sentence.⁹³² The remaining punishments included fines, community service, and warnings.⁹³³ Interviews with prosecutors and basic court judges confirmed the most common sentence under Article 220 is a suspended sentence.⁹³⁴

Prosecutors insisted they recommend punishments, but that judges rarely accept their recommendations. Yet other interviews revealed that prosecutors sometimes acquiesce to suspended sentences, leaving victims unprotected. One judge described a case involving severe injuries, including a broken nose, in which the offender pled guilty.⁹³⁵ The prosecutor agreed to a two-year suspended sentence.⁹³⁶ In that case, the agreement did not provide any post-conviction protective measures for the victim, as described in the next section.⁹³⁷

PROTECTIVE MEASURES IN CRIMINAL PROCEEDINGS

The courts do not provide victims of criminal-level violence effective protection from their abusers before, during, and after criminal proceedings. Even after offenders are arrested, the trial is underway, or the verdict is appealed, a victim may be vulnerable to repeated attacks by her abuser.⁹³⁸

⁹²⁸ Interview with Prosecutor, City B, July 2, 2015.

⁹²⁹ Interview with Basic Court, City C, July 7, 2015.

⁹³⁰ Interview with Prosecutor, City B, July 2, 2015.

⁹³¹ Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutor, City D, July 3, 2015.

⁹³² Ministarstvo za Ljudska i Manjinska Prava Crna Gora, Podaci o slučajevima nasilja nad ženama i nasilja u porodici iz različitnih izvora za 2015. godinu, March 2016, at 4.

⁹³³ *Id.* at 4.

⁹³⁴ Interview with Prosecutor, City D, July 3, 2015; Interview with Prosecutor, City F, July 7, 2015; Interview with Judges, City A, July 8, 2015.

⁹³⁵ Interview with Judge, City A, July 8, 2015.

⁹³⁶ *Id.*

⁹³⁷ *Id.*

⁹³⁸ Interview with Police, City D, July 4, 2015. Before 2013, measures such as orders for protection were available only under the LDVP. See also Interview with Prosecutors, City A, July 8, 2015. Prosecutors in criminal cases were sometimes unfamiliar with them or reluctant to petition the misdemeanor court/organ, in part because the case cannot proceed simultaneously in both the misdemeanor and criminal courts. Interview with Basic Court, City D, July 3, 2015. Some police found it difficult to convince prosecutors that victims needed protection, and thus the

In 2013, the Criminal Code was amended to permit criminal judges to issue restraining orders and evictions against an offender upon conviction.⁹³⁹ As interviews revealed, police, judges, and prosecutors were either unfamiliar with the new provisions,⁹⁴⁰ had not used them, or viewed them as unnecessary because the parties divorced.⁹⁴¹ A Member of Parliament acknowledged the new provisions are working “very slowly” and that full implementation may be impossible until the country’s institutions have greater awareness.⁹⁴² Even if courts were issuing these protections, the legal system does not provide any specific protections for victims before or during criminal proceedings.

PROSECUTIONS FOR ORDER FOR PROTECTION VIOLATIONS

Prosecutors also are responsible for prosecuting violations of orders for protection under Article 220(5).⁹⁴³ Interviews revealed some positive practices in holding violators accountable. In one case, an offender harassed his wife by sending threatening text messages. Copies of those messages alone were sufficient evidence to support criminal charges against him.⁹⁴⁴ As police explained, additional violence is not necessary, and “it is enough that the offender comes to the door of the victim.”⁹⁴⁵

Overall, however, prosecutors are not consistently prosecuting violations of OFPs. In one case, a man with two restraining orders against him threatened his victim and held her captive in his car for forty minutes. He escaped criminal prosecution by claiming he never received the protective orders.⁹⁴⁶ The police said they advised the man about the OFPs verbally, but such notice was not sufficient for the prosecutor.⁹⁴⁷

When prosecutors do pursue these violations, they do not always treat them as a new and separate crime. When an offender commits violence while under an OFP, interviews revealed that prosecutors often treat the new violence as an extension of the original offense and fail to seek longer detentions.⁹⁴⁸

police opted to pursue a misdemeanor case to protect the victim. Interview with Police, City D, July 4, 2015. There was no provision in the criminal code for prosecutors to move for surveillance or supervision measures during trial in a domestic violence case. Interview with Prosecutor, City C, July 6, 2015. Instead, prosecutors suggest protective measures to police, the CSW, or misdemeanor courts, or simply expect family members to help protect the victim. Interview with Prosecutors, City A, July 8, 2015; Interview with Prosecutor, City E, July 9, 2015; Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutors, City F, July 7, 2015. Some prosecutors did not demonstrate strong knowledge about which NGOs are active in addressing domestic violence. Interview with Prosecutors, City A, July 8, 2015.

⁹³⁹ Criminal Code, Arts. 77(a), (b); Interview with Prosecutor, City F, July 7, 2015.

⁹⁴⁰ Interview with Police, City D, July 4, 2015.

⁹⁴¹ Interview with Basic Court, City C, July 6, 2015; Interview with Prosecutor, City E, July 9, 2015; Interview with Prosecutor, City A, July 8, 2015; Interview with Prosecutor, City C, July 6, 2015.

⁹⁴² Interview with Parliament, Podgorica, July 10, 2015.

⁹⁴³ Criminal Code, Art. 220(5).

⁹⁴⁴ Interview with Police 2, City C, July 6, 2015.

⁹⁴⁵ Interview with Police, City F, July 7, 2015.

⁹⁴⁶ MDT, City D, July 10, 2015.

⁹⁴⁷ *Id.*

⁹⁴⁸ Interview with Police, City D, July 4, 2015.

CRIMINAL COURT PROCEEDINGS

JUDGES' DEMEANOR AND TRAINING

Criminal judges hear domestic violence cases under Article 220,⁹⁴⁹ and as with prosecutors, there are no specialized domestic violence courts. Some judges display insensitivity toward victims of domestic violence while others intimidate them.⁹⁵⁰ For example, in one case, a judge accused a victim of being a bad mother because she allowed her children to testify after her husband violated an OFP.⁹⁵¹ Judges also expressed the opinion that low-level domestic violence should not be chargeable if the woman verbally “provoked” her husband or demanded “unreasonable” material support.⁹⁵² Such harmful attitudes can diminish victim confidence in the judicial system and even cause them to abandon the case.

MoJ representatives described how judges, prosecutors, and international experts provide continuing training at an educational center for the judiciary.⁹⁵³ Some judges may also receive training as members of an MDT.⁹⁵⁴ To date, however, most judges have had limited, if any, training on domestic violence.⁹⁵⁵ NGOs in different cities found varying levels of interest in trainings among judges, indicating the need for mandated, systematic training.⁹⁵⁶

Even after training, judicial and other institutions do not always exhibit an understanding of violence against women.⁹⁵⁷ Tools are needed to further judicial reform to increase knowledge and to incorporate it into actual bench practices. The MoJ has not promulgated specific domestic violence protocols for judges.⁹⁵⁸ In a recent survey of Montenegrin judges, 78 percent of respondents reported they do not use CEDAW, or other treaties that Montenegro has ratified, in their work.⁹⁵⁹ Even where some judges revealed familiarity with treaties, such as the Istanbul Convention, they have yet to implement its provisions.⁹⁶⁰

⁹⁴⁹ Interview with Basic Court, City D, July 3, 2015.

⁹⁵⁰ Interview with NGO, City C, July 6, 2015; Interview with NGO, City B, July 1, 2015.

⁹⁵¹ Interview with NGO, City B, July 1, 2015.

⁹⁵² Interview with Basic Court, City D, July 3, 2015.

⁹⁵³ Interview with Ministry of Justice, Podgorica, June 29, 2015.

⁹⁵⁴ Interview with Parliament, Podgorica, July 10, 2015.

⁹⁵⁵ Interview with Basic Court, City B, July 1, 2015; Interview with NGO, City C, July 6, 2015.

⁹⁵⁶ Interview with NGO, City C, July 6, 2015; Interview with NGO 3, City D, July 4, 2015.

⁹⁵⁷ Interview with NGO 2, City B, July 2, 2015.

⁹⁵⁸ Interview with Ministry of Justice, Podgorica, June 29, 2015.

⁹⁵⁹ IPSOS Strategic Marketing, at 46.

⁹⁶⁰ Interview with Basic Court, City D, July 3, 2015; Interview with Basic Court, City B, July 1, 2015.

PROCEDURE FOR CASES ARISING UNDER ARTICLE 220 OF THE CRIMINAL CODE

Criminal proceedings under Article 220 may be protracted, endangering victim safety and resulting in dismissals

Under the Criminal Procedure Code, faster, summary proceedings are mandatory in Article 220 cases where the prescribed penalty is five years or less in prison.⁹⁶¹ Judges explained that while summary proceedings shorten deadlines, the formal requirements of the law inevitably leads to delays.⁹⁶² Criminal proceedings can take months to resolve, depending on the complexity of the case, severity of injuries, and availability of evidence.⁹⁶³ NGO staff described the criminal process as “always very long and hard.”⁹⁶⁴ Court personnel defined a “quick” resolution as three months and recounted a case where the prosecutor filed charges in late March 2013.⁹⁶⁵ In June 2014, 14 months later, the court finally issued its decision.⁹⁶⁶

Appeals also prolong court proceedings. For example, in one case, the offender hit his intimate partner on her head and other parts of her body with his fist and a wooden bat, causing a black eye, as well as injuries to her neck, chest, and knee. The defendant appealed his three-month sentence under Article 220(3), further prolonging the process.⁹⁶⁷ Eventually, the high court affirmed the defendant’s three-month prison sentence.⁹⁶⁸

These delays can expose victims to further harm, especially when there are no measures imposed to protect them during criminal proceedings, as described below. A doctor described how a woman with two small children reported violence by her husband. He was discharged from custody and the trial was repeatedly delayed. After they divorced, she returned to her family home. While awaiting trial, the man entered his ex-wife’s family home with a gun, shot her in the leg, and injured his child and another relative.⁹⁶⁹

According to judges and prosecutors, delays also result in the dismissal of more cases. By the time a criminal case reaches trial, many parties have reconciled and victims are reluctant to testify.⁹⁷⁰ Their

⁹⁶¹ Criminal Procedure Code, Arts. 446-60; Interview with Ministry of Justice, Podgorica, June 29, 2015 (stating that “summary proceedings are every proceeding with a jail sentence up to five years”). This applies to Articles 220 (1)-(3) as well as protective orders under 77a or 77b. Interview with Basic Court, City B, July 1, 2015. Prosecutors reported that summary proceedings usually last from two to fifteen days. Interview with Prosecutors, City F, July 7, 2015; Interview with Prosecutor, City B, July 2, 2015.

⁹⁶² Interview with Basic Court, City B, July 1, 2015.

⁹⁶³ Interview with Prosecutor, City C, July 6, 2015; Interview with Prosecutor, City B, July 2, 2015; Interview with CSW, City D, July 3, 2015.

⁹⁶⁴ Interview with NGO, City F, July 7, 2015.

⁹⁶⁵ Interview with Basic Court, City F, July 7, 2015.

⁹⁶⁶ *Id.*

⁹⁶⁷ *Id.*

⁹⁶⁸ *Id.*

⁹⁶⁹ Interview with Doctors, City D, July 3, 2015.

⁹⁷⁰ Interview with Judges, City A, July 8, 2015; Interview with Prosecutors, City A, July 8, 2015.

reluctance may be compounded when judges fail to explain the process to victims, leaving them bewildered and discouraged when the process takes longer than expected.⁹⁷¹

Judges do not take steps to ensure victim safety during Article 220 proceedings

Generally, criminal court judges do not take adequate steps to protect the victim from violence during the proceedings.⁹⁷² In a recent survey, 75 percent of judges and 79 percent of assistant judges reported they had not encountered a plan, such as a safety plan, to protect a victim of domestic violence.⁹⁷³ Both police and judges interviewed for this report lamented the overall low level of protection in criminal cases, including the complete absence of protection for domestic violence victims prior to conviction.⁹⁷⁴ One judge described a case where the court twice convicted a husband under Article 220 and issued suspended sentences, but did not order any measures to protect the victim.⁹⁷⁵ In a third round of proceedings, the judge observed the victim lost a tooth between hearings, leading the judge to conclude that the violence had continued.⁹⁷⁶ Yet the judge dismissed the case because the victim refused to testify against the offender.⁹⁷⁷

In addition, a victim's vulnerability may be increased by the courts' failure to communicate with her throughout the case and at its completion.⁹⁷⁸ For example, courts have no obligation to notify victims of convictions and acquittals.⁹⁷⁹ A victim who does not know the outcome of a legal proceeding may be at greater risk for retaliation from her abuser, which is contrary to best practice standards. When the trial does not begin for several months after the initial hearing, a victim may assume it is over and nothing happened.⁹⁸⁰ She may be unable to plan for her own safety if she is unaware of the state of proceedings, and the offender may retaliate against the victim if the proceedings continue or the judge imposes a sanction. Judges dismissed the need to communicate this information directly to victims, saying victims usually know about the outcome. When they do not, judges pointed out that convictions are public anyway.⁹⁸¹

Interviews revealed judges do not know about services that could assist victims. As a result, they do not refer victims to these services. One judge did not know there was a safe house in his jurisdiction until he learned of it during the interviews for this report.⁹⁸² Free legal aid is available in criminal cases, but many victims do not know about it. As a result, it is rarely used in criminal domestic violence cases.⁹⁸³ Judges complained that the CSW and other institutions do not inform women of their right to legal

⁹⁷¹ Interview with NGO, City B, July 1, 2015.

⁹⁷² Interview with CSW, City D, July 3, 2015.

⁹⁷³ Ipsos Strategic Marketing, at 67.

⁹⁷⁴ Interview with Police, City D, July 4, 2015; Interview with Basic Court, City B, July 1, 2015.

⁹⁷⁵ Interview with Judges, City A, July 8, 2015.

⁹⁷⁶ *Id.*

⁹⁷⁷ *Id.*

⁹⁷⁸ *Id.*

⁹⁷⁹ Interview with Basic Court, City B, July 1, 2015.

⁹⁸⁰ Interview with NGO, City B, July 1, 2015.

⁹⁸¹ Interview with Basic Court, City F, July 7, 2015.

⁹⁸² Interview with Basic Court, City C, July 6, 2015.

⁹⁸³ Interview with NGO, City B, June 30, 2015; Interview with NGO, City B, July 1, 2015.

assistance,⁹⁸⁴ but the authors found no reports of judges providing this information. Criminal judges also do not consistently inform victims about services or obtaining compensation from their abuser.⁹⁸⁵

Judges acknowledged that it is best to impose protection immediately, but that can only be accomplished via the misdemeanor system.⁹⁸⁶ Criminal judges do not have protective measures they can use to protect victims during the criminal proceedings. Misdemeanor OFP remedies are available, providing the victim seeks their protection for an act of violence different than what is criminally prosecuted.⁹⁸⁷ Women are not consistently informed, however, that these OFPs are available.⁹⁸⁸ One judge acknowledged that restraining orders are available in the misdemeanor court but that “it’s really not convenient.”⁹⁸⁹

Evidentiary barriers under Article 220

Like prosecutors, judges expressed frustration with their inability to convict violent offenders when victims decline to testify.⁹⁹⁰ Consequently, judges are critical of police and prosecutors for not proactively collecting other evidence to promote victim-absent prosecution.⁹⁹¹ But interviews also revealed judicial practices that unduly rely on victim cooperation for convictions. Even when there are medical records or other evidence, some judges treat the victim’s refusal to cooperate as a mitigating factor.⁹⁹² In one case, for example, a husband hit his wife in the face with his open hand, causing her to fall down.⁹⁹³ The victim made a statement and participated as a witness, but from a legal standpoint, she did not “join” the prosecution. The judge treated her refusal to join the case as a mitigating

⁹⁸⁴ Interview with NGO, City B, July 1, 2015.

⁹⁸⁵ *Id.*

⁹⁸⁶ Interview with Basic Court, City B, July 1, 2015.

⁹⁸⁷ The European Court of Human Rights 2009 decision, *Mareсти v. Croatia (Mareсти)*, drastically altered the legal landscape—and protections—for domestic violence victims. *Mareсти* is a decision concerning, among other things, a violation of the applicant's right not to be tried or punished twice for the same offense under Article 4 of the European Convention on Human Rights.⁹⁸⁷ The effect of *Mareсти* is that the misdemeanor and criminal laws are now mutually exclusive for purposes of prosecution, thus requiring a victim to choose between long-term protective measures and the appropriate criminal charges against her abuser. Even if an offender perpetrates serious injuries, compelling the victim to seek protection through an eviction or restraining order, the maximum sentence that offender could face is the misdemeanor jail sentence or a fine. Conversely, if the prosecutor chooses to prosecute the case and seek criminal-level punishment, the victim is then precluded from obtaining long-term protective measures for herself under the LDVP. In other words, the victim must wait for or use another act of violence to occur before she can seek protective measures under the LDVP. The Criminal Code provides long-term security measures of eviction and a restraining order (Articles 77(a) and (b)) that can protect the victim after the trial's conclusion. Montenegro's Criminal Procedure Code, however, lacks corollary security measures to guarantee her the full and comprehensive protection she needs during the trial, and existing measures focus instead on ensuring the defendant's presence in court proceedings. *Case of Mareсти v. Croatia*, App No. 55759/07, Euro. Ct. Human Rts, September 25, 2009. See also The Advocates for Human Rights, et al., *Implementation of Croatia's Domestic Violence Legislation* (2012).

⁹⁸⁸ Interview with NGO 2, City B, July 2, 2015.

⁹⁸⁹ Interview with Basic Court, City E, July 9, 2015.

⁹⁹⁰ Interview with Judges, City A, July 8, 2015.

⁹⁹¹ Interview with NGO, City B, July 1, 2015.

⁹⁹² Interview with Judges, City A, July 8, 2015.

⁹⁹³ *Id.*

factor.⁹⁹⁴ Cases in which the victim does not fully cooperate usually end in acquittals and suspended sentences.⁹⁹⁵ In the worst cases, victims may be penalized rather than protected. An NGO described several cases where victims have later been sued by their abusers for “ruining their husbands’ reputations” after they recant.⁹⁹⁶

As discussed earlier on page 83, a recently adopted law allows judges to consider victims’ formal statements made to police immediately following the incident or reflected in the police report.⁹⁹⁷ Not all judges, however, know about this important change to the law.⁹⁹⁸

Without medical evidence, judges find it difficult to assess credibility when the defendant and the victim present opposing accounts of the incident.⁹⁹⁹ Although not as common as among misdemeanor judges, some criminal judges rely on confrontation.¹⁰⁰⁰ Basic court judges may require victims to participate in confrontation despite the existence of a protective measure that would prohibit the practice.¹⁰⁰¹ Judges who recognize the need to avoid confrontation may use audio or video to facilitate the victim’s participation in the hearings,¹⁰⁰² but such practice is rare and one NGO could not recall any cases where judges used audio/video for an adult victim of domestic violence.¹⁰⁰³ Interviews revealed the traumatic effects on victims when judges force them to participate in confrontation.¹⁰⁰⁴

VIOLATIONS OF A MISDEMEANOR ORDER FOR PROTECTION

Individuals who violate misdemeanor OFPs may be prosecuted under Article 220(5) of the Criminal Code.¹⁰⁰⁵ As with other criminal cases brought under Article 220, proceedings are slow and sanctions tend to be lighter than that allowed by Article 220(5) of a fine or maximum six months’ imprisonment. One case took a year, and in the end, the judge issued only a suspended sentence and fine.¹⁰⁰⁶ One NGO worker noted that “it’s not some urgent procedure where they are arresting the violator and putting him into prison. It’s more like a regular criminal procedure that lasts a long time.”¹⁰⁰⁷ In this person’s

⁹⁹⁴ *Id.*

⁹⁹⁵ Interview with NGO, City B, July 1, 2015.

⁹⁹⁶ *Id.*

⁹⁹⁷ Interview with Basic Court, City B, July 1, 2015.

⁹⁹⁸ Interview with Basic Court, City C, July 6, 2015.

⁹⁹⁹ Interview with Basic Court, City B, July 1, 2015.

¹⁰⁰⁰ See, e.g., Interview with Basic Court, City B, July 1, 2015; Interview with Basic Court, City F, July 7, 2015.

¹⁰⁰¹ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹⁰⁰² Interview with Basic Court, City B, July 1, 2015; Interview with Basic Court, City D, July 3, 2015.

¹⁰⁰³ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

¹⁰⁰⁴ Interview with NGO, City B, June 30, 2015.

¹⁰⁰⁵ Interview with Police 2, City C, July 6, 2015; Interview with Prosecutor, City C, July 6, 2015; Interview with NGO, City B, June 30, 2015; Interview with Prosecutor, City B, July 2, 2015; Interview with Basic Court, City D, July 3, 2015.

¹⁰⁰⁶ Interview with CSW, City D, July 3, 2015; Interview with NGO, City B, July 1, 2015; Interview with CSW, City D, July 3, 2015.

¹⁰⁰⁷ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

experience, the basic court judges often require the victim herself to prove that the offender violated a protective measure, but her word alone is not sufficient.¹⁰⁰⁸

Attitudes that focus on victims' rather than offenders' behavior can also result in negative outcomes. In another case, a victim of long-term abuse was forced to continue living in the same apartment as her alcoholic husband despite her OFP.¹⁰⁰⁹ They had four children, and he was twice incarcerated.¹⁰¹⁰ She could not afford her own home for herself and the children.¹⁰¹¹ They lived on different floors of the apartment, but shared a bathroom. Her husband repeatedly violated the OFP by entering her space. He even smashed the door to come near her.¹⁰¹² She threw an object at him to protect herself. Later in court, when the police focused on this incident, "the police officer, judge, everyone turned against her" for acting in self-defense, rather than holding the offender accountable for violating the OFP.¹⁰¹³

PENALTIES

Judges expressed hope that their punishments would prevent future domestic violence.¹⁰¹⁴ Given the frequency of suspended sentences, however, some judges have considered misdemeanor penalties, such as fines, to be more effective.¹⁰¹⁵ Recent amendments to the Criminal Code requiring more "severe" violence for criminal prosecution may compel judges to impose heavier sentences.¹⁰¹⁶ These heavier sentences have yet to be imposed, however. Although sentences under Article 220 can range from a fine to a maximum prison term of 12 years, judges appeared reluctant to impose greater sanctions, even when there was "severe" physical violence. One man punched his partner's face and neck and used a bat to beat her. She suffered bruises on her face and neck and injuries to her chest and leg. For his violence, he received a three-month jail sentence.¹⁰¹⁷

When discussing the effectiveness of Article 220, judges told stories of repeat offenders. For example, one man who repeatedly beat his wife was convicted three times and sentenced to a total of 9.5 months in prison and a fine of €2,000.¹⁰¹⁸ He was sentenced to six months in prison for inflicting severe bodily injury on his wife.¹⁰¹⁹ After his release, the violence continued, and he was sentenced a second time. Following the third sentence and imprisonment, the judge saw them together at the county fair. He said, "I ask myself, 'Do these convictions mean anything? They will come [to court] again.'"¹⁰²⁰ One

¹⁰⁰⁸ *Id.*

¹⁰⁰⁹ Interview with NGO, City F, July 7, 2015.

¹⁰¹⁰ *Id.*

¹⁰¹¹ *Id.*

¹⁰¹² *Id.*

¹⁰¹³ *Id.*

¹⁰¹⁴ Interview with Judge, City A, July 8, 2015. Convictions are public and courts' opinions explain the basis for their decisions. *Id.*

¹⁰¹⁵ Interview with Judges, City A, July 8, 2015; Interview with Prosecutors, City A, July 8, 2015.

¹⁰¹⁶ Interview with Basic Court, City B, July 1, 2015.

¹⁰¹⁷ Interview with Basic Court, City F, July 7, 2015.

¹⁰¹⁸ Interview with Basic Court, City C, July 6, 2015.

¹⁰¹⁹ *Id.*

¹⁰²⁰ *Id.*

prosecutor opined, “I think they are just not familiar enough. They just don’t know about the severity of emotional and physical violence.”¹⁰²¹

Often, judges attribute domestic violence to alcohol abuse and prioritize treatment over punishment.¹⁰²² In one case, a misdemeanor court issued a six-month restraining order against a man.¹⁰²³ He violated the order by texting threats to his wife. Upon conviction, he was sentenced to thirty days’ imprisonment under Article 220(5).¹⁰²⁴ On appeal, he submitted evidence of his ongoing treatment for alcohol abuse.¹⁰²⁵ The High Court revoked the conviction and requested a medical assessment of his psychological state.¹⁰²⁶ In the meantime, the parties divorced, but the man continues to harass his former wife.¹⁰²⁷

As with addiction treatment, criminal judges may regard medical treatment as a comparable substitute for imprisonment. For example, one offender was diagnosed with “pathological jealousy caused by impotence” and sentenced to medical treatment and a prison sentence.¹⁰²⁸ But his ultimate punishment was reduced because authorities credited his time in medical treatment toward his jail term.¹⁰²⁹

Some judges view an offender’s prior record as an “aggravating circumstance”¹⁰³⁰ and take it into account during sentencing, while other judges do not consider it.¹⁰³¹ Judges do not have direct access to the offender’s prior misdemeanor record and generally do not request it.¹⁰³² Instead, they rely on the victim and prosecutor to advise them whether there has been a misdemeanor OFP issued¹⁰³³ or LDVP sentence for the offender.¹⁰³⁴ As noted in the preceding section, prosecutors themselves may not have that information. Likewise, criminal court judges may consider prior OFPs as aggravating circumstances. It is the responsibility of the victim and the prosecutor, however, to alert the court to the existence of the order.¹⁰³⁵ As with prosecutors, the divide between misdemeanor and criminal systems poses a challenge for access to information for the judiciary.

Criminal judges do have access to offenders’ criminal records.¹⁰³⁶ Prosecutors claim the judge must examine the defendant’s criminal record, prior accusations, and suspended sentences as aggravating

¹⁰²¹ Interview with Prosecutor, City F, July 7, 2015.

¹⁰²² Interview with NGO, City C, July 6, 2015; Interview with Basic Court, City D, July 3, 2015.

¹⁰²³ Interview with Basic Court City C, July 6, 2015.

¹⁰²⁴ Interview with Police, City C, July 6, 2015.

¹⁰²⁵ Interview with Prosecutor, City C, July 6, 2015.

¹⁰²⁶ Interview with Basic Court, City C, July 6, 2015.

¹⁰²⁷ *Id.*

¹⁰²⁸ Interview with Basic Court, City B, July 1, 2015.

¹⁰²⁹ Interview with Basic Court, City B, July 1, 2015.

¹⁰³⁰ Interview with Basic Court, City F, July 7, 2015.

¹⁰³¹ Interview with Basic Court, City D, July 3, 2015.

¹⁰³² Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with Basic Court, City D, July 3, 2015; Interview with Prosecutor, City B, July 2, 2015.

¹⁰³³ Interview with Misdemeanor Judge, City A, July 8, 2015; Interview with Basic Court, City F, July 7, 2015.

¹⁰³⁴ Interview with Misdemeanor Judge, City A, July 8, 2015.

¹⁰³⁵ Interview with Basic Court, City F, July 7, 2015.

¹⁰³⁶ Interview with Basic Court, City D, July 3, 2015.

factors.¹⁰³⁷ However, the records may be incomplete. A judge recounted a case several years earlier in which he received records showing the offender had been convicted twice before, but failed to identify the victim in both cases.¹⁰³⁸ The incomplete history made effective sentencing more difficult.

POST-CONVICTION MEASURES TO PROMOTE VICTIM SAFETY

2013 amendments to the Criminal Code added Articles 77a and 77b, allowing the court to issue restraining and eviction orders at the conclusion of certain criminal proceedings, including proceedings under Article 220.¹⁰³⁹ These measures are available only upon conviction, leaving the victim vulnerable throughout the proceedings when she may need protection the most.¹⁰⁴⁰

Interviews indicate these important protections are not being used.¹⁰⁴¹ Judges declared they had never issued a restraining order or eviction under Articles 77a or 77b of the Criminal Code.¹⁰⁴² At the time of fact-finding, judges had not received direct training on Articles 77a or 77b.¹⁰⁴³ There is no indication judges assess the risk of future violence.¹⁰⁴⁴ A criminal court issued fines and jail sentences for one offender in three successive criminal proceedings, but never evicted or issued a restraining order against the perpetrator. The victim was forced to continue living with her ex-husband because she had nowhere to go, and she continued to face domestic violence.¹⁰⁴⁵ In another case, the victim had been subjected to very severe physical violence, yet neither the prosecutor, the victim's lawyer, nor the judge considered the possibility of issuing these measures.¹⁰⁴⁶ While acknowledging it is their "primary duty" to protect victims of domestic violence, judges expressed concern that imposing strict sanctions could interfere with reconciliation between the offender and the victim.¹⁰⁴⁷ Many victims do not know these post-conviction measures for protection exist, a gap that is further compounded when institutions fail to convey this information.¹⁰⁴⁸

¹⁰³⁷ Interview with Prosecutor, City B, July 2, 2015.

¹⁰³⁸ Interview with Judges, City A, July 8, 2015.

¹⁰³⁹ Criminal Code, Arts. 77(a), (b).

¹⁰⁴⁰ Interview with NGO, City D, June 30, 2015; Interview with NGO, City B, June 28, 2015; Interview with Ministry of Justice, Podgorica, June 29, 2015; Interview with Police City D, July 4, 2015.

¹⁰⁴¹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹⁰⁴² Interview with Basic Court, City C, July 6, 2015; Interview with Prosecutor, City C, July 6, 2015; Interview with Judges, City A, July 8, 2015.

¹⁰⁴³ Interview with Ministry of Justice, Podgorica, June 29, 2015.

¹⁰⁴⁴ Interview with Basic Court, City D, July 3, 2015.

¹⁰⁴⁵ Interview with Health Center, City F, July 7, 2015.

¹⁰⁴⁶ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹⁰⁴⁷ Interview with Basic Court, City B, July 1, 2015.

¹⁰⁴⁸ Interview with NGO, City B, July 2, 2015.

HEALTH CARE INSTITUTIONS

Health care institutions play an important role in protecting victims of domestic violence and holding offenders accountable. First, they treat and document domestic violence injuries. Medical documentation of injuries is often essential evidence in penal proceedings. Second, they provide expert reports on the offender for prosecutors and judges.¹⁰⁴⁹ Third, they are responsible for working with other institutions to fulfill their “duty to provide [the] victim with full and coordinated protection” from domestic violence.¹⁰⁵⁰ Fourth, they are responsible for implementing two protective measures: mandatory addiction treatment and mandatory psychosocial treatment for offenders.¹⁰⁵¹

The Protocol describes 11 actions the health sector should undertake.¹⁰⁵² Among them, it requires health sector institutions “to post in [a] visible place and make the Protocol on treatment of victims of family violence accessible to all.”¹⁰⁵³ At the time of fact-finding, however, several health care providers were not even aware of the state Protocol or the provisions that apply to the health sector.¹⁰⁵⁴ One emergency room doctor stated, “I do not know anything about the Protocol.” A colleague added, “We do not know about any protocol, and can you imagine any protocol about domestic violence?”¹⁰⁵⁵

The Protocol requires health sector institutions—along with other institutions—to “establish files of the cases according to the rules of their profession and provide them for insight, when necessary, to other authorities.”¹⁰⁵⁶ An MoJ report notes that health care providers do not have an updated electronic system of data collection on domestic violence.¹⁰⁵⁷ In particular, the MoJ observes that health care providers record the nature of an injury, but not the circumstances under which it was caused.¹⁰⁵⁸ In at least one jurisdiction, the health center established its own protocol on screening, treatment, and documentation of domestic violence injuries.¹⁰⁵⁹ But this protocol is not standardized across other health facilities.¹⁰⁶⁰ Most other health care providers reported their institutions have not developed their own procedures for handling domestic violence cases.¹⁰⁶¹ Doctors expressed an overall urgent need for standardized procedures to respond to domestic violence among their patients.¹⁰⁶²

¹⁰⁴⁹ These reports typically focus on the offender and state whether he has an addiction or a mental illness.

¹⁰⁵⁰ LDVP, Art. 5(1).

¹⁰⁵¹ *Id.* Art. 33(3)-(4).

¹⁰⁵² Protocol, All Institutions, ¶13.

¹⁰⁵³ *Id.* ¶13.

¹⁰⁵⁴ Interview with Health Center, City B, July 10, 2015.

¹⁰⁵⁵ *Id.*

¹⁰⁵⁶ Protocol, II, All institutions, ¶11.

¹⁰⁵⁷ 2016 Ministarstvo Pravde Izvještaj, Section V.

¹⁰⁵⁸ *Id.*

¹⁰⁵⁹ Interview with Health Center, City F, July 7, 2015.

¹⁰⁶⁰ *Id.*

¹⁰⁶¹ Interview with Doctors, City D, July 3, 2015; Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Center, City B, July 1, 2015.

¹⁰⁶² Interview with Doctors, City D, July 3, 2015.

In other jurisdictions, health care institutions explained that all employees with patient contact receive the Protocol and insisted they conduct training on LDVP obligations.¹⁰⁶³ But many ad hoc practices remain. For example, doctors shared how they rely on “improvisation” to address domestic violence, such as providing therapy to offenders when requested by family members.¹⁰⁶⁴ The MoJ recently concluded that health care institutions lack sufficient capacity, resources, and training to implement the LDVP.¹⁰⁶⁵

ATTITUDES OF HEALTH SECTOR WORKERS

Interviews revealed that health care professionals hold misperceptions about causes of domestic violence. Several medical professionals attributed domestic violence to drug or alcohol addiction.¹⁰⁶⁶ Other health care providers perceived the offender’s “sociopathic structure or personality”¹⁰⁶⁷ or psychiatric illness to be the cause of domestic violence.¹⁰⁶⁸

Health sector workers are required to speak to a victim “with special care,” refer the victim to CSWs and notify support centers and the secondary health protection level.¹⁰⁶⁹ In addition, when treating a victim or suspected victim, they must complete a “prescribed form about possible physical injuries and about the abuser” and provide the victim with a “list of injuries, ex officio, free of charge.”¹⁰⁷⁰ Despite these directives, interviews revealed an aversion by doctors to address and respond to the domestic violence they see. Several health sector workers expressed the view that any measures beyond treating the victim or diagnosing the offender are “not our job.”¹⁰⁷¹ One doctor asserted that health centers are not the frontlines of combating domestic violence, explaining, “The first place they go to report all the violence is an NGO, the police, or a judge. The victim comes to a health care institution only for health problems.”¹⁰⁷² The director of a major health care center stated that “invisible violence is not in the institution’s competence.” He added, “Our doctors see 100 patients every day. What can you expect in a few minutes?”¹⁰⁷³ Workers must also pay attention to a victim’s injuries and overall health status that might indicate domestic violence.¹⁰⁷⁴ But an ER doctor, whose colleagues stated how rare it is for victims to admit their injuries are from domestic violence, conceded that, “Sometimes we deny that domestic violence is present in Montenegro. I think it is very common.”¹⁰⁷⁵

¹⁰⁶³ Interview with Health Center, City F, July 7, 2015.

¹⁰⁶⁴ Interview with Doctors, City D, July 3, 2015.

¹⁰⁶⁵ 2016 Ministarstvo Pravde Izvještaj.

¹⁰⁶⁶ Interview with Health Care Providers, City A, July 8, 2015; Interview with Doctors, City D, July 3, 2015; Interview with Neuropsychiatrist, City E, July 9, 2105.

¹⁰⁶⁷ Interview with Neuropsychiatrist, City E, July 9, 2015.

¹⁰⁶⁸ Interview with Doctors, City D, July 3, 2105.

¹⁰⁶⁹ Protocol, Health Sector, ¶4.

¹⁰⁷⁰ *Id.* ¶¶2-3.

¹⁰⁷¹ Interview with Health Care Providers, City A, July 8, 2015.

¹⁰⁷² Interview with Health Center, City B, July 1, 2015.

¹⁰⁷³ *Id.*

¹⁰⁷⁴ Protocol, Health Sector, ¶9.

¹⁰⁷⁵ Interview with Health Center, City B, July 10, 2015.

EXAMINATION OF VICTIMS

We only document what the victim says. If we suspect domestic violence, we do not document our suspicion.

-ER Doctor¹⁰⁷⁶

Several interviewees stated they examine patients separately from other family members who accompany them to ensure privacy and confidentiality.¹⁰⁷⁷ One ER doctor observed that while he takes care to protect patient privacy, he did not think others were as cautious.¹⁰⁷⁸ He also was not aware of any institutional rules requiring patient examination in a private setting.¹⁰⁷⁹ Consequently, patient privacy is not consistently guaranteed. Another ER health care provider conceded he usually consults with patients in private, “but sometimes it is very crowded.”¹⁰⁸⁰ An NGO employee observed that in a typical emergency room setting, “the door is open, people are circulating...[and] there is little privacy” for a patient.¹⁰⁸¹

Some doctors reported they do not separate the victim and offender during examinations.¹⁰⁸² One doctor explained that it may be possible to see the victim privately, but when there is psychological violence, “it is impossible and they both leave.”¹⁰⁸³ This doctor expressed fear that if the offender is forced to wait outside the examination room, he will later abuse the victim.¹⁰⁸⁴ One doctor explained that when the victim’s partner or relative is present, “usually I give her our telephone number to call us and come alone” but acknowledged the situation is difficult.¹⁰⁸⁵

Health care providers may discourage victims from reporting to the police because “she will experience additional stress” if she interacts with police.¹⁰⁸⁶ They may make decisions that ignore patient autonomy. One victim explained how her husband hit her until she lost consciousness and awoke in the emergency room.¹⁰⁸⁷ After tending to the victim’s injuries, the ER worker asked her whether she wanted to remain in the hospital or return home.¹⁰⁸⁸ The victim responded, “First, I want to talk to the police.” Instead, she realized they put her in a car and sent her home, because “they didn’t want me to talk to the police.”¹⁰⁸⁹ She later learned the ER doctor had spoken with her husband and brother-in-law while she was unconscious; based on that conversation, the doctor referred the victim to a psychiatric

¹⁰⁷⁶ *Id.*

¹⁰⁷⁷ Interview with Doctors, City D, July 3, 2015; Interview with Health Center, City F, July 7, 2015; Interview with Health Center, City B, July 10, 2015.

¹⁰⁷⁸ Interview with Health Center, City B, July 10, 2015.

¹⁰⁷⁹ *Id.*

¹⁰⁸⁰ *Id.*

¹⁰⁸¹ Interview with NGO City B, Nov. 1, 2016 (via telephone).

¹⁰⁸² Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Center, City B, July 1, 2015.

¹⁰⁸³ Interview with Health Care Providers, City A, July 8, 2015.

¹⁰⁸⁴ *Id.*

¹⁰⁸⁵ Interview with Health Center, City B, July 1, 2015.

¹⁰⁸⁶ Interview with Health Care Providers, City A, July 8, 2015.

¹⁰⁸⁷ Interview with Victim, City A, July 8, 2015.

¹⁰⁸⁸ *Id.*

¹⁰⁸⁹ *Id.*

hospital.¹⁰⁹⁰ At least one interviewee, a psychiatrist, tries to persuade victims to report to the police, which she views as “the fastest and best way to release them from the violence.”¹⁰⁹¹

Under the Protocol, if a health sector worker suspects a patient is a victim of domestic violence, the worker must “write such suspicions into the health record and issue medical documents with the facts that were obtained and established through the medical examination to the victim, free of charge.”¹⁰⁹² Various stakeholders, including health care workers, recognized the need for doctors to learn to recognize, screen, and document domestic violence.¹⁰⁹³ Doctors who reported undergoing training did not express familiarity with techniques for domestic violence screening.¹⁰⁹⁴ Those doctors with relevant training see patients only on referral or when the patient is able to find them.¹⁰⁹⁵

Many health workers rely on patients to tell them if their injuries are caused by domestic violence.¹⁰⁹⁶ Doctors reported they “can do nothing” when they suspect a patient’s injuries are from domestic violence but the patient denies it.¹⁰⁹⁷ An ER doctor explained, “if the patient does not say she is a victim, then we do not conduct an investigation.”¹⁰⁹⁸ One NGO worker expressed frustration that these practitioners do not ask victims about domestic violence.¹⁰⁹⁹ Even when a patient denies domestic violence but her injuries are inconsistent with her statements, ER doctors still do not document the inconsistency.¹¹⁰⁰ In addition, ER workers reported they do not document whether a weapon or tool was used to inflict the injury.¹¹⁰¹ Police regretted that medical reports do not describe injuries in greater detail, particularly when a patient denies domestic violence.¹¹⁰² One reason practitioners gave for their reluctance to probe further is that they cannot provide safe refuge to victims.¹¹⁰³

DOCUMENTATION OF DEFENSIVE INJURIES

Interviews revealed that health workers do not generally assess or document whether physical injuries were caused by acts of self-defense.¹¹⁰⁴ In one case, a police officer’s brother was arrested for attacking his wife. During the fight, the woman defended herself with a key.¹¹⁰⁵ The offender obtained medical

¹⁰⁹⁰ *Id.*

¹⁰⁹¹ Interview with Neuropsychiatrist, City E, July 9, 2015.

¹⁰⁹² Protocol, Health Sector, ¶15.

¹⁰⁹³ Interview with Gender Equality Committee, Podgorica, June 30, 2015; Interview with Doctors, City D, July 3, 2015.

¹⁰⁹⁴ Interview with Doctors, City D, July 3, 2015.

¹⁰⁹⁵ *Id.*

¹⁰⁹⁶ Interview with Neuropsychiatrist, City E, July 9, 2015; Interview with Health Center, City F, July 7, 2015; Interview with Health Center, City B, July 1, 2015; Interview with Health Center, City B, July 10, 2015.

¹⁰⁹⁷ Interview with Doctors, City D, July 3, 2015.

¹⁰⁹⁸ Interview with Health Center, City B, July 10, 2015.

¹⁰⁹⁹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹¹⁰⁰ Interview with Health Center, City B, July 10, 2015; Interview with Doctors, City D, July 3, 2015.

¹¹⁰¹ Interview with Health Center, City B, July 10, 2015.

¹¹⁰² Interview with Police, City D, July 4, 2015.

¹¹⁰³ Interview with Health Care Providers, City A, July 8, 2015; *see also* Interview with Health Center, City B, July 1, 2015.

¹¹⁰⁴ See, e.g., Interview with NGO, City D, June 28, 2015; Interview with Police, City D, July 4, 2015; Interview with Health Care Center, City B, July 10, 2015.

¹¹⁰⁵ Interview with NGO, City D, June 28, 2015.

documentation of his injury, which was used to charge his wife with domestic violence.¹¹⁰⁶ Although police and prosecutors suspected she caused the injuries in self-defense, they nonetheless went forward with the prosecution based on the medical documentation.¹¹⁰⁷

RECORDKEEPING IN DOMESTIC VIOLENCE CASES

The MoH requires health care centers to compile quarterly reports on domestic violence cases.¹¹⁰⁸ Most centers, however, lack the systems to track these cases.¹¹⁰⁹ Only one institution had developed a keyword for electronic patient files to flag domestic violence cases for their quarterly reports.¹¹¹⁰

Several doctors asserted that while they maintain personal records if a patient is a victim, they do not enter that information in shared computer records.¹¹¹¹ Interviews indicated hesitation to openly sharing information with other colleagues. One doctor explained she feared another nurse could access the documentation, and did not want to create a “social problem.”¹¹¹² A psychologist admitted her caution about what she can disclose when her patient’s primary care provider questions her about a case.¹¹¹³

Accurate recordkeeping is important in domestic violence cases. The court often requests an opinion from an expert witness, who relies on the victim’s medical records.¹¹¹⁴ The expert may also use those records to assess for defensive injuries, but as described above, these reports rarely describe self-defense.¹¹¹⁵ In the absence of systematized recordkeeping, a victim must resort to the mere existence of the record to prove she sought assistance for her injuries.¹¹¹⁶

REFERRAL OF OFFENDERS WITH MENTAL DISORDERS

The Protocol states that if a health sector worker suspects that domestic violence “was exerted by a person with [a] mental disorder,” the worker should “refer the person to medical treatment,” in accordance with Montenegro’s mental illness law so the offender can be placed in a “controlled environment.”¹¹¹⁷ After doing so, the worker must inform the CSW and the police, as well as the victim upon the offender’s release.¹¹¹⁸ How effectively this process works to prevent further violence is unclear. For example, one woman was murdered by her abuser, who she thought was held in a

¹¹⁰⁶ *Id.*

¹¹⁰⁷ Interview with Police, City D, July 4, 2015.

¹¹⁰⁸ Interview with Health Center, City F, July 7, 2016.

¹¹⁰⁹ Interview with Doctors, City D, July 3, 2015; Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Center, City B, July 1, 2015; Interview with Health Center, City B, July 10, 2015.

¹¹¹⁰ Interview with Health Center, City F, July 7, 2015.

¹¹¹¹ Interview with Doctors, City D, July 3, 2015; Interview with Health Care Providers, City A, July 8, 2015.

¹¹¹² Interview with Health Care Providers, City A, July 8, 2015.

¹¹¹³ Interview with Health Care Providers, City A, July 8, 2015.

¹¹¹⁴ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹¹¹⁵ *Id.*

¹¹¹⁶ Interview with Neuropsychiatrist, City E, July 9, 2015.

¹¹¹⁷ Protocol, Health Sector, ¶7. Law on Protection and Exercise of Rights of Persons with Mental Disorder, Official Gazette of Montenegro 32/05 of 27 May 2005, Art. 33.

¹¹¹⁸ Protocol, Health Sector, ¶8.

psychiatric hospital.¹¹¹⁹ There is no evidence that health authorities took measures to inform other relevant institutions or the woman about the offender's health status.¹¹²⁰

EXPERT REPORTS AND COURT TESTIMONY

Prosecutors rely on health workers' opinions in making decisions with respect to criminal charges and detention. They use psychiatrists' opinions to determine whether non-physical harm is sufficiently severe to warrant criminal charges.¹¹²¹ Prosecutors also typically seek a neuropsychiatrist's opinion on whether an offender should be detained pending trial.¹¹²² The prosecutor may ask the neuropsychiatrist to assess whether the offender has an addiction, is dangerous, or is mentally ill.¹¹²³ Without this report, the prosecutor must release the offender from detention.¹¹²⁴ Health care providers may also recommend that an offender be deprived of his weapons¹¹²⁵ as soon as an investigation begins.¹¹²⁶

As described on page __, medical testimony about the cause of injuries is vital if the victim recants.¹¹²⁷ In one case, an offender cut the victim's face with a glass. Although the victim begged the judge not to punish the offender, the medical examiner confirmed her facial injuries were caused by the sharp edge of a glass,¹¹²⁸ which enabled the prosecutor to continue the proceedings and secure a conviction.¹¹²⁹

Interviews revealed that some medical experts may be careless in their exams. In one case, an offender falsified a medical report to state his victim was medically insane, exploiting the fact that another woman with the same name was a patient in a nearby mental hospital.¹¹³⁰ Based on this falsified report, the offender persuaded the ER physician to refer the victim to the psychiatric ward¹¹³¹ and requested the court hire an expert witness to assess her mental health.¹¹³² The expert examining the victim incorrectly assumed she was the same woman hospitalized for mental illness, allowing the offender to

¹¹¹⁹ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

¹¹²⁰ Personal communication from NGO to The Advocates for Human Rights, via email, June 12, 2015 (on file with authors).

¹¹²¹ Interview with Prosecutors, City F, July 7, 2015; Interview with Neuropsychiatrist, City E, July 9, 2015.

¹¹²² Interview with Neuropsychiatrist, City E, July 9, 2015.

¹¹²³ *Id.*

¹¹²⁴ *Id.*

¹¹²⁵ Interview with Social Worker, City C, July 6, 2015.

¹¹²⁶ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors). The prosecutor first takes statements from the defendant, victim and witnesses, then determines the expert witness who can make such a recommendation. *Id.*

¹¹²⁷ Interview with Prosecutors, City F, July 7, 2015.

¹¹²⁸ *Id.*

¹¹²⁹ *Id.*

¹¹³⁰ Interview with Victim, City A, July 8, 2015.

¹¹³¹ *Id.*

¹¹³² *Id.*

prompt the CSW to initiate proceedings for depriving her of child custody.¹¹³³ The victim eventually brought separate criminal charges against the offender for providing a false medical report.¹¹³⁴

The appellate court for misdemeanors also appears to require medical documentation for OFPs.¹¹³⁵ A misdemeanor judge ordered alcohol addiction treatment for an offender after noting his previous treatment for addiction. Yet, the appellate court struck down the order because the judge failed to obtain a psychiatric opinion.¹¹³⁶ The judge noted that such medical opinions can take two weeks and therefore delay misdemeanor proceedings.¹¹³⁷ In such situations, misdemeanor judges must postpone hearings, even if the case is an emergency.¹¹³⁸

Based on the recommendation of a medical expert, a criminal judge may order an offender to receive medical treatment rather than imprisonment.¹¹³⁹ This practice allows violent offenders to escape accountability. One NGO worker confronted an expert witness who planned to recommend lenient placement for a violent abuser in an open mental institution so he could “rest a little bit.” The NGO worker asked if the expert psychiatric witness intended to guarantee the life and safety of the family, as well.¹¹⁴⁰ The expert reconsidered and recommended prison, which the judge followed.¹¹⁴¹

MANDATORY REPORTING

Consistent with Article 9 of the LDVP, the Protocol requires health care providers to “[r]eport suspicion of [domestic] violence to the police without delay.”¹¹⁴² One Member of Parliament stated that mandatory reporting by health care providers “is one of the parts of the system that works best,” but another member stressed that health care workers need more training on their reporting obligations.¹¹⁴³

Best practices recognize that health care providers should not report domestic violence without victim consent.¹¹⁴⁴ In practice, Montenegro’s reporting system is more consistent with best practices than with the letter of the law. Most health sector workers shared the opinion that mandatory reporting is a good

¹¹³³ Interview with Victim, City A, July 8, 2015. The Ministry of Labor eventually intervened to stop the proceedings.

¹¹³⁴ *Id.*

¹¹³⁵ *Id.*

¹¹³⁶ Interview with Council for Misdemeanors, Podgorica, June 30, 2015.

¹¹³⁷ Interview with Misdemeanor Court, City C, July 6, 2015.

¹¹³⁸ *Id.*

¹¹³⁹ *Id.*

¹¹⁴⁰ Interview with Basic Court, City B, July 1, 2015; Interview with Neuropsychiatrist, City E, July 9, 2015.

¹¹⁴¹ Interview with NGO, City B, July 1, 2015.

¹¹⁴² *Id.*

¹¹⁴³ Protocol, Health Sector, ¶1.

¹¹⁴⁴ Interview with MP Committee, Podgorica, July 10, 2015 (statements from members of the incumbent party and opposition party).

¹¹⁴⁴ World Health Organization, *Responding to Intimate Partner Violence and Sexual Violence against Women*, 2013, at 41.

practice,¹¹⁴⁵ but would not report without victim consent.¹¹⁴⁶ They explained they do not report because of “professional ethics.”¹¹⁴⁷

Some health care providers, including ER workers, however, conceded they report domestic violence regardless of victim consent.¹¹⁴⁸ One interviewee explained victim consent is unnecessary when domestic violence “harms her health.”¹¹⁴⁹ These interviewees explained they must report even a suspicion of domestic violence.¹¹⁵⁰ Other health sector workers condition their reporting on whether the victim may be further injured.¹¹⁵¹ Interviews revealed, however, that health sector workers are not familiar with risk assessments to evaluate for future violence.¹¹⁵²

MULTI-SECTOR COOPERATION

Health care providers complained that other sectors do not cooperate in responding to domestic violence.¹¹⁵³ As one health care provider explained, “There is no satisfactory cooperation between institutions, between police, prosecution. Everybody wants to complete their part of the job, but this is a problem, and it cannot be solved individually by health care institutions.”¹¹⁵⁴ Yet others pointed to reluctance by health care sector to participate. One NGO employee explained, “doctors say their salary is very low and they are not interested in a cooperation agreement not signed by them.”¹¹⁵⁵

¹¹⁴⁵ Interview with Doctors, City D, July 3, 2015; Interview with Social Worker, City C, July 6, 2015; Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Center, City F, July 7, 2015; Interview with Health Center, City B, July 10, 2015; Interview with Ministry of Health, Podgorica, June 29, 2015.

¹¹⁴⁶ Interview with Doctors, City D, July 3, 2015; Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Center, City F, July 7, 2015; Interview with Health Center, City B, July 10, 2015; Interview with NGO, City D, June 28, 2015; Interview with Health Center, City B, July 1, 2015; Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Care Providers, City A, July 8, 2015; Neuropsychiatrist, City E, July 9, 2015; Interview with Health Center, City B, July 10, 2015; Interview with Ministry of Health, Podgorica, June 29, 2015.

¹¹⁴⁷ Interview with NGO, City D, June 28, 2015.

¹¹⁴⁸ Interview with Health Center, City B, July 1, 2015; Interview with Health Center, City B, July 10, 2015.

¹¹⁴⁹ Interview with Health Center, City F, July 7, 2015.

¹¹⁵⁰ Interview with Health Care Providers, City A, July 8, 2015; Interview with Health Center, City B, July 1, 2015.

¹¹⁵¹ Interview with Health Care Providers, City A, July 8, 2015; Interview with Neuropsychiatrist, City E, July 9, 2015.

¹¹⁵² Interview with Health Center, City B, July 10, 2015.

¹¹⁵³ Interview with Health Care Providers, City A, July 8, 2015.

¹¹⁵⁴ *Id.*

¹¹⁵⁵ Interview with NGO, City B, July 2, 2015.

FAMILY LAW PROCEEDINGS

Victims of domestic violence may use divorce to escape the violence. One judge estimated that approximately 10 percent of the divorce cases she hears involve domestic violence.¹¹⁵⁶ The MoJ has not created any regulations or protocols to guide judges hearing family law cases where domestic violence may be a factor.¹¹⁵⁷ Many interviewees reported the need to provide training to these judges so they can recognize and understand domestic violence.¹¹⁵⁸ Judicial perceptions about the weight of domestic violence are inconsistent; some judges explained that information about domestic violence would assist them in their decision-making, while other judges said the will of the parties is more significant.¹¹⁵⁹ Notably, judges do not allow confidants to accompany victims in the court, where they could provide important support during divorce hearings. One judge reported the court even prohibits attorneys from being present at the first hearing.¹¹⁶⁰

In addition to creating barriers to victim safety and stability, law and practices on divorce and custody can further endanger victims. For example, judicial practices, and until recently the Family Law, prioritize reconciliation and mediation over victim safety, as discussed in further detail below.¹¹⁶¹ Judges also prioritize reconciliation, even in cases involving domestic violence.¹¹⁶² According to a survey, 59 percent of members of the judiciary stated that, in times of family crisis, it is more important to preserve the family than to protect individual rights.¹¹⁶³ One judge explained the judge's "active role" in divorce and custody cases is to try to reconcile the parties,¹¹⁶⁴ and that reconciliation is in the best interests of the children.¹¹⁶⁵ The judge admitted, "The worst thing is that we have the agreement of divorce."¹¹⁶⁶

Instead of screening for domestic violence themselves, judges hearing divorce and custody cases rely on the parties to inform them about any violence.¹¹⁶⁷ As one judge explained, "If they don't mention it, I don't ask."¹¹⁶⁸ Yet judges and other interviewees uniformly recognize that victims rarely mention domestic violence in these proceedings.¹¹⁶⁹ Victims may be reluctant to mention domestic violence, because they do not see it as relevant or do not want to provoke a spouse into contesting custody or

¹¹⁵⁶ Interview with Judges, City A, July 8, 2015.

¹¹⁵⁷ Interview with Ministry of Justice, Podgorica, June 29, 2015.

¹¹⁵⁸ Interview with Gender Equality Committee, Podgorica, June 30, 2015; Interview with NGO, City B, July 2, 2015.

¹¹⁵⁹ Interview with Basic Court, City C, July 6, 2015.

¹¹⁶⁰ *Id.*

¹¹⁶¹ See, e.g., Family Law, Art. 326(1).

¹¹⁶² See, e.g., Interview with Basic Court, City E, July 9, 2015; Interview with Basic Court, City E, July 9, 2015.

¹¹⁶³ Ipsos Strategic Marketing, at 25.

¹¹⁶⁴ Interview with Basic Court, City E, July 9, 2015.

¹¹⁶⁵ *Id.*

¹¹⁶⁶ Interview with Basic Court Judge, City E, July 9, 2015.

¹¹⁶⁷ Interview with Basic Court, City C, July 6, 2015; Interview with Basic Court, City E, July 9, 2015.

¹¹⁶⁸ Interview with Basic Court, City C, July 6, 2015.

¹¹⁶⁹ Interview with Basic Court, City C, July 6, 2015; Interview with Basic Court, City E, July 9, 2015; Interview with NGO, City B, Nov. 1, 2016 (via telephone).

alimony.¹¹⁷⁰ Some judges even blamed victims for not alerting them to the domestic violence.¹¹⁷¹ Other times, when victims did bring up domestic violence, judges discounted their reports.¹¹⁷²

As with screening, family law judges do not consistently conduct risk assessments. Yet the most dangerous time for a victim is when she attempts to leave the relationship. Some judges stated that they conduct risk assessments to gauge this danger,¹¹⁷³ but interviews indicate they do so on an ad hoc basis and without a standardized risk assessment tool or bench guide.¹¹⁷⁴ For example, one judge concluded an offender did not pose a danger simply because he lived in a different city.¹¹⁷⁵ Another judge purports to conduct a “psychological examination of the personality” of the offender based solely on his physical appearance and behavior in court.¹¹⁷⁶ Using this evaluation, the judge decides whether to inform police and prosecutors if the man is “really violent.”¹¹⁷⁷

CUSTODY AND VISITATION

The Family Law recognizes that courts may limit a child’s right to live with his or her parents if it is in the child’s best interests.¹¹⁷⁸ Specifically, the law recognizes that domestic violence may warrant separating a child from his or her parent¹¹⁷⁹ or restricting the child’s relationship with the parent.¹¹⁸⁰ Yet judges “almost never” take domestic violence into account when ordering custody and visitation.¹¹⁸¹ There is no communication between the misdemeanor court and the judges hearing family law cases in basic court.¹¹⁸² Judges may be unaware of an OFP, either because they do not ask or because the misdemeanor court does not inform them.¹¹⁸³ Family law judges may even ignore the existence of OFPs issued by the misdemeanor court.¹¹⁸⁴ One NGO worker reported going around in “the same kind of circle for years” attempting to inform the basic court of a 100-meter restraining order and to respect the misdemeanor court’s decision.¹¹⁸⁵

In other cases, the judges may simply not believe the charges. Several judges expressed the view that a woman may fabricate allegations of domestic violence to influence decisions about custody and visitation.¹¹⁸⁶ At times, judges base custody decisions on the abuser’s welfare rather than on the best

¹¹⁷⁰ Interview with Basic Court, City C, July 6, 2015.

¹¹⁷¹ *Id.*

¹¹⁷² Interview with Basic Court, City E, July 9, 2015.

¹¹⁷³ Interview with Basic Court, City C, July 6, 2015; Interview with Basic Court, City E, July 9, 2015.

¹¹⁷⁴ Interview with Basic Court, City C, July 6, 2015; Interview with Basic Court, City E, July 9, 2015; Interview with Ministry of Justice, Podgorica, June 29, 2015.

¹¹⁷⁵ Interview with Basic Court, City C, July 6, 2015.

¹¹⁷⁶ Interview with Basic Court, City E, July 9, 2015.

¹¹⁷⁷ *Id.*

¹¹⁷⁸ Family Law, Art. 62(2).

¹¹⁷⁹ *Id.* Art. 62(3).

¹¹⁸⁰ *Id.* Art. 63(3).

¹¹⁸¹ Interview with NGO, City B, July 1, 2015.

¹¹⁸² Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹¹⁸³ Interview with Basic Court, City C, July 6, 2015; Interview with Misdemeanor Judge, City A, July 8, 2105.

¹¹⁸⁴ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹¹⁸⁵ *Id.*

¹¹⁸⁶ Interview with Basic Court, City C, July 6, 2015.

interest of the child. One judge recognized the father's violence but still granted him custody and visitation out of fear the father would commit suicide if he was denied contact with his children.¹¹⁸⁷ In another case, a family law judge told a victim that if she wanted to have custody of her children, she could only do so if she left the shelter where she had been living.¹¹⁸⁸

The Family Law requires the court overseeing divorce proceedings "to cooperate with the custody agencies and other professional services which deal with the issues of marriage and family, especially when spouses have joint minor children."¹¹⁸⁹ In addition, an interviewee observed that most judges are unaware of the Istanbul Convention's requirements that visitation rights not endanger the victim or the children.¹¹⁹⁰ Basic court judges often fail to take into account a violent parent's conduct when establishing visitation terms and conditions.¹¹⁹¹ Even when the judge issues a decision that takes into account the violence, a victim may still lack protection due to inadequate follow-up and communication. In one case, a judge ordered child custody to the mother when the father was abusive, but the court's judgment was never enforced.¹¹⁹² In another case, an NGO sought to file charges against a judge for repeatedly failing to ensure that a decision to give the mother custody of her children was executed.¹¹⁹³

Judges do not take domestic violence into account when ordering visitation and determining custody

In many cases, family law judges prioritize visitation as the violent parent's right.¹¹⁹⁴ For example, a judge described a case in which the abuser stalked the victim and their 12-year-old daughter throughout the divorce proceedings. He found the daughter at school and told her negative things about her mother.¹¹⁹⁵ After witnessing her father's stalking and harassment of her mother, the daughter told the court she did not want to see her father.¹¹⁹⁶ The judge expressed satisfaction, however, at mending the relationship between the father and the daughter, telling the daughter that under the Family Law, her father has a right to see his daughter at least once per week.¹¹⁹⁷ The judge reported that the daughter agreed to supervised visitation at the CSW and that "everything is fine now."¹¹⁹⁸

In divorce proceedings, parents may agree on the joint exercise of parental rights, subject to the court's determination that the agreement is in the child's best interests.¹¹⁹⁹ Family court judges may demand

¹¹⁸⁷ Interview with NGO 1, City D, July 4, 2015.

¹¹⁸⁸ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹¹⁸⁹ Family Law, Art. 336.

¹¹⁹⁰ Interview with NGO, City B, July 1, 2015.

¹¹⁹¹ Interview with NGO 1, City B, July 2, 2015; Interview with Basic Court, City E, July 9, 2015; Interview with Judges, City A, July 8, 2015.

¹¹⁹² Interview with Basic Court, City C, July 6, 2015.

¹¹⁹³ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹¹⁹⁴ Interview with NGO 1, City B, July 2, 2015; Interview with Basic Court, City C, July 6, 2015; Interview with Judges, City A, July 8, 2015; Interview with Gender Equality Committee, Podgorica, June 30, 2015.

¹¹⁹⁵ Interview with Basic Court Judge, City E, July 9, 2015.

¹¹⁹⁶ *Id.*

¹¹⁹⁷ *Id.*

¹¹⁹⁸ *Id.*

¹¹⁹⁹ Family Law, Art. 76(2). If parents are separated and a court has not yet issued a decision concerning parental rights, the parent with whom the child resides may exercise parental rights alone. *Id.* Art. 78(2).

that the victim meet the offender or force her to negotiate with him about their children.¹²⁰⁰ Institutions expressed the view that visitation agreements are voluntary,¹²⁰¹ but victims are under great pressure to agree in case institutions conclude they are not a good parent.¹²⁰²

Interviews also revealed that judges do not understand the harmful effects of domestic violence. For example, one victim experienced psychological problems when subjected to violence by her abuser. When she was not suffering violence, she functioned well.¹²⁰³ Yet, the judge not only ordered that the children live with the abuser, but took the unprecedeted step of requiring the victim to hire a third party to supervise her visitations with her children.¹²⁰⁴

Lack of effective judicial oversight can allow violent parents another avenue for controlling their ex-partner.¹²⁰⁵ For example, a father was granted visitation but never appeared for the visitation appointments. He later lied to the court and CSW staff, claiming the mother barred him from seeing the children.¹²⁰⁶ Fathers have also abducted their children during visitation.¹²⁰⁷ In another case, the father would disappear with the children for an entire day.¹²⁰⁸ When the victim sought a temporary OFP during divorce proceedings, the father told her the order was unnecessary because, "you are already protected by the fact that I was in jail last year."¹²⁰⁹

Lack of proper judicial oversight can be fatal. An interviewee described a case where the abuser repeatedly threatened to kill his victim, their child, and himself throughout the custody proceedings.¹²¹⁰ Based on the CSW's recommendation for regular visitation for the father, the judge allowed his visits to continue despite victim's reports to the police of his threats.¹²¹¹ During visitation, the father took the child to the outskirts of town, killed the child, and committed suicide.¹²¹²

Supervised visitation procedures do not ensure victim safety

Judges do not typically order supervised visitation or other measures for the victim's safety.¹²¹³ One judge explained the responsibility is simply "not our competence."¹²¹⁴ They also may not mandate supervision during visitation when children are not direct victims of physical violence.¹²¹⁵ Other judges who dislike supervised visitation perceive the best visitation takes place in a natural environment like

¹²⁰⁰ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹²⁰¹ Interview with Basic Court, City C, July 6, 2015; Interview with Basic Court, City F, July 7, 2015.

¹²⁰² Interview with NGO, City B, July 1, 2015.

¹²⁰³ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹²⁰⁴ *Id.*

¹²⁰⁵ Interview with NGO, City B, July 1, 2015.

¹²⁰⁶ Interview with Victim, City A, July 8, 2015.

¹²⁰⁷ Interview with NGO, City B, July 1, 2015.

¹²⁰⁸ Interview with NGO 1, City B, July 2, 2015.

¹²⁰⁹ *Id.*

¹²¹⁰ Interview with NGO, City B, July 1, 2015.

¹²¹¹ *Id.*

¹²¹² *Id.*

¹²¹³ Interview with NGO, City B, June 30, 2015; Interview with NGO, City B, July 1, 2015; Interview with NGO, City B, Nov. 1, 2016 (via telephone); Interview with Basic Court, City C, July 6, 2015.

¹²¹⁴ Interview with Basic Court, City C, July 6, 2015.

¹²¹⁵ MDT, City D, July 10, 2015.

the family home rather than at the CSW or an NGO.¹²¹⁶ According to one judge, parents who request supervised visitation ignore their children's best interests.¹²¹⁷ One NGO employee observed that judges may even view a request for supervised visitation as a "man-hater approach," rather than as a tool to promote victim safety.¹²¹⁸

ALIMONY

A spouse who is unable to work or find work "is entitled to alimony by his/her spouse, in proportion to his/her financial circumstances."¹²¹⁹ Yet NGO staff report that even though judges often issue alimony orders, those orders are not enforced by the court or public officials.¹²²⁰ NGO workers observed that alimony disputes rarely go smoothly and despite court orders, abusers often do not comply with their alimony obligations.¹²²¹ In the case where the judge ordered the victim to breastfeed their child in her abuser's home, the abuser attacked her during a supervised visitation. The woman declined to report the violence because the abuser threatened to withhold her alimony payments.¹²²² Parliament recently declined to adopt a law that would have provided domestic violence victims with an automatic right to alimony after divorce.¹²²³

MEDIATION AND RECONCILIATION

Despite the Istanbul Convention's clear prohibition on use of mediation and reconciliation in cases of domestic violence¹²²⁴ and the Family Law's recent ban on mediation (Article 326), Montenegrin family law judges widely use these practices, referring the parties to the Center for Mediation. In a recent survey, just 38 percent of representatives of the justice sector stated they almost never use mediation in domestic violence cases, while 54 percent said they apply it in some or a significant number of cases.¹²²⁵ Recent legislation prohibits mediation in domestic violence cases, but is not often implemented.¹²²⁶

The Law on Mediation states that all parties to mediation shall have equal rights.¹²²⁷ But in the domestic violence context, this equality is difficult or impossible to achieve.¹²²⁸ Domestic violence is a complex

¹²¹⁶ Interview with Basic Court, City C, July 6, 2015; Interview with Basic Court, City E, July 9, 2015.

¹²¹⁷ Interview with Basic Court, City E, July 9, 2015.

¹²¹⁸ Interview with NGO, City B, July 1, 2015.

¹²¹⁹ Family Law, Art. 262.

¹²²⁰ Interview with NGO, City B, July 2, 2015 After the final decision of the court they have it on paper, but not in practice; Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

¹²²¹ Interview with NGO, City C, July 6, 2015.

¹²²² *Id.*

¹²²³ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹²²⁴ Istanbul Convention, Section 48.

¹²²⁵ Ipsos Strategic Marketing, at 56.

¹²²⁶ Interview with NGO, City B, Nov. 1, 2016 (via telephone); Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors) (citing amendments to the Family Law in 2016 (Official Gazette of Montenegro No. 1/2007 and Official Gazette of Montenegro No. 53/2017).

¹²²⁷ Law on Mediation, Art. 4.

¹²²⁸ Stop Violence Against Women, Mediation, The Advocates for Human Rights, last updated Feb. 2008, available at <http://www.stopvaw.org/mediation>.

issue of power and control.¹²²⁹ The power imbalance between abuser and victim can endanger the victim and undermine an opportunity to hold the abuser accountable for his past conduct.¹²³⁰ Even a trained mediator cannot compensate for this imbalance of power, because a victim may be afraid to voice her concerns or the abuser may use nonverbal signals to control or even threaten the victim.¹²³¹

Montenegro's laws are at odds with the on-the-ground practice. The Family Law mandates mediation in divorce proceedings except in cases of domestic violence,¹²³² and the Law on Mediation states that participation in mediation is voluntary.¹²³³ But according to one NGO employee, "judges always say it is obligatory."¹²³⁴ Judges who refer cases to a mediator ceded that domestic violence complicates a divorce case, but they nonetheless still refer the case.¹²³⁵

As a result, systems actors' understanding varies. According to the head of the Center for Mediation, "mediation is an obligatory part of the marital dispute" even though the law says otherwise in domestic violence cases.¹²³⁶ He viewed mediation as useful in domestic violence cases.¹²³⁷ He referenced the Milan therapy view that a victim benefits from the opportunity to confront the offender during mediation.¹²³⁸ In his view, this confrontation also helps the offender learn how to communicate more effectively with the victim.¹²³⁹ He added that domestic violence is simply one "style of communication" between parties, and that the victim of domestic violence chooses to have her abuser communicate with her through violence.¹²⁴⁰

Accordingly, some mediators insist that victims attend mediation, even after an NGO intervenes to inform the judge that the procedure is not mandatory.¹²⁴¹ An employee from this NGO commented that mediators can be very persistent in insisting on mediation.¹²⁴² In one case, the victim complied with the mediator's demands, then reported to the NGO that the mediator recommended she try to recover her partnership with her abuser.¹²⁴³ Although the 2016 Family Law amendment provides an exception to mandatory reconciliation in cases of domestic violence, systematic training is needed to ensure consistent compliance with the provision.

¹²²⁹ *Id.*

¹²³⁰ *Id.*

¹²³¹ *Id.*

¹²³² Family Law, Art. 326(1).

¹²³³ Law on Mediation, Art. 3.

¹²³⁴ Interview with NGO, City D, Nov. 11, 2016 (via telephone).

¹²³⁵ Interview with Judges, City A, July 8, 2015.

¹²³⁶ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²³⁷ *Id.*

¹²³⁸ *Id.*

¹²³⁹ *Id.*

¹²⁴⁰ *Id.*

¹²⁴¹ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

¹²⁴² *Id.*

¹²⁴³ *Id.*

Judges and mediators fail to screen for domestic violence

There is no formal opportunity for victims to inform the court that mediation and reconciliation are not appropriate. Although women can disclose domestic violence as a reason to skip mediation, “the problem is that many women don’t know about it.”¹²⁴⁴ Judges who do not require mediation often leave it up to the party to decline mediation,¹²⁴⁵ but do not inform parties of their right to refuse.¹²⁴⁶ Compounding these barriers, as noted above, judges bar confidants from accompanying victims to court hearings.¹²⁴⁷ Victims may also choose mediation, because they perceive it will be quicker to reach an agreement on alimony.¹²⁴⁸ Instead, mediation often has the opposite effect, and many domestic violence victims return to their abusers after the mediation and reconciliation process.¹²⁴⁹

Under the Law on Mediation, a mediator “shall pay special attention to any occurrence of family violence in the past and assess if it may reoccur between the parties in future. The mediator shall especially consider if a mediation procedure would be the appropriate action to be taken under the specific circumstances.”¹²⁵⁰ Upon appointment, the mediator receives “the complete case” from the court.¹²⁵¹ Mediators are not required, however, to screen for domestic violence. Like judges, mediators must learn of domestic violence in their meetings with the parties, from court documents, or from an NGO.¹²⁵² The mediator may also seek an expert opinion from the CSW or other body.¹²⁵³ But according to the Center for Mediation, CSWs provide mediators with background information “only in the most difficult cases.”¹²⁵⁴ One CSW employee reported that they do not provide any information to mediators or participate at all in the mediation procedure.¹²⁵⁵ Some mediators did, however, report receiving information about domestic violence when taking on a case.¹²⁵⁶ Even with such information, some mediators do not decline to mediate.¹²⁵⁷

Mediators do not adopt additional measures in the context of domestic violence

According to the Center for Mediation, if a mediator discovers domestic violence, the mediator may ask for help from another mediator, return the case to the judge, or proceed with mediation.¹²⁵⁸ Some mediators described altering their approach if they are aware of domestic violence, but do not take any measures to ensure that the victim is safe and not coerced.¹²⁵⁹ Interviews did not reveal the use of

¹²⁴⁴ Interview with NGO, City B, July 1, 2015.

¹²⁴⁵ Interview with Basic Court, City C, July 6, 2015.

¹²⁴⁶ Interview with NGO, City B, July 1, 2015.

¹²⁴⁷ Interview with Basic Court, City C, July 6, 2015.

¹²⁴⁸ Interview with NGO, City B, June 30, 2015.

¹²⁴⁹ Interview with NGO, City B, July 2, 2015.

¹²⁵⁰ Law on Mediation, Art. 43(3).

¹²⁵¹ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²⁵² *Id.*

¹²⁵³ Law on Mediation, Art. 47(1).

¹²⁵⁴ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²⁵⁵ Interview with CSW, City D, July 3, 2015.

¹²⁵⁶ Interview with CSW, City A, July 8, 2015.

¹²⁵⁷ *Id.*; Interview with Judges, City A, July 8, 2015.

¹²⁵⁸ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²⁵⁹ Interview with CSW, City A, July 8, 2015; Interview with NGO, City B, July 1, 2015.

shuttle mediation, in which the parties are in separate rooms throughout the mediation process.¹²⁶⁰ One mediator opined that a history of domestic violence makes it “much harder to achieve an agreement,” but the mediator nonetheless focuses on a result that is in the best interest of the children.¹²⁶¹

The Law on Mediation allows attorneys to be present for the mediation.¹²⁶² Third parties, however, may attend with the consent of both parties and the mediator.¹²⁶³ As a result, mediators do not allow confidants to be present for mediation or reconciliation unless the other spouse consents.¹²⁶⁴ In practice, this means that typically only the spouses and the mediator participate in the mediation.¹²⁶⁵ And in this context, the victim may feel less safe disclosing domestic violence to the mediator than if she had the support of a confidant.

Mediators promote reconciliation

The reconciliation process must be conducted within one month of the date the court forwards the case to the mediator.¹²⁶⁶ During the reconciliation process, the spouses must “attempt to resolve the disturbed relations without conflicts and without divorce of marriage.”¹²⁶⁷ The court may not conduct a divorce hearing until one month after the reconciliation process fails.¹²⁶⁸

As with the mediation process, mediators generally embrace reconciliation even when domestic violence is present.¹²⁶⁹ One NGO worker recounted victims’ reports that “mediators try to reconcile the relationship and to preserve the relationship.”¹²⁷⁰ The Center for Mediation head stated that he had handled “numerous cases” involving domestic violence.¹²⁷¹ In his view, the mediator can help the couple identify the cause of the domestic violence and teach them to communicate without violence during reconciliation.¹²⁷² He reported he had never seen a domestic violence case where he would not pursue reconciliation, adding that “there is an approach to every man [and we should just] find the path to approach” each abuser.¹²⁷³ Similarly, another mediator expressed a preference for reconciling the parties so they can “understand the core of the problem.”¹²⁷⁴ One mediator, however, does not attempt reconciliation when there is domestic violence, explaining, “For me, as a mediator, my moral code does not allow me to attempt reconciliation” in those circumstances.¹²⁷⁵

¹²⁶⁰ Interview with NGO, City B, July 1, 2015.

¹²⁶¹ Interview with CSW, City A, July 8, 2015.

¹²⁶² Law on Mediation, Art. 5(2).

¹²⁶³ *Id.* Art. 5(2).

¹²⁶⁴ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²⁶⁵ Interview with NGO, City D, June 28, 2015.

¹²⁶⁶ Family Law, Art. 331.

¹²⁶⁷ *Id.* Art. 328.

¹²⁶⁸ *Id.* Art. 337.

¹²⁶⁹ Interview with NGO, City B, June 30, 2015.

¹²⁷⁰ Interview with NGO, City D, June 28, 2015.

¹²⁷¹ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²⁷² *Id.*

¹²⁷³ *Id.*

¹²⁷⁴ Interview with CSW, City B, June 29, 2015.

¹²⁷⁵ Interview with CSW, City A, July 8, 2015.

Mediators do not address victim safety during reconciliation and mediation procedures

Mediators do not take specific steps to protect the safety of the victim during reconciliation or mediation. When asked whether a husband ever threatened his wife during mediation, a mediator responded dismissively, “You know how it is. A man will say, ‘I will kill you.’ But it’s figurative.”¹²⁷⁶ The head of the Center for Mediation explained mediators are obliged to take steps only if they “assess that there is violence that could harm the peaceful life of the victim.”¹²⁷⁷ Despite cases where the husband threatened the wife during mediation, he never takes measures to protect victim safety because these cases did not involve “significant violence.”¹²⁷⁸ The impact on the legal outcome can be devastating. A woman may not return to mediation out of fear for her safety, perhaps losing the right to see her children ever again.¹²⁷⁹

The center head further explained that an OFP does not prevent spouses from meeting at mediation and expressed the view that OFPs have a negative effect on mediation.¹²⁸⁰ He recalled one mediation where the victim had a restraining order. When he asked the victim whether police officers needed to be present for the mediation, she declined.¹²⁸¹ He proceeded and allowed the abuser to be in the same room as the victim, in violation of the restraining order.¹²⁸² According to him, this approach as permissible because mediation is part of the legal procedure.¹²⁸³

Mediators face a conflict of interest in cases involving domestic violence

Mediators seeking compensation face a conflict of interest in cases where they should find mediation inappropriate, such as cases involving domestic violence. Under the Law on Mediation, a mediator is entitled to remuneration and compensation.¹²⁸⁴ The Center for Mediation reports that mediators are entitled to €25 for each *successful* mediation, regardless of its duration.¹²⁸⁵ Mediation is successful if other institutions do not have to resolve any remaining conflicts between the parties,¹²⁸⁶ thus creating an incentive for mediators to address a broad range of issues and bring closure to any disputes. The compensation rules therefore discourage mediators from determining mediation to be inappropriate in domestic violence cases, because that decision would deny the mediator potential compensation.¹²⁸⁷ The rules also encourage mediators to pressure the parties to continue mediation even after a party has disclosed domestic violence. One NGO surmised that mediators probably do so because they want their fees.¹²⁸⁸

¹²⁷⁶ Interview with CSW, City B, June 29, 2015.

¹²⁷⁷ Interview with Center for Mediation, City B, July 10, 2015.

¹²⁷⁸ *Id.*

¹²⁷⁹ *Id.*

¹²⁸⁰ *Id.*

¹²⁸¹ *Id.*

¹²⁸² *Id.*

¹²⁸³ *Id.*

¹²⁸⁴ Law on Mediation, Art. 10.

¹²⁸⁵ Interview with Center for Mediation, Podgorica, July 10, 2015.

¹²⁸⁶ *Id.*

¹²⁸⁷ *Id.*

¹²⁸⁸ Interview with NGO, City B, Nov. 1, 2016 (via telephone).

NON-GOVERNMENTAL ORGANIZATIONS

NGOs provide victims with a spectrum of assistance, such as conducting risk and needs assessments, developing monthly support and protection plans, providing psychological support, offering assistance in writing petitions, and preparing before court hearings.¹²⁸⁹ NGOs also advocate for law reform.¹²⁹⁰ Other systems actors recognized the tremendous support that NGOs provide for victims. One CSW worker stated, “It would be helpful if there was an NGO here in [our city]. When you see a woman who is frightened or crying, you can go to Podgorica, but [she says], ‘I don’t have a car, where should I go with the kids?’¹²⁹¹

ORDERS FOR PROTECTION

One of the most important services NGOs perform is aiding women in applying for OFPs.¹²⁹² Their assistance is especially important for emergency OFPs, which police rarely request without third party encouragement.¹²⁹³ NGO intervention also helps secure police eviction orders; as an NGO worker explained, “In [our city], they do make the three-day orders, because we push them.”¹²⁹⁴ One NGO has even taken the initiative to develop a standard application form, which they have forwarded to other NGOs, police, and CSWs to help facilitate the process for victims.¹²⁹⁵ NGO staff agree their assistance in OFP applications can increase a victim’s chance of success.¹²⁹⁶ An NGO director stated that misdemeanor court judges have denied OFPs in her town “a hundred times.”¹²⁹⁷ But when the NGO applies on behalf of its beneficiaries, all of them receive an OFP.¹²⁹⁸

As discussed earlier, implementation of OFPs by state actors remains challenging. NGOs can intervene in their enforcement when state institutions fail to or do not abide by the order’s terms. For example, violations of OFPs may go unpunished. An NGO employee described a perpetrator who violated his order two or three times.¹²⁹⁹ He was an ex-police officer who inflicted bruises on his victim’s face and stomach, broke her wrist, and caused so much damage to her internal organs that she required surgery.¹³⁰⁰ After he smashed the front door and broke his mother-in-law’s arm, the NGO obtained an eviction and restraining order for the victim.¹³⁰¹ He continued to violate the order by climbing through

¹²⁸⁹ Interview with NGO 1, City D, July 4, 2015.

¹²⁹⁰ Interview with Misdemeanor Court, City B, June 30, 2015.

¹²⁹¹ Interview with CSW, City E, July 9, 2015.

¹²⁹² Interview with NGO 1, City D, July 4, 2015; Interview with NGO, City C, July 6, 2015; Interview with NGO, City B, July 1, 2015. Typically this role falls to NGOs or the police. Interview with NGO, City C, July 6, 2015.

¹²⁹³ Interview with NGO 1, City D, June 28, 2015.

¹²⁹⁴ *Id.*

¹²⁹⁵ Interview with NGO 1, City D, July 4, 2015.

¹²⁹⁶ *Id.*; Interview with NGO, City C, July 6, 2015.

¹²⁹⁷ Interview with NGO, City C, July 6, 2015.

¹²⁹⁸ *Id.*

¹²⁹⁹ *Id.*

¹³⁰⁰ *Id.*

¹³⁰¹ *Id.*

her window, accosting her on the street, visiting her workplace, and sending her letters from jail where he was serving four months.¹³⁰²

One woman suffered severe violence by her husband and, with the help of an NGO, obtained a five-day OFP for a restraining order and prohibition against stalking and harassment.¹³⁰³ A shelter worker described the woman's injuries from the last beating and the abuser's controlling tactics:

A broken nose. Bruises all over the body on arms, legs. The beating lasted for two hours. Since it was about the former police officer who was involved with the intervention, his duty was to beat people. . . . He knew how to do that. He knew where the bruises are less visible. She said she was beaten mostly in part of the stomach and the head, the top of the head. But what was visible--it was very brutal. He beat her with a shoe. . . . [S]he said she addressed him maybe in a provocative way because she said that he bought new shoes although he did not have money. This was the reason for him to beat her with a shoe [on her] arms, legs. He also pressed her mobile phone; he controlled messages, calls, Facebook and everything.¹³⁰⁴

Despite the OFP, a family judge ordered temporary shared custody of the children, alternating every five days between parents.¹³⁰⁵ Although the judge ordered third-party child transfers by the police, the NGO recognized the father could manipulate the mother through the children.¹³⁰⁶ With two potentially conflicting decisions from different courts, the NGO protected the woman by supporting her decision to go into hiding with her children.¹³⁰⁷

THE ROLE OF CONFIDANTS

Article 16 of the LDVP formally recognizes the role of a supportive advocate for victims. Victims may select a "confidant" to attend all procedures governed by the domestic violence law.¹³⁰⁸ Confidants typically appear with the victim in court, but may also accompany her to all institutions, including police.¹³⁰⁹ Confidants may be a relative of the victim, an NGO employee, or a CSW social worker.¹³¹⁰ While CSW workers can fill this role, they have been described as lacking an understanding of violence against women and instead focusing on family preservation.¹³¹¹ CSW workers do not always demonstrate a clear understanding of the confidant's role or the victim's right to a confidant.¹³¹² Victims

¹³⁰² *Id.*

¹³⁰³ Interview with NGO 1, City D, July 4, 2015.

¹³⁰⁴ *Id.*

¹³⁰⁵ *Id.*

¹³⁰⁶ *Id.*

¹³⁰⁷ *Id.*

¹³⁰⁸ LDVP, Art. 16.

¹³⁰⁹ MDT, City D, July 10, 2015; Interview with NGO 1, City D, July 4, 2015. Confidants may be present at all proceedings, including in the misdemeanor court, if the victim consents. LDVP, Art. 16(1); Interview with CSW, City D, July 3, 2015; Interview with Ministry of Justice, Podgorica, June 29, 2015; Interview with NGO, City B, July 2, 2015.

¹³¹⁰ LDVP, Art. 16; Interview with NGO 1, City B, July 2, 2015.

¹³¹¹ Interview with NGO 1, City D, June 28, 2015.

¹³¹² Interview with CSW, City E, July 9, 2015; Interview with CSW, City F, July 7, 2015.

may also perceive the conflicting roles that CSW workers may have as confidants and as witnesses or experts called by the court.¹³¹³ Because of these factors, interviewees opined that confidants should not be from state institutions.¹³¹⁴ Thus, the support that NGOs can provide as confidants is essential.

A confidant can be a supportive figure to victims through a traumatizing courtroom experience, especially when judges use confrontation.¹³¹⁵ One confidant observes how women often forget details when they must confront their abuser.¹³¹⁶ The confidant whispers information to help her at times, although, on at least one occasion, the judge has ejected her from the courtroom for doing so.¹³¹⁷ An NGO worker explained that when they tell a victim of her right to a confidant, most victims use this option.¹³¹⁸ Regretting she cannot accompany every woman to court, an NGO worker explained, “It is different when the victim goes by herself, and it is much more different than when there is a confidant.”¹³¹⁹ Others, too, have acknowledged the process is easier when an NGO is present and reduces the likelihood of recantation.¹³²⁰

Confidants also informally monitor proceedings.¹³²¹ NGO staff acknowledged that accompanying women to all procedures gives them insight as to how institutions are functioning.¹³²² For example, a confidant serving Roma women described how she observes judicial prejudice against the women she assists.¹³²³ Furthermore, a confidant’s independence allows them to better hold institutions accountable.¹³²⁴ One confidant even documents what she observes and sends the information to the higher judicial bodies.¹³²⁵

Even the presence of the confidant can provide some measure of accountability and watchfulness to systems actors. Interviews revealed victims have better outcomes when they interact with institutions with the assistance of a confidant.¹³²⁶ For example, NGO staff observed that misdemeanor judges issue OFPs only when confidants attend proceedings.¹³²⁷ Similarly, judges grant OFPs almost every time a

¹³¹³ Interview with CSW, City D, July 3, 2015; Interview with CSW, City B, June 29, 2015.

¹³¹⁴ Interview with NGO, City F, July 7, 2015. Victims most often choose NGOs or relatives as confidants. Interview with CSW, City B, June 29, 2015.

¹³¹⁵ See, e.g., Interview with NGO, City B, June 30, 2015 (explaining that misdemeanor courtrooms are so small that confidants stand because there is no chair for them).

¹³¹⁶ Interview with NGO, City B, July 1, 2015.

¹³¹⁷ *Id.*

¹³¹⁸ Interview with NGO 1, City D, July 4, 2015.

¹³¹⁹ Interview with NGO, City F, July 7, 2016.

¹³²⁰ Interview with NGO, City B, June 30, 2015.

¹³²¹ *Id.*; Interview with NGO, City B, July 1, 2015.

¹³²² Interview with NGO, City B, July 1, 2015; Interview with NGO 1, City B, July 2, 2015.

¹³²³ Interview with NGO 2, City D, July 4, 2015.

¹³²⁴ Interview with NGO, City F, July 7, 2015.

¹³²⁵ Interview with NGO, City B, July 1, 2015.

¹³²⁶ Interview with NGO City F, July 7, 2015.

¹³²⁷ Interview with NGO, City B, July 2, 2015.

confidant is present.¹³²⁸ A confidant explained, “Even my colleagues at [an NGO] say it is very good that persons have a confidant person, and I know it is. The institution really behaves differently.”¹³²⁹

Although the LDVP prescribes that a confidant may be present in all proceedings, prosecutors and judges do not always permit their presence.¹³³⁰ For example, confidants are not allowed to be present during divorce proceedings, even in cases involving domestic violence.¹³³¹ Some judges simply do not welcome the presence of confidants at all.¹³³² One confidant reported that when she entered a misdemeanor courtroom, the judge complained, “There is again that one.”¹³³³

Despite their usefulness, there are few confidants throughout the country and are not accessible to most victims.¹³³⁴ An interviewee estimated eight to ten confidants from NGOs fill this role.¹³³⁵ In addition, information about confidants is not always provided to victims. One confidant observed that “nobody in the institutional system . . . informs the woman that they have a right to have a confidant.”¹³³⁶ One NGO worker concluded that, although there should be a confidant for every hotline, the biggest problem is to keep the [confidant] service alive.”¹³³⁷

Confidants cannot remedy every problem that may arise in court; they are not the victim’s attorney and are not permitted to speak in court.¹³³⁸ One confidant emphasized the importance of legal representation in addition to confidants:

At the end, the success of the proceeding is not guaranteed because you can’t say anything; you can’t react if you see a kind of violation of the judge. It happened to me several times that I saw that they are not acting correctly, and I can’t react, and it’s really frustrating. So the best way is that the victim has the confidant person and the lawyer. And that’s not the case.¹³³⁹

LEGAL AID IN DIVORCE MATTERS

NGOs also provide legal representation and support to victims undergoing divorce, child custody disputes, division of marital property, and non-payment of alimony.¹³⁴⁰ Victims may obtain a legal aid

¹³²⁸ Interview with NGO 1, City D, July 4, 2015.

¹³²⁹ Interview with NGO, City B, July 1, 2015.

¹³³⁰ Interview with NGO 1, City D, June 28, 2015; Interview with NGO, City B, July 1, 2015; Interview with NGO, City C, July 6, 2015; Interview with Basic Court Judges, City C, July 6, 2015. Sometimes, prosecutors fear the confidant’s presence will hinder a successful prosecution. Interview with NGO, City B, July 1, 2015. Other times, judges justify excluding confidants because the case is confidential. Interview with NGO, City C, July 6, 2015.

¹³³¹ Interview with NGO 1, City D, June 28, 2015; Interview with NGO, City B, June 30, 2015.

¹³³² Interview with CSW, City F, July 7, 2015.

¹³³³ Interview with NGO, City B, June 30, 2015.

¹³³⁴ Interview with NGO, City B, July 1, 2015.

¹³³⁵ *Id.* While they would like to train students to act as confidants, it requires experience and ability to work under scrutiny. *Id.*

¹³³⁶ Interview with NGO, City F, July 7, 2015.

¹³³⁷ *Id.*

¹³³⁸ Interview with NGO, City B, July 1, 2015.

¹³³⁹ *Id.*

¹³⁴⁰ Interview with NGO, City C, July 6, 2015; Interview with NGO, City B, June 30, 2015.

attorney either through a qualified NGO or through a court-maintained roster.¹³⁴¹ Some NGOs are limited to representing victims in criminal proceedings, so in other circumstances victims must obtain an attorney from the roster.¹³⁴² Even when victims qualify for an independent free legal aid lawyer, NGOs still find it necessary to defend their beneficiaries' interests when those attorneys underperform.¹³⁴³ And women who request a lawyer are not permitted to choose their counsel, but are simply assigned the next lawyer on the list.¹³⁴⁴ A client may complain if she is not satisfied and may receive a replacement legal aid attorney, but women rarely complain.¹³⁴⁵

The quality of legal representation varies. An NGO worker related instances where lawyers have failed to appear at hearings, shouted at their clients, and pressured them to agree to settlements.¹³⁴⁶ In one case, an NGO advised a victim to ask her lawyer to request an order for temporary child custody until the conclusion of the divorce.¹³⁴⁷ Her legal aid attorney, however, failed to request supervised visitation despite the mother's specific request.¹³⁴⁸ Instead, the lawyer filed a request for standard, unsupervised visitation on weekends, holidays, and during summers. The lawyer did not show up at the hearing but instead sent his assistant to represent his client.¹³⁴⁹

DIVORCE

As described in the Family Law Proceedings section, mediation is used in divorce proceedings. NGO staff provide an important intervention by declining mediation on behalf of victims.¹³⁵⁰ An NGO worker explained, "There is big pressure on women to have mediation. It's okay if it's our client, but so many women who don't come to us are pushed to do mediation."¹³⁵¹ In these cases, NGO staff advise women simply to ask to cancel the mediation.¹³⁵²

INTERVENTIONS WITH STATE INSTITUTIONS

NGOs frequently intervene on behalf of victims to hold state institutions accountable. For example, one NGO urged the police repeatedly to arrest a man whose wife reported him five times for violence.¹³⁵³ Another NGO works directly with police to recommend OFP measures, which the police often follow.¹³⁵⁴ This NGO also meets with the police chairman to discuss problems that arise in practice and is seeking

¹³⁴¹ Interview with Member of Parliament, Podgorica, July 10, 2015.

¹³⁴² Interview with Ministry of Justice, Podgorica, June 29, 2015; Interview with NGO, City B, June 30, 2015.

¹³⁴³ See e.g., Interview with NGO, City B, July 1, 2014.

¹³⁴⁴ *Id.*

¹³⁴⁵ *Id.*

¹³⁴⁶ *Id.*

¹³⁴⁷ Interview with NGO 1, City B, July 2, 2015.

¹³⁴⁸ *Id.*

¹³⁴⁹ *Id.*

¹³⁵⁰ Interview with NGO 1, City D, June 28, 2015.

¹³⁵¹ *Id.*

¹³⁵² Interview with NGO, City B, July 1, 2015.

¹³⁵³ *Id.*

¹³⁵⁴ Interview with NGO 1, City B, July 2, 2015.

funds for intersectoral meetings.¹³⁵⁵ In the case where the woman with a broken nose was shuttled from city to city, the NGO staff member recalled how no one did their job until the NGO intervened:

The police did not do their part of their job properly and did not inform the prosecution in a timely way. The woman went alone to the emergency center, and she was not accompanied by anyone. She has a 2-year-old child with special needs. . . [T]he CSW was not informed about that by anyone. No one refers her to go there. There is no temporary measure. And no police restraining order. There is no order for protection in any form by the court. I informed the director of the CSW in City [A]. . . . I asked for the urgent involvement of multidisciplinary team located in City [B], because the woman was in a difficult psychological situation. The psychologist who was supposed to talk to her said, “please let her come tomorrow to my office.” The woman was ruined....No one did their job properly in that process. When we started with everything--that same day--everything was brought. Everyone had to come to Podgorica. Then we had talks with the chair of the police and director of CSW.

She concluded, “We forced them to take responsibility for everything.”¹³⁵⁶

A staff member of another NGO observed that judges rarely order supervised child visitation except in severe cases with the NGO involvement.¹³⁵⁷ Nevertheless, she explained their intervention is frequently viewed as “man-hater” interference, and many months pass before they succeed in their request.¹³⁵⁸

In a case involving a dual arrest, an NGO sent letters to the higher court and Supreme Court.¹³⁵⁹ After they implored the MoJ to intervene, the MoJ requested that the president pardon her.¹³⁶⁰ The same NGO has also filed charges against police officers for violations of their duties in other cases. For example, the NGO filed three complaints against a police officer who kept a victim waiting for hours in the police station.¹³⁶¹ When her abusive husband appeared, it became apparent that he and the police officer were already friendly with each other.¹³⁶² Her case was never registered, and the police actually charged her for taking the child out of the country without his permission.¹³⁶³ The officer was never punished but finally transferred out of the domestic violence unit following complaints by an NGO.¹³⁶⁴

¹³⁵⁵ Interview with NGO 1, City B, July 2, 2015.

¹³⁵⁶ *Id.*

¹³⁵⁷ Interview with NGO, City B, July 1, 2015.

¹³⁵⁸ *Id.*

¹³⁵⁹ *Id.*

¹³⁶⁰ *Id.*

¹³⁶¹ *Id.*

¹³⁶² *Id.*

¹³⁶³ *Id.*

¹³⁶⁴ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

As described throughout this report, NGOs often train state institutions to inform them of the domestic violence law and procedures and to eliminate harmful attitudes.¹³⁶⁵ Based on trainings, one NGO prepared practical guidelines on implementing an OFP to address the most common questions.¹³⁶⁶

VULNERABLE POPULATIONS

One organization addresses domestic violence, forced and early marriages, and education within the Roma community.¹³⁶⁷ Such groups play a particularly important role for Roma women and girls because of the barriers and harmful misperceptions they face. Given the underlying community tolerance of domestic violence, an NGO explained how it takes great courage for a Roma woman to come forward to report.¹³⁶⁸ When she does, she may face skepticism by the very actors who are directed to help her. For example, the NGO staff reported stereotypes that Roma women lie to gain benefits, such as shelter during the winter when food and housing are scarce.¹³⁶⁹ These misperceptions come from all actors. A police officer told a Roma woman that perhaps she was abused because she did not want to have sex with her husband.¹³⁷⁰ One judge told a confidant who accompanied a 13-year-old victim of forced marriage and rape that this “is common to you.”¹³⁷¹

Forced and early marriages are problems in Montenegro, with one organization handling 21 cases within a three-year period.¹³⁷² Forced and early marriages are more likely to become violent based on the power of one spouse over the other.¹³⁷³ As the NGO worker described, “Forced marriage is violence.”¹³⁷⁴ Currently, Montenegro’s Criminal Code prohibits early marriage when an adult “cohabitates in a customary marriage with a juvenile.”¹³⁷⁵ Girls under the age of 16 years are not permitted to marry, but prosecutions of adult husbands are rare.¹³⁷⁶

Since the NGO began building awareness about forced and early marriage, CSWs and police have strengthened their cooperation with the NGO.¹³⁷⁷ For example, after learning of the impending marriage of a 15-year-old girl, the NGO worked with the CSW and police to stop the wedding and allow the CSW to assume custody of the girl.¹³⁷⁸ NGO intervention can also support women and girls escaping an

¹³⁶⁵ See e.g., Interview with Misdemeanor Court Judges, City D, July 3, 2015 (describing a training by an NGO for judges as “helpful”).

¹³⁶⁶ Interview with NGO 1, City B, July 2, 2015. For example, common questions the guidelines address include: What if the offender refuses to hand over the keys to the house? What if he violates the measure? What if the offender is a juvenile? *Id.*

¹³⁶⁷ Interview with NGO 2, City D, July 4, 2015.

¹³⁶⁸ *Id.*

¹³⁶⁹ *Id.*

¹³⁷⁰ *Id.*

¹³⁷¹ *Id.*

¹³⁷² *Id.*

¹³⁷³ StopVAW, *Consequences and Effects of Forced and Child Marriage*, The Advocates for Human Rights, http://www.stopvaw.org/consequences_and_effects_of_forced_and_child_marriage, last visited Oct. 24, 2016.

¹³⁷⁴ Interview with NGO 2, City D, July 4, 2015.

¹³⁷⁵ Criminal Code, Art. 216(1).

¹³⁷⁶ Interview with NGO 2, City D, July 4, 2015.

¹³⁷⁷ *Id.*

¹³⁷⁸ *Id.*

abusive marriage. One 14-year-girl had been married twice. She suffered terrible physical and sexual violence by her first husband and her in-laws, who spilled hot water onto her genitals. To escape her marriage, the girl was forced to pay twice her bride price (approximately €1,000) to be released—funds neither she nor her parents possessed. The sum was paid by her second husband, who was as abusive as her first husband and with whom she had a baby. Her mother-in-law informed the girl that her father-in-law wanted to rape her. She was even tied down with chains. Although the police and CSW initially did not respond to the mother’s pleas to help her daughter, with the NGO’s intervention, they intervened and granted child custody to the girl. They concluded, “For the time being, she is protected and the second [husband], he accepted that fact . . . and whenever those contacts [happen], she always reports to the police.”¹³⁷⁹

ASSISTANCE WITH BASIC NEEDS

Shelter

In Montenegro, there are three shelters for women in Podgorica, Niksic and Plevlja that are run and funded by women’s NGOs.¹³⁸⁰ These shelters provide approximately 38 places, as well as food, counseling, individual and group therapy work, legal assistance, transportation in emergency situations, and confidant services.¹³⁸¹ These spaces are inadequate to meet Montenegro’s needs, and shelters had to turn away 21 women due to limited space in 2012. To meet the standards set by the Council of Europe Taskforce Recommendations, Montenegro needs 25 additional spaces.¹³⁸² But many of these shelters do not receive state funding and rely on foreign and foundation funding.¹³⁸³ An NGO representative voiced their desire to operate its own shelter but noted that the NGO lacked the funds.¹³⁸⁴

These sheltering NGOs provide a critical service.¹³⁸⁵ When asked what protection is available to a woman late on a weekend night, an interviewee replied, “only shelter.”¹³⁸⁶ These shelters often provide more than housing, also serving as a support system that addresses a variety of victims’ needs as described throughout this section.¹³⁸⁷ For example, several NGOs operate hotlines for victims of domestic violence.¹³⁸⁸ At the time of fact-finding, there was a proposal to finance three volunteers to

¹³⁷⁹ *Id.*

¹³⁸⁰ Personal communication from NGO to The Advocates for Human Rights, via email, May 18, 2017 (on file with authors).

¹³⁸¹ *Id.*

¹³⁸² Women against Violence Europe, *WAVE Report 2014: Specialized Women’s Support Services and New Tools for Combating Gender-Based Violence in Europe*, 2015, at 32, 68.

¹³⁸³ Interview with NGO, City D, June 28, 2015; Interview with NGO, City B, June 30, 2015.

¹³⁸⁴ Interview with NGO 2, City B, July 2, 2015.

¹³⁸⁵ See, e.g., Interview with NGO, City D, June 28, 2015 (operates a shelter with 12 beds but will expand to 21 beds); Interview with NGO, City B, June 30, 2015 (operates a shelter with 15 to 16 beds); Interview with NGO 2, City B, July 2, 2015 (operates a state shelter with 10-12 beds for victims of trafficking but accommodates victims of domestic violence with their children at times); Interview with NGO, City C, July 6, 2015.

¹³⁸⁶ Interview with NGO, City B, July 1, 2015.

¹³⁸⁷ Interview with NGO 1, City D, July 4, 2015.

¹³⁸⁸ Interview with NGO, City C, July 6, 2015; Interview with NGO, City F, July 7, 2015.

staff a 24-hour hotline.¹³⁸⁹ In 2015, the Ministry of Labor and Social Welfare and the SOS Hotline Nikšić launched a countrywide, free, 24-hour hotline for domestic violence victims.¹³⁹⁰ Within its first ten days, the helpline received 84 calls.¹³⁹¹

The woman whose husband beat her with his shoe sought shelter from an NGO twice within one year.¹³⁹² Even though she has an OFP against him, he owns many weapons and continues to drive around the shelter, park his car in front of the shelter, send her messages, and phone her 20 times per day.¹³⁹³ The shelter provides her with refuge to keep her safe

¹³⁸⁹ Interview with Ministry of Human and Minority Rights, Podgorica, July 2, 2015; Interview with NGO, City F, July 7, 2015.

¹³⁹⁰ UNDP, *Montenegro Introduces National, Toll-free, Anonymous SOS Helpline for Victims of Violence in Family*, Sept. 9, 2015,

<http://www.me.undp.org/content/montenegro/en/home/presscenter/articles/2015/09/08/montenegro-introduces-national-toll-free-anonymous-sos-helpline-for-victims-of-violence-of-family.html>, last visited Oct. 24, 2016.

¹³⁹¹ *Id.*

¹³⁹² Interview with NGO 1, City D, July 4, 2015.

¹³⁹³ *Id.*

RECOMMENDATIONS

PRIORITY RECOMMENDATIONS*

* Connotes a priority recommendation following this section.

- Amend the **criminal laws to provide for measures of protection** to protect victim safety during criminal proceedings. Issuance of such criminal measures of protection should be done only in appropriate circumstances.
- Amend the Law on Domestic Violence Protection in accordance with the commentary provided in Appendix C.
- Develop and integrated and uniform data collection system, along with indicators for evaluating and monitoring implementation of the LDVP at the local and national levels. **Systematically track and release statistics** on domestic violence, including numbers of orders for protection requested, issued and denied, their terms, and violations, as well as information on extensions, convictions and sentencing. Statistics should be disaggregated by sex and include information on relationship of the victim to the aggressor.
- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all systems actors with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence and their implementation, and services for victims of domestic violence.
- Ensure interdisciplinary participation in and the adherence of multidisciplinary teams to best practices for interagency response, including: 1) adhering to an interagency approach that has collective intervention goals and a shared understanding about domestic violence; 2) focusing attention on the context and severity of abuse into each intervention; 3) recognizing that most domestic violence is a patterned crime requiring engagement with victims and offenders; 4) establishing swift consequences for repeated violence; 5) using the criminal justice system to communicate messages of help and accountability; 6) acting to reduce unintended consequences and the disparity of impact on victims and offenders.¹³⁹⁴ NGOs that provide services to victims should play a core role in any MDT.
- Establish an independent mechanism to **receive and handle complaints** on authorities conduct in carrying out their duties under Montenegro's laws with the goal of ending impunity for officials who fail to carry out their duties in domestic violence cases.
- Develop a comprehensive and mandatory **risk and lethality assessment**, in consultation with NGOs, for systems actors to use for domestic violence cases. Ensure that a standardized risk assessment is performed in all cases involving domestic violence.
- Create and implement policies that require front line officers to aggressively act to protect victim safety and ensure accountability for perpetrators at the scene of domestic violence by **investigating for the full history** of domestic violence beyond the immediate incident,

¹³⁹⁴ Adapted from St. Paul Blueprint for Safety, <https://www.stpaul.gov/departments/police/blueprint-safety>

separating the parties during questioning, **investigate the level of risk to victims** in each case of domestic violence using standardized risk assessment tools, adopting protocols and undertaking trainings to **identify the predominant aggressor** and refraining from pursuing or encouraging mutual orders for protection.

- Issue a **directive to misdemeanor judges** clarifying that orders for protection may be issued prior to a pronouncement of guilt and independent of any other misdemeanor sanctions. Ensure that judges are trained on the use of orders for protection and keep the process victim-responsive. Victim-centered efforts should tailor orders for protection to ensure victim safety without inhibiting reports of violence to the court.
- Ensure that misdemeanor judges assign priority to **remedies that promote victim safety**, including eviction, restraining orders, and prohibitions against harassment and stalking. Addiction treatment and psychosocial therapy should not be used as a substitute for these measures that protect victim safety.
- **Expedite all orders for protection proceedings** and issue decisions in a timely manner.
- **Aggressively pursue and prosecute criminal-level cases** of domestic violence, including those involving minor bodily injury or lacking evidence of physical injury.
- Strive for a policy that promotes **victim-absent prosecutions**, even in cases where victims recant or exercise the right not to testify. In deciding whether to pursue prosecution without cooperation of the victim, prosecutors should consider the totality of the evidence that might support or corroborate the victim's statement, including a history of abuse, and ensure that all available evidence has been collected by the investigating police.
- Ensure that **violations of orders for protection**, including non-compliance with psychosocial therapy and addiction treatment, are punished with the swift issuance of prison sentences as allowed under the law.
- Immediately **cease using the judicial practice of “confrontation”** in domestic violence cases.
- Refrain from imposing **suspended sentences that place victims in danger of further harm and fines that punish victims** who share joint financial resources with their offenders in domestic violence cases. Judges should prioritize the issuance of prison sentences that increase with repeat violence or violations over lenient sentences, including medical treatment.
- Take all measures possible to **protect a victim’s safety** in divorce proceedings involving domestic violence, such as custody determinations, supervised visitation, or prohibited visitation. Adhere to the best practice standard that the best interests of the child are promoted through a rebuttable presumption of custody to the non-violent parent.
- Develop a **formal and uniform policy** for use by all health care institutions statewide based on best practices and a collaborative interagency approach that is victim-centered.
- Amend the regulations governing psychosocial therapy in accordance with recognized best practice standards, which include: 1) prioritizing victim safety and offender accountability; 2) working with other lawmakers and ministries to ensure psychosocial therapy is part of a comprehensive criminal and civil legal framework on domestic violence; 3) grounding all psychosocial therapy programs in the common theory that domestic violence is based on power and control; 4) connecting the program with other sectors, including the criminal justice system

and victims' advocates; 5) making referrals to other mental health treatments to address substance abuse, mental illness, and past trauma independently of the psychosocial therapy program; 6) avoiding harmful practices, such as couples counseling and anger management; and 7) using risk assessment and management. Ensure such regulations provide for consistent treatment programs that adhere to best practice standards as recognized in Recommendations for Effective Batterer Intervention Programs in Central and Eastern Europe & the Former Soviet Union.¹³⁹⁵

- **Immediately implement Article 326 of the new Family Law and cease the use of mediation and reconciliation** in cases involving domestic violence.
- Ensure that **adequate funding is dedicated to NGO services** for victims of domestic violence, including shelters, hotlines, and other support services, including child care.

PARLIAMENT

- Amend the **criminal laws to provide for measures of protection** to protect victim safety during criminal proceedings. Issuance of such criminal measures of protection should be done only in appropriate circumstances.*
- Amend the LDVP in accordance with the commentary provided in Appendix C.*
- Amend the criminal and misdemeanor procedural laws to allow for **service of process by publication**.
- Amend the Criminal Code definition of forced and early marriage to ensure it includes the absence of free and full consent of one or both parties and define forced and early marriage in accordance with international legal standards.
- Establish a **compensation fund for victims of domestic violence** that provides funds to victims in a timely and accessible manner and without requiring civil proceedings.
- Amend the **law on legal aid to allow and compensate NGOs** to provide free legal aid for victims of violence against women.
- Ensure that **adequate funding is dedicated to NGO services** for victims of domestic violence, including shelters, hotlines, and other support services, including child care.*

ALL MINISTRIES

- Develop and integrated and uniform **data collection system**, along with indicators for evaluating and monitoring implementation of the LDVP at the local and national levels.*
- Establish an independent mechanism to receive and handle **complaints on authorities** conduct in carrying out their duties under Montenegro's laws with the goal of ending impunity for officials who fail to carry out their duties in domestic violence cases.*
- Ensure that any working groups, councils, and MDTs, including bodies to **monitor implementation of the Istanbul Convention, include and are led by NGOs** that serve women victims of violence.

¹³⁹⁵ The Advocates for Human Rights, *Recommendations for Effective Batterer Intervention Programs in Central and Eastern Europe & the Former Soviet Union* (2016).

- Continue to undertake measures to **strengthen interagency responses**, including adopting written practices that centralize victim safety and offender accountability and link intervening agencies, ensuring a supportive community infrastructure for victims, tracking, monitoring and assessing of data, and bringing practitioners together to discuss and resolve systemic problems.*

Ministry of Interior

- **Systematically track and release statistics** on domestic violence, including numbers of orders for protection requested, issued and denied, their terms, and violations, as well as information on extensions, convictions and sentencing. Statistics should be disaggregated by sex and include information on relationship of the victim to the aggressor.*
- **Develop a standardized form/checklist** for domestic violence police reports that includes a requirement that written reports be filed in all instances of police responding to reports of domestic violence, as well as information required to document in victim/witness interviews, including: the history of domestic violence; existence of orders for protection, warrants, prior convictions; evidence collected; interview statements with parties and witnesses; risk and lethality assessment questions; rationale for arrest or non-arrest decisions; and a summary of police actions taken.¹³⁹⁶
- Establish **specialized police units** and dedicated police officers trained on dynamics of domestic violence.
- Develop a comprehensive and mandatory **risk and lethality assessment**, in consultation with NGOs, for police to use for all domestic violence cases. Ensure that all responding officers have training in assessing predominant aggressors.*

Ministry of Justice

- Develop a **standardized and mandatory protocol for bench risk assessment** to identify high-risk offenders and promote victim safety for all judges.*
- Develop an **information sharing system** between misdemeanor and basic courts to ensure that histories of domestic violence are readily accessible among all courts.
- Develop and provide trainings on a **bench protocol for judges to screen and respond** to cases of domestic violence in misdemeanor, criminal, or civil proceedings.
- **Give due consideration to the legal amendments** proposed in this report, particularly through the activities of any established working groups for legal reform.

Supreme Court

- Issue a **directive to misdemeanor judges** clarifying that orders for protection may be issued prior to a pronouncement of guilt and independent of any other misdemeanor sanctions. Ensure that judges are trained on the use of orders for protection and keep the process victim-

¹³⁹⁶ See e.g., Duluth Police Pocket Card, available at http://www.stopvaw.org/duluth_police_pocket_card.

responsive. Victim-centered efforts should tailor orders for protection to ensure victim safety without inhibiting reports of violence to the court.^{1397*}

Ministry of Health

- Develop a **formal and uniform policy** for use by all health care institutions statewide based on best practices and a collaborative interagency approach that is victim-centered.*
- **Integrate health care policies and provisions** for women experiencing domestic violence into existing health services instead of standalone services.
- Amend the regulations governing psychosocial therapy in accordance with recognized best practice standards, which include: 1) prioritizing victim safety and offender accountability; 2) working with other lawmakers and ministries to ensure psychosocial therapy is part of a comprehensive criminal and civil legal framework on domestic violence; 3) grounding all psychosocial therapy programs in the common theory that domestic violence is based on power and control; 4) connecting the program with other sectors, including the criminal justice system and victims' advocates; 5) making referrals to other mental health treatments to address substance abuse, mental illness, and past trauma independently of the psychosocial therapy program; 6) avoiding harmful practices, such as couples counseling and anger management; and 7) using risk assessment and management. Ensure such regulations provide for consistent treatment programs that adhere to best practice standards as recognized in Recommendations for Effective Batterer Intervention Programs in Central and Eastern Europe & the Former Soviet Union.^{1398*}

POLICE

- Create and implement policies that require front line officers to aggressively act to protect victim safety and ensure accountability for perpetrators by **detaining violent perpetrators** as legally allowed, conducting thorough searches for and **seizing weapons**, and knowledge of community resources to which victims can be referred. Officers should be trained in predominant aggressor assessment.
- Create and implement policies that require front line officers to aggressively act to protect victim safety and ensure accountability for perpetrators at the scene of domestic violence by **investigating for the full history** of domestic violence beyond the immediate incident, **separating the parties** during questioning, **investigate the level of risk to victims** in each case of domestic violence using standardized risk assessment tools, adopting protocols and undertaking trainings to **identify the predominant aggressor**, and refraining from pursuing or promoting mutual orders for protection.*
- Adopt a **probable cause standard of arrest**, allowing police to arrest and detain an offender, if they determine based on evidence at the scene that there is probable cause that an offense has occurred.

¹³⁹⁷ If the victim finds that reporting violence makes her life more difficult, she is not likely to report future acts of violence.

¹³⁹⁸ The Advocates for Human Rights, *Recommendations for Effective Batterer Intervention Programs in Central and Eastern Europe & the Former Soviet Union* (2016).

- **Refrain from issuing verbal warnings** in domestic violence cases.
- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all police officers with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence and their implementation, and services for victims of domestic violence.*
- Consistently inform victims of their **rights and referrals** to available support organizations.
- Consistently inform victims of the availability of **three-day evictions orders** and issue such orders at the victim's request.
- Consistently inform victims of the availability of **court-issued orders for protection** and petition the misdemeanor court for such orders at the victim's request.
- Develop a protocol for police communications to promote police consistency in court appearances for misdemeanor orders for protection.
- **Refrain from discouraging victims** from pursuing orders for protection or criminal prosecution.
- Arrest and detain perpetrators for all **violations of orders for protection** and three-day eviction orders.
- Participate fully in the **multidisciplinary teams and inter-agency responses** that evaluate and improve systems' response to domestic violence.

CENTERS FOR SOCIAL WELFARE (CSW)

- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all CSW personnel with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, the effects of a violent parent on children, dangers of mediation, and promoting victim safety.*
- **Treat all domestic violence cases as urgent**, submit reports to courts in a timely manner, and comply with the Protocol to guarantee victim safety.
- Perform **risk assessments and safety plans** based on best practices and the victim's history of domestic violence, in consultation with the victim.
- **Screen for domestic violence** in divorce and child custody cases, in accordance with best practice screening techniques and ensure this information is included in reports submitted to courts.
- Prioritize the **safety of all victims in evaluations and reports** that adhere to best practices of promoting the safety of children in domestic violence cases by placing custody with and protecting the non-violent parent. Refrain from recommending unsupervised visitation with the violent parent.
- Take adequate steps to enhance **victim safety during supervised visitation**, such as ensuring both parents do not meet and arranging schedules so the victim can arrive and depart before the perpetrator, including in cases where an OFP is in effect. Ensure that visitation is always supervised by specialized, trained personnel to prevent further traumatization to the child and

any attempts by the perpetrator to manipulate or elicit information about the mother that could place the victim at risk.

- Participate fully in the **multidisciplinary teams and inter-agency responses** that evaluate and improve systems' response to domestic violence.
- Ensure that multidisciplinary teams adhere to best practices for interagency response, including: 1) adhering to an interagency approach that has collective intervention goals and a shared understanding about domestic violence; 2) focusing attention on the context and severity of abuse into each intervention; 3) recognizing that most domestic violence is a patterned crime requiring engagement with victims and offenders; 4) establishing swift consequences for repeated violence; 5) using the criminal justice system to communicate messages of help and accountability; 6) acting to reduce unintended consequences and the disparity of impact on victims and offenders.¹³⁹⁹ NGOs that provide services to victims should play a core role in any MDT.*

MEDIATORS

- Require that all family law mediators be **trained** in best practices for mediation.
- Refrain from carrying out mediation and reconciliation in domestic violence cases. Where it is not possible to avoid mediation:
 - require separate mediation for parties who have experienced domestic violence, regardless of whether or not there is an OFP,
 - allow for the presence of confidants,
 - prioritize victim safety over reconciliation or the offender's welfare*
- Remove the requirement that a mediation be successful a condition for mediators to receive compensation.

MISDEMEANOR COURT JUDGES

- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all court personnel and judges with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, and promoting victim safety.*
- Immediately **cease using the practice of “confrontation”** in domestic violence cases.*
- Refrain from imposing **admonitions and suspended sentences that place victims in danger of further harm and fines that punish victims** who share joint financial resources with their offenders in domestic violence cases. Judges should prioritize the issuance of prison sentences and orders for protection remedies that promote victim safety.*
- Ensure **separate waiting areas and consistent and adequate security**, including court escorts and security personnel, for victims upon arrival, within, and upon departure from the courthouse.

¹³⁹⁹ Adapted from St. Paul Blueprint for Safety, <https://www.stpaul.gov/departments/police/blueprint-safety>

- Ensure that a **standardized risk assessment** is performed in all cases involving domestic violence.*
- **Expedite all orders for protection proceedings** and issue decisions in a timely manner. Use the “shortened procedure” as allowed by law in all domestic violence cases regardless of evidence of physical violence.
- **Issue orders for protection** in cases on the basis of the victim’s fear for her safety instead of the offender status in detention or living situation.
- **Issue emergency orders for protection** within the 48-hour deadline and on the basis of a victim’s statement alone.
- Refrain from requiring any **evidence other than the victim’s statement** in order to issue orders for protection, including emergency orders for protection.
- Ensure an inquiry is made to learn of any **history of domestic violence** in all domestic violence cases, regardless of any charges or convictions.
- **Independently review the facts** in domestic violence cases and use external reports, such as those from the CSW or medical sector, as one factor among many to reach a decision. Continue to expedite proceedings, even pending receipt of a CSW opinion.
- Issue orders for protection for the **maximum time allowed** under the law to ensure victim safety and **extend duration** of such orders based upon the victim’s fear of repeated violence. Ensure the victim can request cancellation of a misdemeanor OFP.
- Assign priority to **remedies that promote victim safety**, including eviction, restraining orders, and prohibitions against harassment and stalking. Addiction treatment and psychosocial therapy should not be used as a substitute for these measures that protect victim safety.*

PROSECUTORS

- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all prosecutors. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence, risk assessment, victim-absent prosecutions, the new post-conviction measures under Articles 77a and 77b, and promoting victim safety.*
- Seek the protection of victims and accountability for perpetrators by **detaining violent perpetrators** as allowed under the law.
- **Aggressively pursue and prosecute criminal-level cases** of domestic violence, including those involving minor bodily injury or lacking evidence of physical injury.*
- Ensure inquiry is consistently made to learn of any **history of domestic violence** in all domestic violence cases, beyond any prior documented charges or convictions (misdemeanor and criminal), to inform charging decisions and the court.
- Pursue criminal prosecution of domestic violence, including in cases where the defendant and victim have **reconciled**, with prioritization of victim safety and sensitivity toward promoting victim reporting in the future.
- Create and implement policies that require prosecutors to **identify the predominant aggressor** in domestic violence cases and charge only the offender if there is probable cause that an

offense has occurred. Use best practice standards for determining use of **self-defense** and refrain from charging victims.

- Strive for a policy that promotes **victim-absent prosecutions**, even in cases where victims recant or exercise the right not to testify. In deciding whether to pursue prosecution without cooperation of the victim, prosecutors should consider the totality of the evidence that might support or corroborate the victim's statement, including a history of abuse, and ensure that all available evidence has been collected by the investigating police.*
- Support efforts to amend the criminal law so that prosecutors can **request measures to protect victims**, including eviction, restraining orders, and prohibitions against stalking and harassment, that are effective *during* the proceedings. In criminal cases, prosecutors should recognize when victims are in danger and should be able to implement such measures on a victim's behalf. Until such reforms are made, inform victims of the availability of misdemeanor orders for protection and make referrals to service providers who can assist with applications.
- Pursue prosecution for all **violations of misdemeanor orders for protection**, including those not involving physical violence, as a separate crime independent from any new offenses committed during the violation.
- Participate fully in the **multidisciplinary teams and inter-agency responses** that evaluate and improve systems' response to domestic violence.
- Until domestic violence victim-specific measures can be adopted, prosecutors should use Criminal Procedure provisions that are designed to protect against witness tampering as a stopgap form of protective measures during proceedings until Parliament adopts new protective measures during proceedings? (Also add similar provision for criminal judges so they will support such steps.)

CRIMINAL COURT JUDGES

- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all court personnel and judges with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, victim recantation, the new post-conviction measures under Articles 77a and 77b, and promoting victim safety.*
- Strive to expedite domestic violence cases and, in all cases, support efforts to amend the criminal law so that criminal judges may issue **measures to protect victims**, including eviction, restraining orders, and prohibitions against stalking and harassment, that are effective *during* the proceedings.
- Ensure that **violations of orders for protection**, including non-compliance with psychosocial therapy and addiction treatment, are punished with the swift issuance of prison sentences as allowed under the law.*
- Refrain from requiring victim cooperation to issue a conviction. Order sentences for domestic violence and violations of orders for protection that are commensurate with the gravity of the aggressor's crimes of violence against women and **irrespective of victim cooperation**. Ensure

that criminal sanctions are enhanced in cases of repeat violence or violations of orders for protection.

- Immediately **cease using the practice of “confrontation”** in domestic violence cases.*
- Actively and consistently inquire to learn of any **history of domestic violence** in all domestic violence cases, beyond any prior documented charges or convictions (misdemeanor and criminal) and orders for protection.
- Refrain from imposing **suspended sentences that place victims in danger of further harm and fines that punish victims** who share joint financial resources with their offenders in domestic violence cases. Judges should prioritize the issuance of prison sentences that increase with repeat violence or violations over lenient sentences, including medical treatment.*
- Inform parties of and give priority to issuing **post-conviction measures under Articles 77a and 77b** for the maximum period allowed under the law.
- **Send copies of all decisions** to victims and their lawyers immediately, without waiting for requests, regardless of the outcome.*

HEALTH CARE WORKERS

- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all health care personnel. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, screening, referrals, and promoting victim safety.*
- Exercise diligence in **identifying and documenting injuries** likely caused by domestic violence while respecting the victim's privacy and wishes about reporting. Inquire about exposure to domestic violence when evaluating conditions that may be caused or complicated by domestic violence.
- Promote **patient privacy and confidentiality**, by examining the victim privately and separate from any accompanying parties. Inform women of any limits on confidentiality, such as mandatory reporting.
- When patients disclose violence, **do not require mandatory reporting** and instead, **offer immediate, non-judgmental practical care and support** that includes assisting her to access information about resources, increasing her and her children's safety, mobilizing social support, and allowing her to speak of her history of violence but still respects patient autonomy. If the patient desires reporting and is aware of her rights, health care providers should offer to report to appropriate authorities.
- Take and document a **complete history**, including of the time since the violence and type of violence and mental health status, to determine appropriate interventions. Conduct a complete physical examination.
- Consistently **inform all self-identified or suspected victims of their rights** and **make referrals** to available support organizations.

- Make **written information on domestic violence available** throughout health care facilities as posted, pamphlets or brochures available in private areas, such as women's rest rooms, with warnings about bringing them home if the violent abuser lives there.
- Use "**watchful waiting**" for up to three months after the incident and offer the option to come back for additional support through regular follow-up appointments.
- When requested, **provide expedited documentation** of domestic violence to judicial authorities.
- **Prioritize victim safety** in all recommendations made to the court with respect to a violent offender.
- Participate fully in the **multidisciplinary teams and inter-agency responses** that evaluate and improve systems' response to domestic violence.

FAMILY LAW JUDGES

- Require **regular training** on domestic violence, in consultation with or led by NGOs serving victims, for all court personnel and judges. The training should be based on best practices and include the dynamics of domestic violence, Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, screening, and promoting victim safety through regular communication of court processes.*
- **Screen all divorcing parties** for domestic violence, in accordance with best practice screening techniques. Actively inquire, beyond the CSW report, into the possibility of domestic violence.
- **Immediately implement Article 326 of the new Family Law and cease the use of mediation and reconciliation** in cases involving domestic violence.*
- **Expedite divorce proceedings** when domestic violence is involved.
- Take all measures possible to **protect a victim's safety** in divorce proceedings involving domestic violence, such as custody determinations, supervised visitation, or prohibited visitation. Adhere to the best practice standard that the best interests of the child are promoted through a rebuttable presumption of custody to the non-violent parent.
- Actively supervise all domestic violence cases that are **mediated** by others to ensure victim safety is given priority.

APPENDIX A. LAW ON DOMESTIC VIOLENCE PROTECTION

LAW ON DOMESTIC VIOLENCE PROTECTION

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I GENERAL PROVISIONS

Subject

Article 1

This Act shall govern the provision of protection from domestic violence ('protection').

Domestic violence

Article 2

Domestic violence ('violence'), as used in this act, shall mean omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred.

Family members

Article 3

Family members, as used in this act, shall mean any of the following:

- 1) spouses or former spouses, children they have in common, and their stepchildren;
- 2) consensual partners or former consensual partners irrespective of the duration of consensual union, children they have in common, and their stepchildren;
- 3) persons related by consanguinity and relatives by full adoption, in the direct line of descent with no limitation and in collateral line of descent up to the fourth degree;
- 4) relatives by incomplete adoption;
- 5) relatives on the side of wife/consensual partner up to the second degree in a married or consensual union;
- 6) persons sharing the same household irrespective of the nature of their relationship;
- 7) persons who have a child in common or who have conceived a child.

Right to assistance and protection

Article 4

A victim of violence ('victim') has the right to psycho-social support, legal aid,

social and medical care, in accordance with law.

Victim protection is provided by, but is not limited to, issuance of order of protection.

Special assistance and protection is provided to a victim who is a minor child, elderly, person with a disability, and person who cannot take care of himself/herself, in accordance with law.

Institutions providing protection

Article 5

The public administration agency in charge of police affairs ('Police'), misdemeanour body, public prosecution service, social work centre or other social and child protection agency, health care institution, and other agency or institution acting as care provider, have the duty to provide victim with full and coordinated protection, within their respective powers and depending on the severity of violation.

A non-governmental organization, other legal or natural person, may provide protection in accordance with law.

Bodies and institutions from para. 1 of this article shall act in accordance with law in setting incidences of violence in the order of priority, and shall ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to victim in regaining security in life.

Expedited procedure

Article 6

Any procedure for protection taken by the bodies and institutions from article 5, para. 1 of this act shall be expedited procedure always bearing in mind, where victim is a minor child, elderly, a person with a disability, or a person who cannot take care of himself/herself, that the interest and wellbeing of victim must be given priority in such procedure.

Use of gender sensitive language

Article 7

Terms used in this act to refer to natural persons of male gender shall also include such persons of female gender.

II VICTIM PROTECTION

1. AVAILABLE ASSISTANCE AND PROTECTION

Forms of violence

Article 8

Specially considered as constituting a violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be any of the following acts whereby a family member:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;
- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or attempts to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with.

Also considered as constituting violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be insufficient care by a family member to provide any of the following:

- 1) food, personal hygiene, clothing, medical care or to ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglect his duties concerning child development and education;
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself.

Considered as constituting major form of domestic violence shall be failure to report (hiding) family member with special needs.

Duty to report violence

Article 9

A state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities.

Under the duty to report violence to the police is the head of the agency or institution from para. 1 of this article, as well as a health and social care worker, teacher, pre-school teacher and other person who learns of violence in the discharge of his affairs.

A misdemeanour body and the police are under the duty to notify the social work centre of such incidence of violence where victim is a minor child.

Emergency intervention

Article 10

Upon receipt of report on the incidence of violence, police will immediately take action and measures to protect victim, in accordance with this act and other legislation governing police, misdemeanour procedure, criminal procedure and witness protection.

A social work centre, or other social and child protection institution, and other body and institution in charge of such protection must immediately provide protection and assistance to victim in line with their respective powers.

The bodies and institutions from para. 2 of this article shall take care of all victim's needs and allow victim access to all forms of assistance and protection.

Victim assistance plan

Article 11

A social work centre may set up an expert team composed of its representatives as well as representatives of local government bodies and service agencies, police, non-governmental organizations and experts for family issues. The team will design victim assistance plan and coordinate victim assistance activities, in accordance with victim's needs and choice.

Victim assistance plan includes measures to be taken in accordance with the law governing social and child protection. Where victim is a minor child, victim assistance plan must also include child protection measures in accordance with the law governing family relations.

For the conduct of activities from para 1 of this article, an expert team may be organized by other body, institution or organization in charge of protection.

*Social care***Article 12**

Victim social care includes provision of material and non-material assistance, accommodation and social work services, in accordance with the law governing social and child care.

Social care centers shall obligatory establish precise record of children and persons with special needs existing on their territory of competence.

In order to provide protection from violence over persons referred to in paragraph 2 herein, centers are obliged to form special teams that shall, at least one time per month, pay visits to families where children and persons with special needs resides or live, control conducting with these persons, and, on basis of determined conditions, these teams shall prepare report in written form.

Social care centers shall obligatory, at least one time in six months, deliver report in written form to the ministry competent for social care affairs, which shall contain data on level of realization of social care for children and persons with special needs.

*Legal aid***Article 13**

Victim of violence has the right to free legal aid, in accordance with the special law.

*Victim security***Article 14**

A police officer has the duty to accompany victim to victim's place of residence or other premises to remove necessary personal belongings and possessions, unless where victim strongly objects to being accompanied.

Action from para. 1 can also be taken where victim is provided with temporary residence and care.

*Confidentiality of procedure***Article 15**

Bodies, institutions, organizations and other legal and natural persons from article 5 of this act shall protect data confidentiality and ensure personal data

protection, in accordance with law.

No information may be disclosed on either victim or the family member who committed violence ('abuser') where such information would lead to identification of victim or victim's family member, unless adult victim has explicitly consented to it.

Confidant

Article 16

Victim may select a person to attend all protection procedures and actions ('confidant').

Eligible to be confidant is a family member, a person from a body, institution, non-governmental organization or other legal person or other person that victim confides in.

Abuser is not eligible to act as confidant.

Victim may select confidant before or during protection procedures and actions.

Line bodies have the duty to ensure presence of confidant in all procedures and actions that involve victim and are related to family relations.

Multidisciplinary team and principle of cooperation

Article 17

For the purpose of organizing, monitoring and promoting a coordinated and efficient protection, the body or institution from article 5, para. 1 of this act may set up a team composed of experts in social and child care, health care, judiciary, police protection, human rights and freedoms, as well as representatives of non-governmental organizations dealing with protection.

Protection strategy

Article 18

Protection is provided in accordance with the strategy for protection from domestic violence ('strategy'), which includes:

- 3) situation analysis and identification of key problems in social care and other forms of care;
- 4) objectives and measures to be taken to promote social care and other forms of care, particularly in relation to the following: awareness raising among citizens of the phenomenon of violence and developing attitudes to violence as an unacceptable form of behaviour; development of

programmes for the prevention of violence; family support in violence prevention; further development of the legislative framework for protection issues; strengthening cooperation among bodies, institutions, organizations and other legal and natural persons in charge of protection; developing new knowledge and skills in any person involved in protection; improvement of the system for data collection and analysis and of the system for reporting incidence of violence.

Activities for implementation of objectives and measures from para. 1, subparagraph 2 of this article are to be set forth in the action plan for strategy implementation.

The strategy and action plan for its implementation are adopted by the Government of Montenegro.

2. ORDERS OF PROTECTION

Purpose of orders of protection

Article 19

Orders of protection are issued to prevent and suppress violence, remove its consequences and take efficient measures to reform abuser and eliminate circumstances that may make him susceptible to or encourage reoffending.

Types of orders of protection

Article 20

Abuser may be issued one or more of the following orders of protection:

- 1) order of removal from place of residence or other premises ('removal from residence');
- 2) restraining order;
- 3) prohibition of harassment and stalking;
- 4) mandatory addiction treatment;
- 5) mandatory psycho-social therapy.

Bodies and institutions from article 5, para. 1 have the duty to inform the abuser of his rights.

Removal from residence

Article 21

Removal from residence may be ordered to abuser who is sharing a place of

residence or other premises with victim, irrespective of the title and other rights that abuser and victim may have to the place of residence or other premises, if there is risk of reoffending.

Abuser who is ordered removal from residence shall immediately leave the residence or other premises.

Removal from residence is ordered for minimum thirty days and maximum six months.

Restraining order

Article 22

Restraining order may be issued to abuser if there is risk of reoffending or where victim undergoes suffering the severity of which has prevented victim's regular psychological activities for a short or longer period of time.

A misdemeanour body shall clearly indicate in the restraining order the location or area within which abuser must not come close to victim.

Restraining order is issued for minimum thirty days and maximum one year.

Order prohibiting harassment and stalking

Article 23

Prohibition of harassment and stalking may be ordered to abuser where there is risk of re-offending.

The protection order from para. 1 of this article is issued for a period of minimum thirty days and maximum one year.

Mandatory addiction treatment

Article 24

Mandatory addiction treatment may be ordered to abuser who commits violence under the influence of alcohol, addictive substances or psychotropic substances, and where due to such addiction there is risk of reoffending.

The protection order from para. 1 of this article may last for as long there is need for treatment, limited to one year.

Mandatory psycho-social therapy

Article 25

Mandatory psycho-social therapy may be issued to abuser to eliminate the

cause of violent behaviour and reform abuser, and to diminish or eliminate risk of reoffending.

The protection order from para. 1 of this article lasts for as long as reasons for which it was ordered are present, limited to six months.

Mandatory psycho-social therapy is enforced in accordance with the law governing treatment and rehabilitation of persons addicted to psychoactive substances (alcoholics and drug addicts) and persons with other behavioural disorders.

3. PROCEDURE OF ISSUING ORDERS OF PROTECTION

Issuance of order of protection

Article 26

An order of protection may be issued either in addition to a sanction or as a sanction in itself.

A misdemeanour body may issue one or several orders of protection to abuser provided pre-requisites for such orders as set by this act are satisfied.

A misdemeanour body may decide to prolong duration of protection measures imposed referred to in Articles 21-25 of this Law, if reasons for measures imposing still exist, but no longer than for period of two years.

Persons eligible to filing petition

Article 27

Petition for grant of order of protection ('petition') may be filed by victim or his representative, social work centre, or other social and child care institution, police or public prosecutor.

An order of protection may be granted by a misdemeanour body *ex officio*.

Order

Article 28

In order to eliminate risk to victim's physical integrity, police officer may order abuser to leave residence or other premises or prohibit his return to residence or other premises. The order is issued for maximum three days.

The written order to leave or not return to residence or other premises must be served by police officer on abuser and victim immediately, within maximum two hours, in the presence of an adult, who may be another police officer, but may not be a family member.

The written order from para. 2 of this article must include: date and hour of removal or prohibition of return to residence or other premises; boundaries of the area within which abuser must not move, reside or come close to victim, and the address of residence where abuser is staying while the order of removal or prohibition of return is in effect.

When leaving residence or other premises, abuser has the right to take with him necessary personal belongings and possessions and must hand over to police officer his key to residence or other premises.

Police officer encloses the written order from para. 2 of this article to the official report on the incidence and immediately, within maximum 12 hours, notifies of the incidence a misdemeanour body and social work centre.

A detailed description of the content and layout of the form for the written order from para. 2 of this article is to be set by the ministry in charge of internal affairs.

Grant of order of protection before and during the proceeding

Article 29

If a misdemeanour body finds it necessary to immediately protect victim, it may grant an order of protection before and during the proceeding, within maximum 48 hours of the receipt of petition.

A misdemeanour body may request assistance from social work centres or other social and child care institution in collecting evidence and presenting the opinion on the purpose of the order sought.

If the petition is filed before the proceeding starts and the petitioner does not file application to initiate the proceeding within five days, the misdemeanour body shall suspend the order of protection granted.

The misdemeanour body shall warn the petitioner of the consequences of his failing to file the application from para. 3 of this article.

Appeal

Article 30

The decision to grant an order of protection is subject to appeal within three days of its service.

The appeal is subject to the decision of the second instance body within three days of receipt of appeal.

The appeal shall not stay the enforcement of decision granting an order of protection.

*Extension, expiry and replacement of an order of protection
granted before and during the proceeding*

Article 31

An order of protection granted before and during the proceeding may last for as long as the reasons for which it was granted are present, limited by the end of proceeding.

Before the proceeding ends, a misdemeanour body may replace the order of protection granted before and during the proceeding with another order of protection.

Duty to comply with order of protection

Article 32

Abuser must comply with the order of protection issued.

A person who is informed during discharge of his affairs that abuser does not comply with the order of protection must notify of that a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor.

Enforcement of order

Article 33

The decision granting an order of protection must be immediately served by a misdemeanour body to the body or institution in charge of enforcement, within maximum three days of the delivery of decision.

The decision granting the order of protection from articles 21, 22 and 23 of this act shall be furnished to the police for enforcement.

The decision granting the order of protection from article 24 and 25 of this act shall be furnished to the body or institution in charge of enforcing orders in accordance with the law governing treatment and rehabilitation of addicts to psychoactive substances (alcoholics and drug addicts) and persons with other behavioural disorders.

More detailed description of enforcement of the decision granting the order of protection from articles 21, 22 and 23 of this act shall be set by the ministry in charge of internal affairs, while more detailed description of enforcement of the decision granting the order of protection from articles 24 and 25 of this act shall be set by the ministry in charge of health care.

*Service of decision and the register***Article 34**

The decision granting an order of protection must be furnished to the social work centre on whose territory victim and abuser reside, either permanently or temporarily.

The register of reported incidences of violence, victims, abusers, orders of protection granted as well as of other protection and assistance measures is maintained by the bodies and institutions from article 5, para. 1 of this act, in line with their respective powers, and deliver it to the ministry competent for human and minority rights protection

*Application of other laws***Article 35**

The procedure by which orders of protection are granted and enforced is subject to provisions of the law governing police, misdemeanour procedure, criminal procedure, criminal sanctions and their implementation and enforcement, unless otherwise provided for by this act.

III PENALTY PROVISIONS

Misdemeanour liability of a family member

Article 36

A fine amounting to minimum three-fold minimum salary in Montenegro or a prison term of minimum ten days shall be imposed on abuser if he does any of the following:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;
- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or makes an attempt to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with (article 8, para.1).

A fine of minimum five-fold minimum salary in Montenegro or a prison term of minimum twenty days shall be imposed for the offence on an adult family member who commits violence from para. 1 of this act in the presence of a minor child.

A fine of minimum ten-fold minimum salary in Montenegro or a prison term of minimum thirty days shall be imposed for the offence on a family member who commits violence from para. 1 of this act and victim is a minor child.

A fine of minimum twenty-fold minimum salary in Montenegro or a prison term of minimum sixty days shall be imposed for the offence on a family member who fails to report (hides) family member with special needs (article 8, para.1).

Misdemeanour liability for neglect

Article 37

A fine of minimum five-fold minimum salary in Montenegro or a prison term of minimum ten days shall be imposed on abuser who does not take sufficient action

to provide the following:

- 1) food, personal hygiene, clothing, medical care or ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglects his duties concerning child development and education (Article 8, paragraph 2, subparagraph 1);
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself (Article 8, paragraph 2, subparagraph 2).

Liability for violation of order

Article 38

A fine of minimum fifteen-fold minimum salary in Montenegro or a prison term for minimum forty days shall be imposed on abuser for violation of the police order to leave place or the order prohibiting return to place of residence or other premises (article 28, paras. 1 and 2).

Misdemeanour liability of a third person

Article 39

A fine ranging from two-fold to ten-fold minimum salary in Montenegro shall be imposed on:

- 1) the head of a state administration body, other body, a health care and social care institution, teacher, pre-school teacher and other person for not reporting to the police an incidence of violence he learns of in the discharge of his affairs (article 9, para. 2);
- 2) a person who is informed in the discharge of his affairs that the abuser does not comply with the order of protection issued but does not report this to a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor (article 32, para. 2).

IV TRANSITIONAL AND FINAL PROVISIONS

Adoption of secondary legislation

Article 40

Secondary legislation governing implementation of this act shall be adopted within six months of the effective date of this act.

Effective date

Article 41

This act shall take effect on the eighth date after its publication in the “Official Gazette of Montenegro”.

APPENDIX B. PROTOCOL ON ACTIONS, PREVENTION OF AND PROTECTION AGAINST FAMILY VIOLENCE

PROTOCOL ON ACTIONS, PREVENTION OF AND PROTECTION AGAINST FAMILY VIOLENCE

- Procedures and institutional cooperation regarding family violence and violence against women -

Note

Within the Gender Equality Program of IPA 2010, implemented in partnership between the Ministry for Human and Minority Rights of Montenegro, UNDP and the EU Delegation to Montenegro, a workshop was organized in Becici, on 28-30 September 2011. The workshop was attended by the representatives of the Montenegrin institutions involved in prevention of violence and assistance to victims, including line ministries, representatives of the centers for social work, judicial authorities, the police and the Misdemeanor Court. Besides, the workshop was also attended by the non-governmental organizations Shelter for Women (Sigurna zenska kuca), SOS Podgorica, SOS Niksic and UNICEF and UNHCR representatives.

The goal of this workshop was to define principles and manner of work of the individual institutions and to discuss the various aspects of cross-sector cooperation. The workshop was managed by Branka Zigante-Zivkovic, judge of the High Misdemeanor Court of Croatia, as a consultant of the UNDP Office in Podgorica.

Based on the discussion, Ms. Zigante-Zivkovic prepared the first draft of the protocol, while the UNICEF Office in Podgorica hired Ivana Stevanovic PhD, President of the Center for Rights of Children in Belgrade, to write the draft version of Part III related to children.

After the period of one month of harmonization of the text, where all the relevant institutions were involved, the Protocol was officially signed on 25 November.

The Gender Equality Team of IPA 2010 extends its gratitude to all the participants in this process who have given their contribution to making the text of the Protocol clear, understandable and compatible with the existing legal and strategic framework. Besides, the Team is pleased with the fact that during the work on this Protocol, good climate was created for implementation of the Protocol in the spirit of good inter-institutional and cross-sector cooperation, as a necessary prerequisite for efficient prevention and protection of victims of family violence and violence against women.

In Podgorica, 25 November 2011.

I INTRODUCTION

With the adoption of the Law on protection against family violence (OGMNE 46/10), and the Strategy for protection against family violence that was derived from that Law for the period 2012-2015, the duty to write the Protocol on actions, prevention of and protection against family violence was prescribed.

The aim of this Protocol is to establish and encourage establishment of multi-disciplinary cooperation with clearly defined procedures to be followed by each system.

The Protocol was designed so as to observe the basic principles derived from all the conventions and laws mentioned in the Strategy for the protection against family violence and it relates to comprehensive protection of the family against violence.

The Protocol regulates joint work of all systems in the implementation of the laws and conventions, as well as the obligation to undertake necessary measures to ensure good organization, preparedness and education of a sufficient number of specialized experts dealing with family violence issues.

Family violence is defined in the provisions of the Criminal Code (CC) and the provisions of the Law on protection against family violence (LPAFV). The Law also defines the persons that constitute a family as an object of protection.

Chapter 19 of the Criminal Code prescribes criminal offenses against marriage and family, and Article 220 defines the criminal offense of violence in the family or in the family community.

“Violence in a family or a family community”

Article 220

(1) *Anyone who by use of serious violence endangers physical or mental integrity of a member of his family or family community shall be sentenced to a fine or imprisonment not exceeding one year.*

(2) *If for the commission of an act referred to in Paragraph 1 of this Article any weapons, dangerous tools or other means for inflicting heavy bodily injuries or for seriously impairing health are used, the perpetrator shall be sentenced to imprisonment of three months to three years.*

(3) *If, due to acts referred to in Paragraphs 1 and 2 of this Article, heavy bodily injury is inflicted or health is seriously impaired or if such acts have been done to a minor, the perpetrator shall be sentenced to imprisonment of one to five years.*

(4) *If by acts referred to in Paragraphs 1, 2 and 3 of this Article, a death of a member of a family or a family community has been caused, the perpetrator shall be sentenced to imprisonment of three to twelve years.*

(5) *Persons violating the measures of protection against family violence stipulated by the court or some other state authority based on the law shall be sentenced to a fine or imprisonment of up to six months.”*

Chapter 13 of the Criminal Code defines the meaning of terms used in the Code, thus, Item 28 stipulates as follows:

A family or a family community/ unit shall also mean former marital partners, blood relatives and relatives through full adoption in the direct line without restrictions, and their relatives up to the fourth degree inclusive of a collateral line, relatives through open adoption, relatives through marriage up to the second degree inclusive, persons living in the same family household and persons who have a child together or the child who is about to be born although they have never lived in the same family household.

The Law on the protection against family violence stipulates the forms of violence in Article 8.

Forms of Violence

Article 8

Specially considered as constituting a violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be any of the following acts whereby a family member:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;
- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or attempts to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with.

Also considered as constituting violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be insufficient care by a family member to provide any of the following:

- 1) food, personal hygiene, clothing, medical care or to ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglect his duties concerning child development and education;
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself.

Considered as constituting major form of domestic violence shall be failure to report (hiding) family member with special needs.

Article 3 of LPAFV defines who the family members are.

Family members

Article 3

Family members, as used in this act, shall mean any of the following:

- 1) spouses or former spouses, children they have in common, and their stepchildren;
- 2) consensual partners or former consensual partners irrespective of the duration of consensual union, children they have in common, and their stepchildren;
- 3) persons related by consanguinity and relatives by full adoption, in the direct line of descent with no limitation and in collateral line of descent up to the fourth degree;
- 4) relatives by incomplete adoption;
- 5) relatives on the side of wife/consensual partner up to the second degree in a married or consensual union;

- 6) persons sharing the same household irrespective of the nature of their relationship;
- 7) persons who have a child in common or who have conceived a child.

Article 6 of the Law emphasizes urgency of the procedure, with special emphasis on the protection of interests and wellbeing of the victim of violence.

LPAFV prescribes the duty of the state authorities, other authorities, health, educational and other institutions to report violence to the police, if, in the discharge of their regular duties i.e. conduct of their activities, they suspect that violence has been exerted.

Duty to report violence

Article 9

"A state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities.

Responsible person in the agency or institution from Paragraph 1 of this Article, as well as the health and social workers, teachers, caregivers and other persons who learn of violence in the discharge of their affairs shall report that violence to the police.

A misdemeanor authority and the police are obliged to inform the center for social work about the reported violence."

II ACTIONS TO BE TAKEN BY THE RESPONSIBLE INSTITUTIONS

Police

Police authority is derived from Article 6 of the Law on Police which states that the police shall undertake measures that are necessary for the protection of lives and health of the people, as well as from other applicable laws (CC, CPC, LP).

Police officer is obliged to register the denunciation regarding family violence that can be expressed verbally (directly, via telephone), written or anonymous; the police officer is also obliged to write minutes about the registered denunciation, making sure not to victimize the victim of violence when registering the denunciation by asking unnecessary questions.

In case of (denunciation) learning of family violence, police officer is obliged to act as follows:

1. To send urgently and without delay minimum two police officers to the actual scene, preferably a male-female couple of officers, in order to check the quotes from denunciation;
2. Policy authority is used commensurate to the need to protect the victim of violence, in order to ensure immediate protection and provision of all forms of protection, and to prevent the abuser from further violent behavior in the family. It is necessary to:
 - a. Determine where the abuser is;

- b. When entering the apartment and other premises, to take the position that prevents contact between the victim of violence and the abuser;
 - c. To secure the scene of the offense;
 - d. Keep the abuser under constant supervision;
 - e. Establish identity of all persons found in the scene of the offense;
 - f. Obtain personal data about the abuser in accordance with the use of police authority;
 - g. Inform the abuser about his/her rights.
- 3. If necessary, arrest the abuser;
- 4. Draft minutes from the investigation at the scene of the offense, with photo documentation – photo elaboration (premises, furniture and other items, state of the victim...);
- 5. Establish circumstances of possible possession of weapons;
- 6. In case of learning of the legal or illegal possession of weapons, take all the legal actions to seize it;
- 7. It is compulsory to contact the state prosecutor, in order to have him/her guide/direct the procedure (criminal or misdemeanor procedure);
- 8. According to the instructions from the prosecutor, bring the abuser before the state prosecutor, according to the applicable legal regulations (Criminal Code and Criminal Procedure Code);
- 9. Write official minutes about the contact with the state prosecutor;
- 10. When interviewing the victim, the abuser must not be present in the same room;
- 11. Engage in an undisturbed interview with the victim in a separate room, starting the conversation with the question: "What happened?", and obtain necessary data on the possible need to ensure medical assistance;
- 12. While interviewing the victim of violence, establish important circumstances regarding the duration, continuity, behavior of the perpetrator and possible violence exerted in the past;
- 13. Inform the victim about his/her rights (to choose a confident, free legal aid, shelter...);
- 14. Inform the victim about the possibility to go to the shelter, and if necessary, take the victim to the shelter and simply inform the relevant institutions about that fact, without revealing that information to the abuser or other family members;
- 15. If necessary, and based on the wish of the victim of violence, assist the victim and escort him/her to a safe place chosen by the victim;
- 16. Pay special attention to children or treatment of minors and always call the center for social work;
- 17. Write a report for the centers for social work about all the actions taken and the established situation in the family, in order to take measures of family-law protection;
- 18. To contact without delay center for social work in case of need to take care of the child, and especially if it is necessary to take care of the child with special needs;
- 19. In case when the responsible institutions (police and court) apply measures of protection, draft a safety plan for the victim of violence and inform the victim about the protective measure of being moved away or the measure of prohibiting the abuser from approaching the victim, as well as the facts about what is

- considered harassment, and the phone number of the police officer in charge of implementing the pronounced measure;
20. Police officer enters the notes regarding measures taken into the operational system;
 21. Submit to the responsible court a motion to initiate misdemeanor proceedings based on the violation of the Law on Protection Against Family Violence;
 22. In the motion for initiation of the misdemeanor proceedings, propose adequate sanction, provide all the available evidence, with a detailed description of facts regarding the offense, containing the important elements of the misdemeanor offense, especially with regard to the very act of violence;
 23. In case of pronounced protective measures within the responsibility of the police, draft a safety plan with the victim, and provide the victim with all the telephone numbers of the different assistance services;
 24. Pay regular control visits to the family within six month period, and if necessary, even longer;
 25. Prepare a risk analysis for the abuser;
 26. Keep all the reports about measures taken as a special record/ file.

Centers for Social Work

When the professional from the Center for Social Work, in the course of his/her work, learns from any person or in any way of the family violence, he/she will report to the police without delay the suspicion that violence has been exerted.

1. Immediately and without delay contact the victim of violence when the information about violence was provided from other institutions.
2. Write official minutes about the information obtained regarding family violence and the specific case.
3. Official minutes should contain data about victims of violence, existence of possible earlier reports, manner in which violence was exerted and all other available information and reports regarding cases of violence and the abuser.
4. In case of family violence, write official notes, report or minutes about each action taken.
5. Urgently establish a file for the specific case.
6. Inform the victim about his/her rights and ways to exercise rights (responsibility/jurisdiction and actions taken by the centers for social work, together with measures and actions that the centers will take in the future in order to ensure safety and security of the victim and children).
7. Pay special attention to the cases of family violence in which the victim is a child.
8. In cases related to family violence to the detriment of children, guided by the principle of the best interest of the child, analyze carefully whether the rights and interests of the child are fully protected, and if not, appoint a special guardian to the child for all the relevant procedures.
9. With special attention and care enable the victim to present all the facts regarding the family situation and violence (duration, form of violence, children...).

10. Establish and maintain contact with the educational institutions in case of violence against children.
11. Establish contacts with the health institutions in case of family violence.
12. If necessary, when called by the police, come to the family and provide necessary assistance to the victims of violence.
13. Prepare the risk assessment.
14. Prepare an individual protection plan for the victim.
15. Monitor implementation of the safety plan.
16. If the victim is asking for accommodation away from the family, establish cooperation with the shelter or an NGO offering accommodation to victims.
17. When necessary, change and adapt safety plans for the protection of victims.
18. Prepare the victim for the court.
19. If necessary, escort the victim to the court.
20. Draft special plans for children (safety, school, doctors...).
21. Enable the police and the prosecution to get insight into the situation and submit all documents with information about family violence.
22. Participate in court proceedings, not only when summoned, but also in cases when the center assesses the risk.
23. Provide for contacts between children and the abusers in controlled environment.
24. Contact the family in regular time intervals (every month, continuously throughout one year from the date of learning of the violence).
25. If possible, appoint a person to manage the case that the victim will always contact (case manager).
26. Case manager informs the team about all information regarding the case and manages and monitors the pace of the procedure.
27. In agreement with the health services and educational and upbringing institutions, develop a Support plan for the child – victim of violence.
28. In cooperation with the health services and educational and upbringing institutions, provide support to the child – victim of violence based on the Support Plan.

Health Sector

1. Report suspicion of violence to the police without delay.
2. Fill out the prescribed form about possible physical injuries and about the abuser.
3. Provide the victim of violence with the list of injuries, ex officio, free of charge.
4. Talk to the victim of violence with special care and refer the victim to the center for social work, and inform the support centers and the secondary health protection level about the situation.
5. In case of suspecting any form of violence, write such suspicions into the health record and issue medical documents with the facts that were obtained and established through the medical examination to the victim, free of charge.
6. Always provide insight into the documentation and all the available data relevant for evidencing the offense to the responsible authorities.

7. In case of suspecting that violence was exerted by a person with mental disorder, refer the person to medical treatment, according to Article 33 of the Law on Protection and Exercise of Rights of Persons with Mental Disorder, which defines the obligation to put that person into controlled environment.
8. Inform the center for social work and the police about actions taken, and before releasing the person from the health institution inform the victim about that fact.
9. In case of arrival of the victim of violence to the emergency room, pay special attention to injuries and the overall health state of the patient that could indicate family violence.
10. In cooperation with the social services and educational and upbringing institutions, develop Support plan for the child – victim of violence.
11. In cooperation with the social services and educational and upbringing institutions, provide support to the child – victim of violence based on the Support plan.

Judiciary

1. Urgent action and decision making.
2. In case of instigating a misdemeanor or criminal proceedings, if the victim of violence is a child, inform the responsible centers for social work.
3. Provide security measures for the victim of violence when entering the court.
4. Secure a special room for the victim of violence to wait for giving a statement (physically separate the victim from the abuser).
5. Inform the victim about his/her rights.
6. When necessary, engage the center for social work in the case, summon the case manager as witness or, if necessary, call the center for social work to protect the victim of violence.

All institutions

All authorities covered by the Protocol are obliged to establish files of the cases according to the rules of their profession and provide them for insight, when necessary, to other authorities, with the obligation to keep all data confidential.

All authorities are obliged to appoint a person in charge of implementing the protocol in all institutions and inform all other institutions about that person and his/her contacts.

It is the duty of all state authorities and other bodies to post in visible place and make the Protocol on treatment of victims of family violence accessible to all.

Measures stipulated in the Strategy of protection against family violence 2011-2015, as well as implementation of the Protocol, establishment and actions of the multi-disciplinary teams require urgent establishment of cooperation between all actors in the protection of victims of family violence, whereas special attention should be given to children, and the fact that these obligations are derived from the signed and ratified international conventions.

Duties of the relevant authorities are not derived from the written documents only, but from the fact that incidence of family violence is increasing, early detection and

prevention of violence and protection of persons exposed to violence represent a priority goal of each and every democratic society. Establishment of cooperation among institutions must be based on mutual trust and realization of a common goal.

III ACTIONS TO BE TAKEN BY THE RESPONSIBLE INSTITUTIONS WHEN CHILDREN ARE INVOLVED IN CASES OF FAMILY VIOLENCE

Police

1. Pay special attention if a child is a direct victim of family violence or the witness of such violence.
2. In these situations, always invite representatives of the Center for Social Work and inform them about the reported violence, for the purpose of taking measures of social and family law protection of the child that falls within the responsibility of the social welfare system.
3. Introduce yourself to the child and explain why the police is there and what it intends to do.
4. Whether the child appears as a direct or indirect victim of family violence, explain to the child that you are there to assist it and its parents.
5. Establish whether the child feels responsible or guilty for what happened, irrespective of whether it appears as an indirect or direct victim of family violence. Give it support and ensure it that it is not its fault at all.
6. Do not insist on certain information. Have in mind that the child is scared and feels uncomfortable talking about certain events.
7. Document – describe any sign of injury/ injuries found on the child and ensure provision of urgent medical assistance if necessary.
8. Explain to the child that the police sometimes has to take one of the parents (or some other family member or member of the family community), that this person will be at a safe place and that this will help other family members.
9. Statement may be taken from the child by a trained police officer only, wearing civilian clothes, in the presence of a confident person chosen by the child – confident person can never be the abuser, even when the child chooses that person. A psychologist must be present at the time of taking a statement from the child.
10. If you are taking a statement from the child in a police station, it is of utmost importance to ensure that the room where the interview is taking place is adapted to needs of the child – ensure a special room where no one will disturb or interrupt the interview, which is equipped with adequate furniture, posters, and toys.
11. Provide conditions to the child that permit the use of various ways of expression (adequate toys, color pens, paper, play dough...).

Centers for Social Work

1. In case of learning/ suspicion that violence has taken place in the family, in which the child was a victim (direct or indirect), a professional from the center for social work must urgently and without delay report the case to the police.
2. Urgently define the plan of assistance and measure for protection of the child victim of family violence – in each concrete case be guided by the principle of the best interest of the child.
3. Appoint a guardian to the child if the parents are not able to play their role or there is a conflict of interest of the parents and the child (special guardian).
4. Decide on displacing the child from the family only in exceptional cases, that is, only in cases when it is not possible to find some other safe place for the child – victim of family violence.
5. Look into the possibility to provide adequate placement in a foster family if it is assessed that this is necessary and the only proper solution for the child victim.
6. Continuously monitor the case and minimum once a month visit the family where the child – victim of family violence is situated.
7. Establish and continuously maintain contacts with the experts from health and educational institutions (pre-school, primary school and high school institutions) in case when the child is the victim of violence (direct or indirect).
8. Instigate a civil procedure before the responsible court.
9. Center for social work initiates and together with the representatives of the state and the NGO sector forms an expert team¹, with the task to do the following:
 - **Define the plan of assistance;**
 - **Measure for protection of the child –victim of family violence;**
 - **Coordination of activities in the process of protection.**
10. Appoint a professional from the Center for Social Work as a coordinator of the expert team.
11. Define the authority and manner of work of the expert team for the purpose of:
 - Obtaining relevant data regarding the case;
 - Assessing the level of risk (using the Risk assessment matrix);
 - Initiate the procedures that are important for protection of the child;
 - Ensure implementation of the procedure for child protection;
 - Provide professional assistance to the child – victim of family violence and assistance to the overall family, especially if there are more children in the family
 - Prevent the possibility of secondary victimization of the child during the implementation of the protective measures (in order to reduce secondary victimization of the child: A. limit the number of interviews with the child - to minimum two; and B. whenever possible, use modern technical aid to take a statement – two-sided mirrors and audio and video techniques to record the statement of the child and its later use in court, in order to avoid exposing the child to new traumatic experiences);

1 Proposal: “Procedures of work of the expert team when the child is a victim of family violence” is given in a separate Annex at the end of the text, in accordance with the Law on Protection Against Family Violence (Art. 11) and other relevant normative framework in Montenegro.

- Keeping record of all activities related to implementation of protective measures;
 - Establishment of an electronic database.
12. Center for social work will submit to the ministry responsible for social welfare affairs an integrated written report on the protection of the rights of the child – victim of family violence and the degree of provision of social protection of that child, minimum twice a year.

Judiciary

1. Special urgency in processing cases and decision-making.
2. A child always gives its statement in the presence of a confident person that it chooses itself, by rule, or the confident person is appointed by the authorized person, in order to protect its best interest. A psychologist must be present when the child is giving the statement.
3. Child as a victim of family violence has the right to free legal aid – inform the child and its legal representative about that fact.
4. Whenever possible, take the statement from the child, especially the child below 14 years of age, outside the premises of the judicial authorities, in an environment that is natural for the child.
5. Whenever possible, use special techniques to take statements (joint interview), that is, take a statement using an audio and video link.
6. If the statement of the child – victim of family violence is taken in the premises of the judicial authorities, the child must overcome the unease/ fear by having the prosecutor, judge or a professional introduce it to the environment, show the building, give juice or chocolate, some appropriate to, in order for the child to feel safe there.
7. In the prosecutor's office and the court prevent the contact between the child – victim of violence that will give the statement and the abuser – provide a special room where the child will feel safe.
8. Invite the case manager from the Center for Social Work, hear him/her as a witness if there are grounds for it, ask him/her to provide social/ psychological expert opinion about the psycho-social status of the child², consequences of violence, that is, whether the child is capable to give a statement, based on its current psycho-physical state.

2 Important facts that must be established by the court through the guardianship authority are as follows:

- Is the child endangered (independently from whether the abuse or negligence are the result of family violence, unfavourable health, social or economic status of the family or other circumstances that obstruct its proper development);
- What are the risks for the child that can be identified in the stage of initial assessment?
- What are the measures that can be used to protect the child within the family?
- Are there grounds for a reasonable doubt that there is a serious danger of harming the health state or further development of the child?

9. Introduce oneself to the child and explain in the manner the child can understand what is about to happen, what the child is expected to do and make sure to check whether the child understands it all.
10. Taking the statement from the child must be adapted to its age and its personal characteristics – vocabulary must be adapted to the age of the child, so that it can understand it properly, and the tone used, as well, so that the authorized person uses continuously moderate voice to calm down and encourage the child to explain the event or events that have occurred and that are especially traumatic for the child.
11. Prosecutor, judge or a professional should simultaneously pay attention to the child's behavior (face expression, movements, anxiety, whether the child is expressing fear) and to adapt the process of taking statement to the reactions they notice.
12. The child must be informed about the fact that it does not have to answer all the questions if it does not want to.
13. Taking the statement from the child starts with general questions, with a mandatory question of whether the child understood the question, and after that the questions regarding concrete facts can be posed.
14. Do not confront the child – victim of family violence with the abuser.
15. If the child victim is identifying the abuser, the prosecution and the court will take special care and ensure that the method used is the one that completely prevents the abuser from seeing the child.
16. When the statement is taken from the child, ask the child if it wants to say something else or to add something.
17. Protect the child from possible media abuse, that is, prevent publication of information based on which the child – victim of family violence could be identified.

Health Sector

1. Identify and urgently report to the police facts (medical indications) that lead to the suspicion that the child was exposed to family violence.
2. Provide urgent medical assistance to the child if necessary.
3. Inform representatives of the Center for Social Work about facts that lead to the suspicion that the child was exposed to family violence.
4. Provide the responsible authorities (Center for Social Work, police, prosecution, court) with insight into medical documentation and support them in collecting all the relevant data.
5. At the invitation of the court, give an expert analysis and report regarding the following:
 - Medical indications, that is, symptoms of violence against the child
 - Connection between the symptoms of violence and behavior of person suspected to be the abuser
 - Psychiatric status of the abuser

- Ability of the child to be a witness in the proceedings, that is, risks of taking the stand and the most suitable ways to take the statement from the child
- 6. Participate, together with other authorized actors, in the work of the expert team, in order to define the plan for assisting the child – victim of family violence and in the coordination of activities in the process of provision of assistance.
- 7. Together with the representatives of the educational system, social welfare system, police and NGO sector, participate in the development and implementation of preventive programs for children, for the purpose of their empowerment to recognize and report this form of violence (whether they are direct victims, witnesses or have some other information about the event).

Pre-school, primary school and high school institutions

1. In case of suspecting violence in the institution, IMMEDIATELY take professional measures, in accordance with the ethics and the profession.
2. Secretariat of the institution interviews the child in the manner that is compatible with the ethics and methods of the profession.
3. Member of the secretariat prepares a report about the actions taken.
4. In case of suspecting violence, management of the institutions reports the case to the police IMMEDIATELY.
5. In case of suspecting violence, management of the institution informs the center for social work in writing.
6. In all institutions there is a box called “ALL MY PROBLEMS” that is posted in the place accessible to children.
7. Secretariat of the institution checks the box and its contents daily and, as a first step, drafts an official note about the discovered violence.
8. Afterwards, member of the secretariat of the institution invites the child for an interview, in the manner compatible with the ethics and methods of the profession.
9. Write an official note about the interview.
10. In case of noting especially severe cases, the management of the institution invites immediately the health service and/or the doctor.
11. In all interventions, representative of the institution is present with the child.
12. Draft official minutes about all the activities.
13. Provide insight into the official notes/ minutes to the other institutions.
14. In agreement with the social and health services, develop a Support Plan for the child victim of violence
15. Support plan in the institution should contain psycho-social support measures and measures for improvement of educational and upbringing achievement (additional lectures, individual work, etc.).
16. Implement measures contained in the Support plan for the child – victim of violence.
17. Monitor child's behavior over a longer period of time, based on the Support plan. Initiate and together with representatives of the police, the health system, social welfare system and NGO sector, participate in the creation and implementation of

the preventive programs for children in pre-school, primary or high school environment, for the purpose of their empowerment to identify and report this form of violence.

ANNEX
PROPOSAL OF “PROCEDURES FOR WORK OF THE EXPERT TEAM”

- 1. Detecting the case of abuse of the child in the family**
- 2. Recording denunciation/ report about the case**
 - Each denunciation is checked.
 - Social worker in the team is in charge of recording denunciation.
 - Decide on whether to investigate further the reported case (decision on further investigation of the case is made based on the defined indicators in the risk assessment matrix)
 - Drafting the report
- 3. Initial assessment**
 - Establish contact with the child and the family.
 - Determine concrete facts
 - Analyze needs of the child and plan measures in accordance with those needs
 - Enable child participation and consult the opinion of the child in accordance with the development of the child and the possibility to understand meaning of the procedure
 - Create individual support plan for each child
 - Appoint guardian for the child if the parents are not able to play this role or there is a conflict of interest between the parents and the child
 - Assess how harmful is the environment for the child and other children in the family
 - Assess the risk of future abuse of the child
 - Define the scope and types of urgent measures that need to be undertaken
 - Identify measures and services that can be provided for the protection of the child within the family
 - Provide for displacement of the abuser from the family or the surroundings of the child
 - Decide on displacing the child from the family only in exceptional cases, that is, only in cases when it is not possible to find some other safe place for the child
 - Visit the families minimum once a month
 - Find adequate placement in a foster family if this is assessed to be necessary and the only adequate solution for the child –victim
4. Instigate the court proceedings.
5. Provide feedback to parents and other responsible individuals and institutions (doctors, teachers, judges...) about the implementation of protective measures.
- 4. Planning the measures of protection and monitoring their implementation**

- Define the scope and types of existing measures that can be used to protect the child
- Analyze family strengths and needs.
- If the child was assigned placement outside the family, determine the deadline for deciding on the permanent solution for the child
- If the abuser was placed in an institution or is outside the current surroundings of the child, monitor the pace of procedures used to secure the abuser
- Check which services, how and for how long and how often can assist in the protection of the child
- Continuously monitor implementation of the individual plan of protection.
- Defines dates for reviewing the case
- Continue with control of security of the child
- Monitor implementation of measures of protection, in cooperation with the relevant services and the court (if it is involved).
- Monitor quality of measure f protection based on the extent in which the child has accepted them and the overall psychological and physical state of the child
- Determine possible new measures and instructions.

5. Closing the case

- Analyze the implemented measure of protection and their results (together with the family)
- Assess further existence/ non-existence of risk for the child
- Define measures that should be undertaken if it proves necessary to ensure further protection of the child
- Decide whether to close the case
- Send this decision to all the relevant services and individuals (e.g. school, teachers, doctors in health institutions, etc.)
- Document/ justify closing of the case

6. Team administration of the case

Each case has its file that contains the following:

- Denunciation of the case
- Questionnaire
- Social anamnesis (form)
- Risk assessment matrix
- All written forms of documents that the expert team uses to address institutions and individuals for the purpose of implementation and monitoring of protection measures
- Documents on defined protection measures
- Report on closing the case.

7. Communication that the team is engaged in

- Expert team holds group meetings (weekly)
- Each team member participate in work on equal footing
- The team has continuous contacts with the director of the center for social work
- The team has occasional communication with the supervisor and other relevant experts that can affect professional upgrade of the team
- The team adopts conclusions in written form after each meeting and enters all data regarding each processed case into an individual card/ file of the child
- There is a clear assignment of tasks in the team when it comes to implementation of protective measures in a concrete case
- The team observes general rules regarding communication in a group.

8. Plan of other activities of the expert team

- Continuously build the capacities of the team (continuously acquire new knowledge, supervision)
- Exchange information with institutions of the system and the NGOs (meetings, Q&A meetings)
- Strengthen the multi-sector approach in work through the improved cooperation with the relevant actors that work on implementing measures for protection of rights of the child – victim of family violence
- Work on networking among expert teams and their mutual communication
- Plan and implement annual work evaluation for the team members that will be undertaken by an independent expert or a team of experts
- Draft the time schedule for implementation of activities for the future period.

9. Reporting on the work of the team

The team is obliged to report to the ministry responsible for social welfare about the following:

- Ending the case (closing the case)
- Continuation of work and the new plan of activities in each individual case

10. Contact with the public – in all cases the expert team:

- Protects primarily the best interest of the child – the public should not be able to access data that could result in revealing identity of the child – victim or witness of family violence
- Agrees on when and what type of information should be presented to the public
- Decides on the type, manner and time of informing the public
- In the defined time intervals, it informs the public about statistics regarding incidence of family violence, that is, the number of cases in which children appear as victims of family violence.

IV CROSS-SECTOR COOPERATION

Efficient protection against family violence represents a complex and long-term task and in order to implement it, it is necessary to engage all segments of the society, not only through the inter-ministerial, but also through cross-sector cooperation.

The civil sector, especially the non-governmental organizations, should be recognized as a partner in the exercise of the right to life without violence. NGOs have many years of experience in raising the public awareness about the issues of violence, provision of assistance to victims and taking care of them. NGOs represent an important resource that the institutions must identify, use strategically and develop concrete plans of cooperation with them.

Legal basis for cooperation between institutions and NGOs in the area of family violence, as well as for the financing of NGO projects and programs from the public funds can be found in the Law on Protection against Family Violence and the Law on NGOs:

Excerpts from the Law on Protection against Family Violence

Institutions providing protection

Article 5

The public administration agency in charge of police affairs ('Police'), misdemeanour body, public prosecution service, social work centre or other social and child protection agency, health care institution, and other agency or institution acting as care provider, have the duty to provide victim with full and coordinated protection, within their respective powers and depending on the severity of violation. A non-governmental organization, other legal or natural person, may provide protection in accordance with the law. Bodies and institutions from Paragraph 1 of this article shall act in accordance with law in setting incidences of violence in the order of priority, and shall ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to victim in regaining security in life.

Victim assistance plan

Article 11

A social work center may set up an expert team composed of its representatives as well as representatives of local government bodies and service agencies, police, non-governmental organizations and experts for family issues. The team will design victim assistance plan and coordinate victim assistance activities, in accordance with victim's needs and choice.

Confidant

Article 16

Victim may select a person to attend all protection procedures and actions ('confidant'). Eligible to be confidant is a family member, a person from a body, institution, non-governmental organization or other legal person or other person that victim confides in. Abuser is not eligible to act as confidant.

Multidisciplinary team and principle of cooperation

Article 17

For the purpose of organizing, monitoring and promoting a coordinated and efficient protection, the body or institution from article 5, Para. 1 of this act may set up a team composed of experts in social and child care, health care, judiciary, police protection, human rights and freedoms, as well as representatives of non-governmental organizations dealing with protection.

Protection strategy

Article 18

Protection is provided in accordance with the strategy for protection from domestic violence ('strategy'), which includes:

- 1) situation analysis and identification of key problems in social care and other forms of care;
- 2) objectives and measures to be taken to promote social care and other forms of care, particularly in relation to the following: awareness raising among citizens of the phenomenon of violence and developing attitudes to violence as an unacceptable form of behavior; development of programs for the prevention of violence; family support in violence prevention; further development of the legislative framework for protection issues; strengthening cooperation among bodies, institutions, organizations and other legal and natural persons in charge of protection; developing new knowledge and skills in any person involved in protection; improvement of the system for data collection and analysis and of the system for reporting incidence of violence.

Activities for implementation of objectives and measures from Para. 1, subparagraph 2 of this article are to be set forth in the action plan for strategy implementation. The strategy and action plan for its implementation are adopted by the Government of Montenegro.

Excerpts from the Law on NGOs

Financial support from the budget

Article 32

In the annual Budget Law of Montenegro, funds are allocated for projects and programs deemed for public benefit, which are implemented by non-governmental organizations. The areas from Paragraph 1 of this Article are considered to be the following: social and medical care, poverty reduction, protection of persons with special needs, children, youth and elderly care, promotion and protection of human and minority rights, rule of law, support to civil society and volunteer activities, support to Euro-Atlantic and

European integration, institutional and informal education, science, art, culture and technical culture, environmental protection, agricultural and rural development, sustainable development, consumer protection, gender equality, addressing corruption and organized crime, prevention of drug addiction, as well as other areas deemed for public benefit that are defined in a special law.

A project, in the sense of this Law, represents a set of activities in the areas defined in Paragraph 2 of this Article that are implemented in the period not exceeding one year.

A program, in the sense of this Law, represents a long-term plan for development of an organization and implementation of activities in the areas defined in Paragraph 2 of this Article in the period not exceeding three years.

At the proposal of an advisory body established based on a Government act, at the end of the current year, the Government of Montenegro (hereinafter: "the Government"), in a special act, defines for the upcoming year priority areas deemed for public benefit from Paragraph 2 of this Article and the amount of funds for financing of projects and programs in those areas.

V SIGNATORIES OF THE PROTOCOL ON ACTIONS, PREVENTION OF AND PROTECTION AGAINST FAMILY VIOLENCE

Ministry of Justice _____

Supreme Court _____

Supreme State Prosecution _____

Ministry of Education and Sports _____

Ministry of Health

Ministry of Labor and Social Welfare

Police Directorate

Misdemeanor Council of Montenegro

APPENDIX C. COMMENTS BY THE ADVOCATES FOR HUMAN RIGHTS ON MONTENEGRO'S LAW ON DOMESTIC VIOLENCE PROTECTION

The Advocates for Human Rights congratulates Montenegro for taking the first difficult step of protecting its citizens from domestic violence by enacting the Law on Domestic Violence Protection (LDVP), which entered into force in 2010. In doing so, Montenegro took an important step toward fulfilling its obligations under CEDAW and other international treaties. These obligations include guaranteeing an individual's right to be free from violence and a state's responsibility to protect individuals not only from violations of their rights by government entities, but also against acts of violence committed by private entities.

The Advocates especially commends the government of Montenegro for including a removal from residence order and a restraining order (Articles 28 and 20) in the LDVP. The removal from residence and restraining orders, also known as protection orders, are among the best methods for keeping victims safe from domestic violence. The removal order, which requires the perpetrator to leave the home, is issued immediately by police and can remain in effect for three days (Article 28). The restraining order provides for important restrictions on the perpetrator's actions (Article 20). The LDVP also allows the order to take effect while it is being appealed (Article 30). It creates an inter-agency response team where the plans and activities for victim assistance are designed in accordance with the victim's needs and choices (Article 11). Importantly, non-governmental organizations, who likely have the greatest level of experience and knowledge about victims, are designated as a part of this team (Article 11). Another important provision allows the victim to have a confidant at all proceedings (Article 16).

The LDVP establishes a team of experts to monitor and promote a coordinated interagency response (Article 17) and outlines a comprehensive strategy and plan for implementation (Article 18). These are key measures for the success of the LDVP.

Despite these commendable provisions, the LDVP and other provisions of Montenegrin law can be strengthened to achieve the goals of any domestic violence law – promoting victim safety and achieving offender accountability. Montenegrin law should address these goals in several ways. At a minimum, it should undertake the following improvements:

Civil:

- The law should explicitly recognize that a victim's statement is sufficient evidence for initial issuance of an order for protection before or during the proceedings (emergency order for protection), with the opportunity for a hearing and further evidence at the request of either party.
- The law should provide for sufficient resources to prevent and combat domestic violence.

- Ideally, the law should provide for a civil (rather than misdemeanor) order for protection to ensure that both victims can gain protection and the state can prosecute offenders for domestic violence. In other words, both the civil and criminal systems should work in parallel to provide victim protection and offender accountability.

Criminal:

- The Criminal Code should include enhanced penalties for multiple violations of the barring order or the order for protection and for repeated assaults. Repeated low level assaults should result in serious felony level sanctions.
- The law should include clear language that obligates law enforcement and prosecutors to pursue domestic violence cases.
- Persons who are convicted of a violation of a restraining order or another criminal domestic violence-related offense should be prohibited from possessing a pistol or a firearm.
- The law should permit the court to order a restraining order for the duration of a criminal case at its own discretion or on request by the prosecutor if it determines that such an order is necessary for the safety of the victim or her children.
- The law grants wide discretion to the Ministry of the Interior to create detailed regulations for enforcing orders for protection. The ministry should review internal policies and procedures on crime victim assistance; arrest, detention, and release of those suspected of violating criminal laws; and standards for the admission of evidence in administrative, civil, and criminal proceedings, to ensure that all are consistent with best practices in domestic violence cases.

Specific Comments on the Law on Domestic Violence Protection

Article 2

The Advocates recommends that the government of Montenegro delete “**psychological**,” “**economic**” and “**mental health and peace**” from the forms of domestic violence. Including psychological and economic violence in the definition of domestic violence has in some cases had the unintended consequence of giving offenders the opportunity to counter-claim psychological or economic abuse against the victims of their abuse. For example, an offender may claim that physical violence is an appropriate response because his wife allegedly insulted him verbally. Or, an angry or disgruntled violent abuser may seek protective measures against his wife for using property owned by him. The result may be that the victim is arrested instead of or in addition to the offender. Legal system intervention is not appropriate or practical in all family disagreements or arguments.

Likewise, the terms “mental health and peace” may be used in the same manner by a violent offender in a counter-claim against the victim.

The Advocates recommends that the government of Montenegro instead incorporate a concept of **coercive control** (in addition to incidents and threats of physical or sexual violence) into the definition of “domestic violence.” Coercive control, for the purposes of this law, should be defined as “*an act or a pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is*

used to harm, punish, or frighten a victim. This control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.”

The Advocates welcomes the recognition of **sexual violence** as an important aspect of domestic violence, and commends the government of Montenegro for its inclusion in the law. We recommend the addition of the following language to this section: “*No marriage or other current or prior relationship should constitute a defense to a charge of sexual domestic violence under this legislation.*” Marital rape should also be defined as a crime within the definition of sexual assault in Montenegro’s criminal code.

We further recommend that the government of Montenegro add a definition of **physical violence** to clarify that it refers to physical harm, bodily injury or assault, or the infliction of fear of such harm. The definition of domestic violence should also include stalking and harassment.

Article 3

The Advocates recommends that Article 3(5) be amended to include the relatives on the side of the **husband/ex-husband/wife/consensual partner** up to the second degree in a married or consensual union. Many women are victims of domestic violence from the family of their husband.

Article 4

In addition to the rights listed here, a domestic violence victim should have the right to have the offender held accountable for acts of domestic violence. And, The Advocates recommends that this Article be amended as follows: “A victim of violence (‘victim’) has the right to psycho-social support, legal aid, social and medical care, free-of-charge, in accordance with law.

The law should mandate that systems actors, including Center for Social Welfare employees, police, and justice system officials, inform victims of domestic violence of their right to assistance and protection.

Although officials should have the authority to issue protective measures based on the application of a non-violent parent for themselves and on behalf of their child, The Advocates is concerned about provisions that specifically address minor children in Article 4 and Article 6. Domestic violence laws are not well-suited to address child abuse and neglect. Domestic violence laws are intended to provide an immediate remedy of separation and protection. Child abuse and neglect should be addressed as a separate law containing specifically tailored remedies for neglected or abused children and procedural protections for parents.

Article 5

The Advocates recommends that the words “...depending upon the severity of the violation’ be omitted. The police, prosecution, social and child care institutions, and health care institutions should provide the victim with full and coordinated protection in all situations of domestic violence. If law enforcement or support organizations deem an act of violence to be minor and do not offer aid to the victim, they

condone the violence, leave her vulnerable to progressively more severe violence, do not provide accountability for the offender, and make it unlikely that the victim will report further acts of violence.

The Advocates commends the government of Montenegro for recognizing the role of non-governmental organizations in combating domestic violence and providing protection for victims. The government should ensure sufficient funding for these organizations to be able to effectively carry out their role.

Article 8

The Advocates recommends that the government of Montenegro consider limiting the description of forms of violence to physical harm, bodily injury, and the fear of imminent danger for his/her own or for a third party's life or health. Including psychological violence, verbal attacks, and rude behavior in a law on domestic violence may provide an opportunity for perpetrators to counterclaim abuse against those towards whom they have been violent. These behaviors may be more effectively addressed by including language on coercive control, as described in the commentary on Article 2.

The provisions regarding insufficient care by a family member to a child or to a family member towards whom there is a duty to care, due to, for example, special needs, disability, or old age, should be addressed in a separate law containing specifically tailored remedies for neglected children and vulnerable adults, and procedural protection for parents and caregivers.

Article 9

This article requires state administrative agencies, health care providers, teachers, and others to report domestic violence to the police. The Advocates recommends that the law of Montenegro not require mandatory reporting except for cases where the victims are especially vulnerable, such as persons with intellectual disabilities, or minor children. Mandatory reporting may place a victim in great danger. In addition, the fear that a doctor or other service provider will report suspected domestic violence may discourage victims from seeking needed services. If a victim is unsure of the consequences of seeking medical help, for example, they may seek it only as a last resort. Instead, the law should direct these actors to provide information and referrals to victims should they choose to seek further assistance. The law should also require state actors to report in accordance with their obligations *when the victims provide informed consent*.

Article 10

The requirement that police, social work centres, and other institutions must immediately take action and provide protection and assistance to victims is an important part of a domestic violence law. This provision could be strengthened by clearly stating the obligations of each actor. For example, the police should be obligated to:

- Pursue all cases of domestic violence, including assaults that result in low-level injuries such as bruises, cuts, scrapes and burns;
- Respond promptly to such calls;
- Identify the predominant aggressor;

- Confiscate any weapons involved; and
- Perform the investigative process in compliance with best practice procedures, such as interviewing parties separately, recording the complaint, filing a police report, attempting to locate an offender who has fled the scene, and advising the victim of her rights.

Article 11

The Advocates commends the government of Montenegro for creating an interagency response where the plans and activities for victim assistance are designed in accordance with the victim's needs and choices. The government should continue to strive to strengthen interagency responses, following good practice models such as the Blueprint for Safety,¹⁴⁰⁰ to improve how agencies share information, ensure appropriate risk assessment at all stages, recognize and decrease unintended negative consequences on victims, and foster ways for agencies to work collectively to identify gaps and solutions to promote victim safety.

Article 13

The Advocates commends the government of Montenegro for giving the victim of domestic violence the right to free legal aid. The law should also require systems actors, including police and CSWs, to promptly inform victims of their right to free legal aid and how to access it.

Article 14

This article creates the assumption that the victim will, of necessity, leave her home. Giving the police the duty to accompany her with her permission will promote victim safety. However, in a domestic violence situation, it is unjust that a victim, and likely her children, should have to leave their home. Article 14 should be amended to require that the offender be ordered to leave the home, as in Article 28, enabling the victim and her children to remain there safely, regardless of ownership of the residence. Where a victim voluntarily chooses to leave her home, then police protection should be guaranteed as she removes her belongings.

Article 16

The Advocates commends the government of Montenegro for allowing the victim to have an advocate at all proceedings. Victim support is key to the success of a domestic violence law. The law should specify that confidants may be allowed to accompany domestic violence victims to all court proceedings, including divorce.

Article 17

The Advocates commends the government of Montenegro for establishing a team of experts to monitor and promote an interagency response. The law should require funding from the government to train these experts on best practices in coordinating the community response, on monitoring techniques, and on keeping statistics on all factors in domestic violence cases. See also the comments to Article 11.

¹⁴⁰⁰ See e.g., The Blueprint for Safety, available at <http://praxisinternational.org/blueprint-home/>.

Article 18

This article outlines a comprehensive strategy for effectively addressing the problem of domestic violence and includes a statement that the strategy and action plan for its implementation are adopted by the Government of Montenegro. The Advocates commends the government of Montenegro and but would recommend the addition of a clause requiring adequate funding for the development and implementation of the strategy.

Article 19

The focus of a law on domestic violence, and the purpose of an order for protection, should be the safety of the victim. Resources should be directed first and foremost to victim safety and assistance before the reform of abusers. In addition, the inclusion of the goal to “eliminate circumstances that may make him susceptible or to encourage reoffending” removes responsibility for his behavior from the abuser, and may in fact foster unintended negative consequences for the victim. The government should focus on identifying the violent offender, holding the offender accountable, and ensuring the victim’s safety.

Article 20

Protective measures should also contain provisions which prohibit the perpetrator from further violence or from threatening to commit further violence, and from possessing or purchasing a firearm. Furthermore, this article could be strengthened by the addition of a provision for financial support, which makes it possible for the victim to live independently of the perpetrator, and a provision which orders the perpetrator to provide support for minor children. Resources should be directed first to victim safety and assistance, rather than mandatory psychosocial or addiction treatment of the perpetrator.

Article 21

This article allows the removal of the offender from the residence *if there is risk of reoffending*. A quick-thinking offender may convince the police that the violence won’t reoccur; a frightened spouse might acquiesce. This would place the victim in grave danger, and would mean that the offender was not held accountable for an act of violence. It may also mean that the police will require repeated acts of violence before taking action. The Advocates recommends that this condition be eliminated from the law in this article, and in Articles 22, 23, 24, and 25. The Advocates also recommends that the time period for removal from the residence be extended to at least one year.

Article 22

The restraining order should be issued if there has been violence or the threat of violence against the victim. It should not be conditional on the severity of the victim’s suffering.

Article 23

The prohibition of harassing or stalking should also prohibit third parties from doing so. An offender under such an order may enlist contacts to stalk or harass on his behalf. He should be prohibited from doing so.

Article 24

Mandatory addiction treatment should never take the place of or substitute for measures that protect victim safety, including removal from residence, restraining order, and prohibition of harassing or stalking. The law should clarify this treatment may be ordered in addition to, but in lieu of, measures that protect victim safety.

Article 25

Mandatory psychosocial treatment should never take the place of or substitute for measures that protect victim safety, including removal from residence, restraining order, and prohibition of harassing or stalking. The law should clarify this treatment may be ordered in addition to, but in lieu of, measures that protect victim safety.

Article 26

The law should clarify that an order for protection may be issued at the conclusion of proceedings with or without an actual sanction, i.e. fine or jail term. The LDVP should also clarify that designating an order for protection as a sanction does not preclude judges from issuing emergency orders for protection before or during the misdemeanor proceedings. The law should clarify that judges may issue an emergency order for protection prior to a finding of guilt.

In cases involving increased risk of danger to the victim, such as repeat domestic violence offenses or repeat violations of the restraining order, restraining orders should be left in place permanently. For example, in Minnesota, an order for protection may be issued for 50 years if the offender has committed three or more domestic violence offenses or three or more violations of a restraining order. Such restraining orders should only be terminated by a finding by the court based on clear evidence that there is no longer any danger to the victim.

Article 27

The consent of the victim should be required if the petition for an order of protection is submitted by institutions of social work and child care, the police, and the prosecutor. The victim's wishes should determine who may apply for the order because victims are most often the best judge of the dangers presented to them by violent offenders: dangers that have been shown to increase upon the application of an order for protection.

However, the law should permit the court to order a restraining order for the duration of a criminal case at its own discretion or on request by the prosecutor, taking into account the wishes of the victim, if it determines that such an order is necessary for the safety of the victim or her children.

Article 28

The police barring order should also prohibit the offender from contacting the victim or from arranging for a third party to do so and it should also prohibit the violent offender from purchasing, using, or possessing a firearm.

The condition of service of the barring order within two hours may prove problematic if, as often happens, a violent offender flees when the police arrive and hides for a time. The barring order should come into effect based upon the victim's statement alone. This would enable the state to provide immediate protection for a victim of domestic violence.

Article 29

This article allows a misdemeanor body, if it finds it necessary to immediately protect the victim, to grant an emergency order for protection before and during the proceeding, within a maximum of 48 hours of receipt of the petition. The law would be strengthened if it required restraining orders to be issued immediately and no later than 24 hours. The law should also be amended to clarify that judges may issue the emergency order based on the victim's statement alone.

Article 30

The Advocates commends the government of Montenegro for allowing orders for protection to take effect while they are being appealed.

Article 33

The decision granting an order for protection may replace a previous temporary protection order which ended at the completion of the latest proceeding, in accordance with Article 31. However, the victim could be without protection for several days if the new decision was not immediately transferred to the authorities. Thus, the decision granting an order for protection should be delivered to the responsible authorities immediately, and not within three days of issuance.

Article 36

The Advocates commends the government of Montenegro for including penalties for committing domestic violence in the LDVP. However, as stated in the commentary on Article 8, the Advocates recommends that the government of Montenegro consider limiting the description of forms of domestic violence to physical harm, bodily injury, and the fear of imminent danger for his/her own or for a third party's life or health. Including psychological violence, verbal attacks, and rude behavior in a law on domestic violence may provide an opportunity for perpetrators to counterclaim abuse against those towards whom they have been violent. Psychological violence, verbal attacks, and rude behavior may be more effectively addressed by including language on coercive control, as described in the commentary on Article 2.

When penalties are imposed on offenders who commit violence in the presence of a minor child, in some jurisdictions the victim has been charged with this offense after a physical altercation occurs in a location that she cannot control i.e. in front of a minor child. This provision of Article 36 should be eliminated.

Article 37

The penalties for insufficient care by a family member to a child or to a family member towards whom there is a duty to care, due to, for example, special needs, disability, or old age, should be addressed in a separate law containing specifically tailored remedies for neglected children and vulnerable adults, and procedural protection for parents and caregivers.

Article 38

The Advocates commends the government of Montenegro for imposing a penalty for violating a protective order to leave the home for a period of time. This penalty appears to apply only to the barring order described in Article 28.

There should be enhanced penalties for repeat violations of protective orders and barring orders. However, the government of Montenegro should consider that very high fines may pose unintended and disastrous consequences to the victim and her family who often rely on the financial support of the offender.

Article 39

The imposition of a reporting requirement of an incidence of violence, and a large penalty for failing to comply with the requirement, should be limited to cases involving minor children or vulnerable adults. A competent adult victim should determine when to report domestic violence as this is a very dangerous time for her and she is the best determinant of her own safety.

The imposition of a reporting requirement of a violation of a protective order, and a large penalty for failing to comply with the requirement, on a wide range of persons, is too far-reaching and unenforceable.

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