

Majda Halilović

**SURVIVORS SPEAK: REFLECTIONS ON CRIMINAL  
JUSTICE SYSTEM RESPONSES TO DOMESTIC  
VIOLENCE IN BOSNIA AND HERZEGOVINA**

Sarajevo, 2015



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VIOLENCE IN BOSNIA AND HERZEGOVINA**

**Majda Halilović**

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## **Atlantic Initiative**

The Atlantic Initiative (AI) is a non-governmental organisation based in Bosnia and Herzegovina (BiH). It was established in 2009 by a group of university professors, journalists, and analysts to research topics such as: security risks in BiH, the integration of BiH into NATO, the security of women and the implementation of UN Resolution 1325 in BiH, gender and the judiciary, and the security of Roma people and returnees in BiH.<sup>2</sup> AI also publishes an academic journal, *Democracy and Security in Southeastern Europe*, which promotes open and informed debate about the Euro-Atlantic integration process in BiH. AI is trusted within BiH and the larger Balkan region as a source of information for BiH government officials as well as other policy makers and professionals working in the international security field.

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1 See the DCAF website at: [www.dcaf.ch](http://www.dcaf.ch)

2 See the Atlantic Initiative website at: [www.atlanticinitiative.org](http://www.atlanticinitiative.org)

## **Gender and Justice Reform Project in Bosnia and Herzegovina**

Together, DCAF and AI have undertaken the Gender and Justice Reform Project in Bosnia and Herzegovina since 2011. The project is currently funded by the Royal Norwegian and Swedish Embassies in Bosnia and Herzegovina. The Office for Overseas Prosecutorial Development, Assistance and Training (US Embassy to Bosnia and Herzegovina) provides in-kind support for some activities associated with this project.

This multi-year project is aimed at increasing the capacities of judges and prosecutors to more effectively integrate principles of gender equality into the procedures and practices of the BiH judiciary. Some project activities aim to produce concrete outcomes, such as resources and research, while others are designed to produce developmental outcomes that will create catalysts for change, i.e. a gradual transformation of thinking and organizational approaches related to gender in the judiciary. DCAF and AI have relied on the leadership, direction, and knowledge of professionals in the BiH justice sector to design and implement this project. The following organisations and professionals have closely collaborated with DCAF and AI for this project: the **Association of Women Judges of BiH (AWJ)**; the **Centres for Judicial and Prosecutorial Training in the Federation of BiH and the Republika Srpska (FBiH CEST and RS CEST)**; the **High Judicial and Prosecutorial Council of BiH (HJPC)**; and judges and judicial professionals in the F BiH and the RS. In addition, Norwegian Ambassador to Bosnia and Herzegovina **H.E. Ambassador Vibeke Lilloe** has provided important support and leadership throughout the implementation of the project.



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# 1. INTRODUCTION AND METHODOLOGY

For several decades, domestic violence has been recognized as a societal problem and a serious criminal matter as opposed to a private family matter to be dealt with outside the criminal justice system.<sup>3</sup> This recognition has sparked analysis within criminal justice systems, which have begun to reexamine their role in domestic violence cases. In Bosnia and Herzegovina (BiH), such analysis emerged some ten years ago and was spurred in part by international efforts to end discrimination against women and bring more attention to substantive issues of women's rights. To this end, existing laws were changed and new laws on domestic violence were introduced; including the Criminal Codes (Federation BiH, Republika Srpska, Brcko District), entity-level Laws on Protection from Domestic Violence and the state-level Gender Equality Law.<sup>4</sup>

Still, a systematic examination of the BiH judicial response to domestic violence was undertaken in 2011 by the OSCE, and the resulting report showed that perpetrators of domestic violence are given suspended sentences in an overwhelming majority of cases (80%). The OSCE expressed general concern about sentencing at or below the minimum penalties prescribed by the law and specific concern about the overuse of

3 Elizabeth M. Schneider, "Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward," *Family Law Quarterly* 42, no. 3 (2008).

4 Criminal Code of The Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, 36/03; The Criminal Code of Republika Srpska, *Official Gazette of Republika Srpska* 49/03 and 63/13; Criminal Code of the Brcko District of Bosnia and Herzegovina, *Official Gazette of the Brcko District of Bosnia and Herzegovina*, 10/03; Law on Protection from Domestic Violence of Republika Srpska, *Official Gazette of Republika Srpska*, No. 102/12 and 82/15; Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 20/13; Law on Gender Equality in Bosnia and Herzegovina: Consolidated Version, *Official Gazette of BiH*, No. 32/10.

suspended sentences. Furthermore, the report cited a reluctance by authorities to combine domestic violence with other charges and a failure to revoke suspended sentences when probationary violations occur, as well as the widespread and improper application of mitigating and aggravating factors in criminal domestic violence cases.<sup>5</sup> Similar findings were reported in 2014 by researchers from several BiH NGOs, who monitored criminal cases of gender-based violence over a 12-month period.<sup>6</sup>

In the spring of 2013, the Atlantic Initiative,<sup>7</sup> a Bosnian NGO, partnered with the Swiss-based Geneva Centre for the Democratic Control of Armed Forces (DCAF)<sup>8</sup> in a resource development project meant to improve the response of the BiH judiciary to cases of domestic violence. As part of this project, nine judges from across BiH reviewed existing international research alongside criminal domestic violence judgments from BiH, in order to develop practical recommendations for the handling of domestic violence cases. This effort culminated in the publication of the *Judicial Benchbook: Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina*. Reflecting on the 2011 OSCE report, these judges determined that the mitigating and aggravating circumstances applied in domestic violence cases were not grounded in the latest knowledge on domestic violence. This was addressed in the *Benchbook*, which was endorsed by the High Judicial and Prosecutorial Council (HJPC) and it is in use as training material for judges and prosecutors in BiH.

Discussions with judges and prosecutors who expressed the desire to better understand how they can reconcile the social complexities of


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5 Organization for Security and Co-operation in Europe, *Ensuring Accountability for Domestic Violence: An analysis of sentencing in domestic violence criminal proceedings in Bosnia and Herzegovina, with recommendations* (Sarajevo: 2011).

6 Aleksandra Petrić and Dženana Radončić, *Izveštaj i analiza praćenja krivičnih postupaka u oblasti rodno zasnovanog nasilja u Federaciji Bosne i Hercegovine i Republici Srpskoj* (Banja Luka: Centar za pravnu pomoć ženama and Fondacija Udružene žene, 2014). See: <http://unitedwomenbl.org/wp-content/uploads/2015/08/analiza-praenja-krivinih-postupaka-u-oblasti-rodno-zasnovanog-nasilja-u-rs-i-fbih.pdf>

7 See their website at: [www.atlanticinitiative.org](http://www.atlanticinitiative.org)

8 See their website at: [www.dcaf.ch](http://www.dcaf.ch)



domestic violence with their judicial practice were the impetus for the research presented in this study, which aims to complement recommendations made in the *Benchbook*. By documenting and portraying stories of domestic violence in BiH, this research layers real-life narratives over sociological and legal theory and the BiH legal framework. The experiences of domestic violence survivors in BiH are thus a lens through which legal approaches are assessed and also often serve to support recommendations of the *Benchbook*, such as the importance of evaluating strangulation and sexual assault as aggravating factors against a defendant.

The work of the Atlantic Initiative and DCAF revealed that victims who report domestic violence in BiH commonly believe that their complaint and their safety are not priorities of the judicial system.<sup>9</sup> Moreover, civil society organizations and even judges have reported that some members of the BiH judiciary minimize the severity of domestic violence by engaging in victim-blaming or arguing that domestic violence is a private matter.<sup>10</sup> And so, this research was undertaken in order to shed some light on the obstacles that exist within the judicial system and to establish how the criminal justice system generally and judges specifically can contribute to better protecting victims of domestic violence and to preventing it.

## 1.2. Methodology in context

The aims of this study – to highlight the complexities of domestic violence cases but also to uncover the potential for the judiciary to take a leading role in preventing domestic violence – focused the research on two major themes. First, it was necessary to tell the true story of domestic violence, including how it begins, what types of violence victims experience, how it affects the lives of children exposed to it, and the reasons why victims

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9 This was shared with AI and DCAF researchers by stakeholders in meetings held during development of the *Benchbook*, in trainings for judges on domestic violence, and in workshops with members of the Association of Women Judges.

10 Majda Halilović and Heather Huhtanen, *Gender and the Judiciary: The Implications of Gender within the Judiciary of Bosnia and Herzegovina* (Geneva: DCAF, 2014).

stay with, leave, and return to violent partners. Second, how victims interact with the criminal justice system had to be examined by addressing why they bring or withdraw charges, how they are treated by police and the judiciary, and whether and how aggravating circumstances are applied by judges and prosecutors.

This research asked women victims of domestic violence to tell their stories and share their insights and opinions. This meant that they were asked to reveal intimate and painful experiences many found embarrassing to talk about. For this reason, a qualitative methodology – which is recognized for the capacity to empower research participants and promote social transformation, and which allows for interpretation, interaction, dialogue, and reflexivity – was identified as most appropriate.<sup>11</sup>

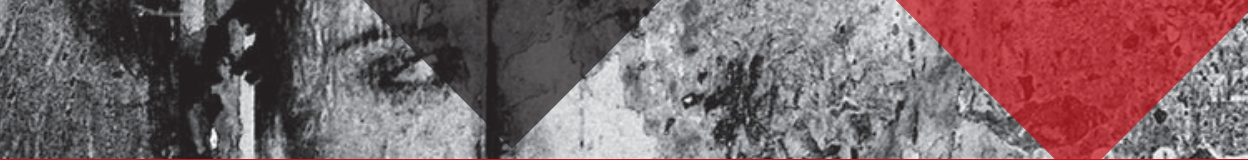
The problem of domestic violence is a socio-criminal one, and to illustrate its complexity and gravity, this research builds on real stories drawn from in-depth interviews.<sup>12</sup> This method enabled survivors of domestic violence to tell their stories in their own words and at their own pace, with the protection of anonymity. Altogether, twenty women were interviewed in five towns across Bosnia and Herzegovina.<sup>13</sup> In order to ensure that they were fully supported, civil society organizations that provide direct services to survivors were involved in developing the research methodology, as well as in identifying women who wished to participate and the issues that should be addressed in the study. These civil society organizations were approached at the earliest stages of the research and several consultative meetings were held with the Sarajevo-based organization *Žene Ženama*, which provided input not only on methodology, but on the current issues and dilemmas in domestic violence research and intervention practices. The organization was also instrumental in connecting the researcher with safe houses and legal aid centers.

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11 Christine S. Davis, "Empowerment" in *The SAGE Encyclopedia of Qualitative Research Methods*, ed. Lisa M. Given (Thousand Oaks, CA: SAGE, 2008), 262.

12 Benjamin F. Crabtree and William L. Miller, eds., *Doing Qualitative Research* (Thousand Oaks, CA: SAGE, 1992).

13 To ensure full anonymity names of the specific towns are avoided



Interviews with domestic violence survivors lasted from 45 to 90 minutes, depending on the pace of their narration and the dynamics of the interview. Some women spoke in very graphic detail about the violence they survived, its consequences, their injuries, and their experiences with authorities and institutions; others less. In some cases, it took women a bit of time to begin telling their stories of violence or to disclose intimate information, especially about sexual abuse, and these women were given all the time they needed to let their stories unfold.

This research was developed and conducted with a cognizance for the World Health Organization's Ethical and Safety Recommendations for Research on Domestic Violence against Women.<sup>14</sup> Broadly, these give utmost priority to the safety of women subjects by recommending that researchers are specially trained and understand how to respond to signs of distress. Ethical qualitative research that seeks to empower women who have been victimized must ensure a safe interview environment and must avoid endangering interviewees or researchers as a result of the research process.

The researcher for this study – a woman – has fifteen years of experience researching sensitive and charged topics, including conducting interviews with severely traumatized survivors during and after the war, and with minorities, women, children, and disabled people. In addition, she is a trained psychologist with the capacity to recognize distress signals and provide appropriate support to interviewees. And, though the interviews conducted for this research were not clinical, per se, they enabled the researcher to recognize indications that subjects were experiencing or had experienced symptoms of anxiety, posttraumatic stress, and depression.

It was important that the women interviewed for this study were approached with respect and were offered transparency about the research and its aim to inform the judicial community. Participants

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<sup>14</sup> World Health Organization, *Putting Women First: Ethical and Safety Recommendations for Research on Domestic Violence Against Women* (Geneva: 2001).

understood that the research would be very unlikely to change their own situations or make drastic and immediate changes to police or judicial practice, but that it could help other women who may find themselves in a similar position in the future. Guided by a feminist style of research, the researcher was honest with and inclusive of women subjects at all times.<sup>15</sup>

The process of obtaining informed consent from women took place in several stages. First, they were approached by someone they knew from a shelter or legal aid organization and were asked to take part in the research. They were told that their participation would be anonymous and voluntary, were given information about who would be conducting their interview and where, and were asked if they agreed to be recorded. Participants were assured that they could decline to participate at any point during the research, even in the midst of an interview, and that they could retract their interview after the fact if they changed their mind about participating. A particular emphasis was placed on anonymity in this study; and in general, the principles laid out by Ellsberg and Heise for interviewing women survivors of violence – of non-maleficence, beneficence, and respect for individuals and justice – were adhered to.<sup>16</sup>

Women consented to participate in the study first in preliminary talks with shelter and legal aid representatives and then again with the lead researcher. This consent was not obtained in writing due to the risk that having to sign a form could be perceived as a threat or betrayal to anonymity. Obtaining consent verbally, and in several stages as part of an ongoing process of negotiation between researcher and subject, reflects the model suggested by Waldrop.<sup>17</sup> This form of consent also follows on arguments made by Ryan, who has drawn attention to the influence of culture on ethics and the

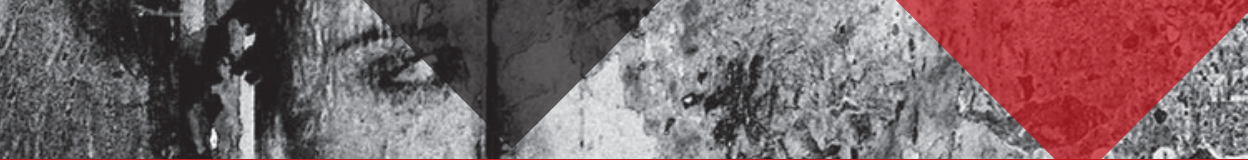
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15 Ann Oakley, "Interviewing Women: A Contradiction in Terms" in *Turning Points in Qualitative Research: Tying Knots in a Handkerchief*, eds. Yvonna S. Lincoln and Norman K. Denzin (Walnut Creek, CA: AltaMira Press, 2003), 243.

16 Mary Ellsberg and Lori Heise, "Bearing witness: Ethics in domestic violence research," *The Lancet* 359 (May 2002), 1599-1604.

17 Waldrop, D., 2004. Ethical Issues in Qualitative Research with High- Risk Populations. In: D. Padgett, ed. 2004. *The Qualitative Research Experience*. Belmont: Thomson-Brooks/Cole.





need to reflect on Western ethical considerations of privacy and the belief that protection comes with signed documentation.<sup>18</sup>

Immediately prior to each interview, the researcher once again explained the nature of the research and assured the women of their anonymity. Each woman was asked to choose a pseudonym or, if they could not come up with one, approve one proposed by the researcher. There are several reasons women were asked to choose their own pseudonym, some of which are symbolic. Victims of severe violence have experienced a loss of control over their lives, finances, property, jobs, and even their own body, and it was important that this loss of control was not perpetuated in the interview process. This is also why interviews were designed to be flexible, so that each woman had the time they needed, at their convenience, to tell their story.


The interviewer was especially careful not to question the truthfulness of women's stories or the wisdom of their choices. Many women have experienced victim blaming, criticism, and stereotyping in their lives and in contact with authorities and professionals, and it was thus imperative that these negative constructions be avoided during this research. Instead, the interviewer demonstrated compassion, empathy, and encouragement as opposed to taking on the role of a distant, perhaps more "clinical," listener. This approach was appreciated by women participants, some of whom felt that the difficult experience of discussing the violence they had suffered was cathartic. As recommended by Parker and Ulrich, interviews were always ended on an optimistic note by reinforcing the coping skills and personal strengths of each woman and reminding her of the value of the information she shared as a means of helping other women.<sup>19</sup>

Each woman who participated exhibited some level of distress, pain, or sadness in the course of their interview. Discussing being humiliated in front of their children, the loss of a child or children due to separation, or the loss of the life they once lived were all heartbreaking topics, and these

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18 Anne Ryen, "Ethical Issues" in *Qualitative Research Practice*, eds. Clive Seale, et al. (London: SAGE, 2004), 218.

19 Barbara Parker and Y Ulrich, "A protocol of safety: Research on abuse of women," *Nursing Research* 39, no. 4 (1990), 248-250.



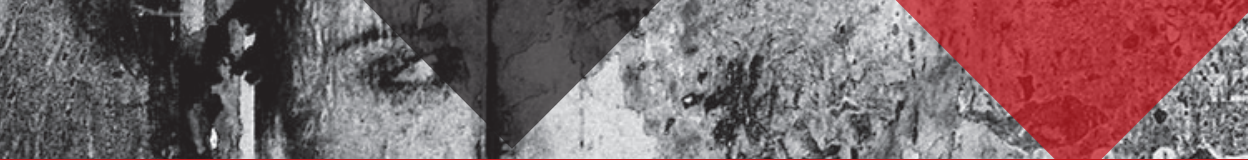
discussions were built on the relationship between the researcher and each woman. Brush argues that this relationship is vital in domestic violence research in order to obtain adequate responses about highly traumatizing and stigmatizing experiences; and in this study, these relationships were based on trust gained through reassurances about anonymity, respect for and understanding of the experiences shared, and appreciation for the bravery and endurance it took to do so.<sup>20</sup>

Interviews began with neutral questions – about the subject’s profession, for instance – that allowed women time to gain comfort with the interview scenario and also offered them a chance to present themselves as more than victims of violence, but as mothers, employees, and friends. This not only helped build rapport but empowered women to acknowledge their whole identity instead of focusing only on their victimhood or survivorship. Indeed, at the very start of interviews, most participants assumed the interviewer was in a position of power, reflecting their experience with other professionals, who are often pressed for time and operate within certain constraints. However, the interviewer worked to quickly shift this power dynamic, offering control to the interviewees and showing appreciation for their time and effort. This made it easier for women participants to proceed to discussing highly sensitive topics and the issue of violence.

One question that commonly served as a bridge from more neutral topics of conversation to more sensitive issues was about marital status, which often led interviewees to start talking about their marriage, separation, and the reasons for that separation – always including violence. Women were then asked to say something about how they met their husbands and when the violence began, and whether their children witnessed violence or were victims themselves. They also talked about the types of violence they experienced, what triggered it, and whether they felt it was

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20 Anne Ryen, “Trust in Cross-Cultural Research: The Puzzle of Epistemology, Research Ethics, and Context,” *Qualitative Social Work* 7, no. 4 (December 2008), 448-465.



possible to prevent or resist it, as well as discussing why they had stayed in a violent marriage and what ultimately led them to leave their home.

Studies on violence against women face the challenge of how to achieve disclosure about very painful and violent acts.<sup>21</sup> The key is how comfortable interviewees feel during interviews, and this can depend on a number of factors, including the sex of the interviewer, the length of the interview, whether others are present, and whether the interviewer is authentically interested, honest, and nonjudgmental. In this study, the comfort and safety of interviewees was held paramount, and this mandate appears to have been met, despite the horrific acts of violence some participants shared. Indeed, some of the experiences related by interviewees were so appalling that they may be hard to believe, but it is important to understand that exaggeration or fabrication are highly unlikely in research interviews of this nature, as argued extensively in various international contexts.<sup>22</sup>

The narratives shared by these women were analyzed using thematic analysis and critical discourse analysis. Thematic analysis enabled the organization of data into categories and allowed for contrasts and comparisons to be made between categories and within themes and categories.<sup>23</sup> Critical discourse analysis provided another layer of insight into the data, enabling greater understanding of how discourses function in relation to domestic violence by generating interpretive claims.<sup>24</sup> Critical discourse analysis examines issues of power, social constructions, and the way certain groups are portrayed, and is particularly significant in the context of domestic violence, where the power of a given discourse


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21 Mary Ellsberg, et al., "Researching Domestic Violence Against Women: Methodological And Ethical Considerations," *Studies in Family Planning* 32, no. 1 (2001): 1-16.

22 See: Michael D. Smith, "Enhancing the Quality of Survey Data on Violence against Women: A Feminist Approach," *Gender and Society* 8, no. 1 (1994): 109-127; and Muhammad M. Haj-Yahia, "The Incidence of Wife Abuse and Battering and Some Sociodemographic Correlates as Revealed by Two National Surveys in Palestinian Society," *Journal of Family Violence* 15, no. 4 (2000).

23 A. Michael Huberman and Matthew B. Miles, "Data Management and Analysis Method" in *Handbook of Qualitative Research*, eds. Yvonna S. Lincoln and Norman K. Denzin (London: SAGE, 1994).

24 Cheek, J. (1997) Negotiating delicately: Conversations about health. *Health and Social Care in the Community* 5 (1): 23-27.



can shape professional practices. For example, rather than being held responsible for their violent behavior or considered dangerous, violent men are often presented as objects of pity who are essentially gentle but driven to extreme and uncharacteristic actions by the tensions of marriage or by their partner's provocation.<sup>25</sup>

The use of critical discourse analysis in this study was helpful in understanding how women domestic abuse victims are perceived by various professionals, as well as the extent to which social and professional discourse affects these women. A dominant discourse that devalues women or labels them as untrustworthy was evident in language used by these women's husbands during and after violence, reflecting how that discourse influences the way women are perceived by their husbands and informs the violent behavior of these men. In Chapters 3 and 4, discourses of power, control, misogyny, and patriarchy that emerged in interviews help create a more complete picture as to why so many women are subjected to violence.

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25 Adrian Howe, "Notes from a 'War' Zone: Reporting domestic/family/home/epidemic (men's) violence" in *Sexed Crime in the News*, ed. Adrian Howe (Sydney: Federation Press, 1998), 29.



## **2. UNDERSTANDING THE PREVALENCE, CAUSES, AND CONSEQUENCES OF DOMESTIC VIOLENCE**


This chapter deals with some of the issues surrounding legal and judicial responses to domestic violence as well as discussing its definition, prevalence, and causes. It is important to define and understand the root causes of violence because the way society and legal or health professionals perceive and define domestic violence is shown to influence policy and intervention responses. Chapter 3 examines the broader consequences of domestic violence on the health and wellbeing of women, but also on all the members of affected families.

### **2.1. The prevalence of domestic violence and the need for clear definitions**

How widespread violence is in any given society is usually established through prevalence studies; and though the precise definition of domestic violence has been debated, almost one third (30%) of all women who have been in a relationship worldwide have experienced physical and/or sexual violence by an intimate partner. Furthermore, globally, as many as 38% of all murdered women are killed by a partner or spouse.<sup>26</sup> In Bosnia and Herzegovina, a 2012 study found that nearly half of all women surveyed had experienced at least one form of violence from the age of 15, and just under 12% reported having experienced violence in the year

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<sup>26</sup> World Health Organization, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (Geneva: 2013).



preceding the survey.<sup>27</sup> The most frequent form of violence cited by women in BiH was psychological, with a lifetime prevalence of 42%, followed by physical violence, with a lifetime prevalence of 24%. The experience of sexual violence was reported by 6% of women.

Perpetrators of violence against women are overwhelmingly former or current partners. Research findings show that partner violence plays a role in 72% of cases; and generally, women face a much higher risk of violence in intimate and domestic relationships than in their wider communities. Young women are more likely to experience violence than older women, and women in poor health or with disabilities are not spared from violence – in fact, prevalence rates are the same for these women as for healthy women without disabilities.<sup>28</sup>

Data on the frequency of incidents of domestic violence indicates that they do not occur in isolation but as part of a pattern.<sup>29</sup> As appreciation of this grew in the 1970s, along with a recognition of the pervasiveness of abuse in families, demands to define domestic violence emerged. Feminist researchers began to see domestic violence as one of the chief threats to the safety and health of women, and service providers started to understand that various forms of domestic violence require specially-tailored interventions. Eventually, women's advocates who had previously opposed the idea of differentiating between forms of violence, in preference of classifying all violence as battering, also saw that differentiation allowed for more effective efforts at treatment and prevention.


The importance of distinguishing between different types of violence is discussed extensively by Joan Kelly and Michael Johnson, who argue that intimate partner violence is not a universal phenomenon but is shaped by

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27 M. Babović, et al., *Prevalence and Characteristics of Violence Against Women in BiH* (Gender Equality Agency of BiH, 2013).

28 Ibid.

29 Ibid.



partner dynamics, context, and consequences.<sup>30</sup> This is a key concept as it relates to legal and judicial response, because suitable interventions – from sanctions to batterers’ programs to support for victims – should be informed by the specific types of violence perpetrated in each case. In 1995, an influential typology for domestic violence was developed by Johnson, and contemporary literature on the subject frequently relies on this typology. According to him, not all violence between couples is alike and legal professionals and the justice system need to recognize different types of domestic violence in order to offer appropriate responses. Johnson identifies three broad categories of violence among couples, each of which differ in their causes, dynamics, and consequences: situational couple violence, domestic violence battering, and violent resistance.<sup>31</sup>

*Situational couple violence* is the most common form of intimate partner violence. It enters a relationship when a disagreement turns into angry quarreling and then escalates into violence. This type of violence can be mild or severe, and may even be isolated, though in some couples, a recurring pattern of such violence becomes extremely dangerous. Still, this type of violence is less likely to escalate over time and result in physical injury. Situational couple violence is almost as likely to be perpetrated by women as by men, though men tend to do more serious harm. Most notably, situational couple violence does not include the aim of domination and control by one or both individuals in the relationship. As a result, the purpose of the violence is more likely specific to that context – either a desire to ‘win’ the argument, or an expression of frustration and anger.

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30 Joan B. Kelly and Michael P. Johnson, “Differentiation among types of intimate partner violence: research updates and implications for interventions,” *Family Court Review* 46, no. 3 (2008): 476-499.

31 Michael P. Johnson, “Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women,” *Journal of Marriage and the Family* 57, no. 2 (May 1995): 283-294. Johnson uses the term ‘intimate terrorism’, however, for the purpose of this report the term domestic violence battering will be substituted in order to use language that is consistent with the *Benchmark*, as well as language that is more commonly used to describe a relationship in which one person uses a variety of abusive and coercive behaviors in order to establish and maintain domination and control in the relationship.

Johnson identifies *domestic violence battering* as independent from conflict or disagreement and as occurring less frequently than situational couple violence. However, it is this type of domestic violence that is most likely to destroy lives. Domestic violence battering is distinguished by a pattern of both violent and non-violent behaviors that are rooted in attempts to dominate and control a partner, and almost always involves men abusing women. Perpetrators control their partners by combining violence with other tactics such as threats and intimidation, economic abuse, psychological abuse, isolation, and the assertion of male privilege.

The third type of violence defined by Johnson is the *violent resistance* of victims – usually women – who try to physically resist domination by their abuser. It is often transitory due to the capacity of many abusers to physically dominate their victim, and most women who resist violently soon turn to other means of coping.<sup>32</sup>

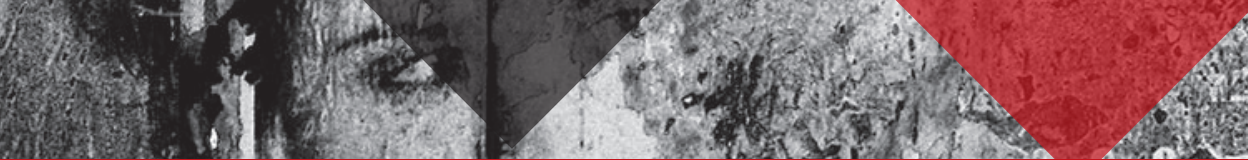
Johnson and Leone strongly argue that researchers and practitioners must make distinctions between situational couple violence, domestic violence battering, and violent resistance, because each type of violence has different root causes and consequences for victims.<sup>33</sup> Awareness of this typology among judicial professionals is especially important as domestic violence battering is usually a long-term cycle perpetuated by men who use manipulation to not only control their partner but to deter them from reporting violence or seeking redress. This type of violence often involves sexual assaults, strangulation, threats made with firearms, and various other forms of coercion – all of which are relevant in assessing a perpetrator's danger to a victim and to society. Domestic violence battering the sense of powerlessness of victims, making it extremely difficult to break free from, and its consequences are severe not only for a

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32 Theodora Ooms, "A Sociologist's Perspective on Domestic Violence: A Conversation with Michael Johnson, Ph.D. (from the conference of the Center for Law and Social Policy and the National Conference of State Legislatures, "Building Bridges: Marriage, Fatherhood, and Domestic Violence," May 2006).

33 Michael P. Johnson and Janel M. Leone, "The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings From the National Violence Against Women Survey," *Journal of Family Issues* 26, no. 3 (April 2005): 322-349.





victim partner but for children who are exposed to this type of violence directly or indirectly.

The women who shared their stories in this study were exposed to domestic violence battering; so for the purposes of this research, the term domestic violence – more widely used in BiH – is used to describe this type of violence. While it is important to stress that not all forms of violence experienced by women in BiH fall into the category of domestic violence battering, problems with understanding the prevalence of specific types of violence result from a failure by police or social workers to distinguish the most severe forms of violence from other types. By not distinguishing among different forms of violence in prevalence studies, a distorted picture is painted, and one in which it may be hard to see which victims are most in jeopardy. For, if all women who have ever experienced physical conflict with their partner are grouped into the same category as victims of domestic violence battering, service providers run the risk of offering one-size-fits-all support. And while any form of violence can be traumatic, women who experience an isolated case of physical conflict with their partner are in need of different interventions than women who have been exposed to severe, debilitating, and life threatening long-term violence.

Still, domestic violence battering is not recognized in many prevalence studies for several reasons. For one, these studies frequently suffer from non-response; and it is often women who are scared of and controlled by their partner who are reticent for fear that their participation could provoke violence, and are thus uncounted.<sup>34</sup> Furthermore, prevalence studies that draw from the general population and ask questions such as whether someone has been hit in the last year or in their lifetime do not indicate how many women are exposed to the most severe and relentless types of violence. And while police and crime statistics are a common means by which to demonstrate the extent of domestic violence, this data

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34 Donna Chung, "Understanding the Statistics about Male Violence Against Women," White Ribbon Research Series, Paper No. 5, May 2013.

is limited by the fact that a majority of domestic violence is not reported to police, health, or support services. Agency statistics show how many people report violence or seek help, but do not accurately represent the total number of victims of domestic violence.<sup>35</sup>

An appropriate judicial response is crucial to the protection of victims and relies on the ability of judges and prosecutors to distinguish domestic violence battering from situational couple violence. Because victims of domestic violence battering experience more frequent and more severe acts of violence, they experience more damage to their physical and psychological health, which interferes with their daily activities.<sup>36</sup> Of course, it is also important that legal and judicial professionals understand the causes of domestic violence, as discussed below.

## 2.2. Causes of domestic violence

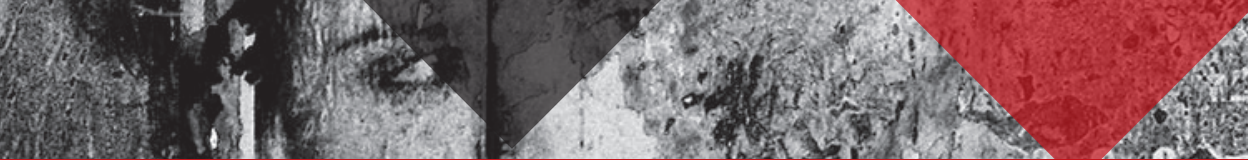
Violence between intimate partners and within families is not a new phenomenon and has been recorded across cultures throughout history. Indeed, evidence of domestic violence is rooted in the very foundations of so-called civil society. In medieval Europe, for example, husbands had the legal right to “chastise” – that is, physically discipline – their wives, servants, and apprentices.<sup>37</sup> Because women were traditionally seen as economically and legally dependent on their husbands, domestic violence was seen for a very long time as inevitable in marriage. It is only since the 1970s and the growth of the modern women’s movement that calls have been made to recognize domestic violence as a social and public health problem. This has prompted increased research and documentation of domestic violence, changes to laws, and the establishment of programs designed to support victims of violence, especially women.

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35 Ibid.

36 Johnson and Leone, “The Differential Effects of Intimate Terrorism...”

37 James A. Brundage, “Domestic violence in classical canon law” in *Violence in Medieval Society*, ed. Richard W. Kaeuper (Brewer, 2000), 183-197.



Intensified social, legal, and scientific attention on domestic violence spurred the emergence of various theories on its causes. A review of the literature shows that theories explaining male violence against current or former female partners can be grouped into three categories based on their framework for analysis: individualist, family system, and societal. The applicability and shortcomings of these three approaches in explaining domestic violence and informing protection services and judicial practice are outlined below.


### **2.2.1. Individual-level explanations of domestic violence**

Individual-level theories are focused on the person, with treatment tailored to each individual. This approach views male aggression as an evolutionary means to secure reproductive dominance by controlling access to a woman. According to many individualist theories, the “natural” violence of men surfaces when they are provoked to the point of anger or frustration, which suggests that male violence cannot be constrained. The trouble with this explanation is that not all men are violent, and men who are violent toward their wives and families are often not violent toward anyone else – even coworkers and friends with whom they may experience frustration. And, evidence shows that men who do perpetrate domestic violence do so with intention, applying physical violence strategically so as not to leave marks or to ensure that they are isolated to areas that are not visible in public. This strongly suggests explicit control, not the utter lack of control that individualist theories imply. In fact, many abusive men demonstrate increased calm as their violence intensifies.<sup>38</sup>

Many psychiatrists and psychologists have been inclined to offer individualist explanations for the causes of domestic violence, arguing that it is committed by mentally disturbed men whose childhood experiences

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38 John M. Gottman, Jacobson, Neil, Rushe, Regina H.; Shortt, Joann Wu, “The relationship between heart rate reactivity, emotionally aggressive behavior, and general violence in batterers.” *Journal of Family Psychology*, Vol 9(3), Sep 1995, 227-248



have led them to become abusers.<sup>39</sup> These arguments highlight the issues such men exhibit, including personality disorders and alcohol and drug addiction, and stem from the view that insecure attachments from childhood are reflected in interpersonal dependence and that the posttraumatic stress of exposure to childhood abuse predisposes men to commit violence later in life.<sup>40</sup>


Still, despite the fact that some violent men are mentally ill, these theories do not explain why violence is so often confined to families and not directed toward strangers or acquaintances. What's more, most men with mental illness are not violent and most violent men are never diagnosed with a mental illness. Individualist theories of violence thus suffer from a failure to demonstrate clear causality and can actually serve to reinforce the idea that violence is unavoidable or that men who commit violence are doing so uncontrollably as a result of mental illness – a perspective which can shape views of mitigating circumstances and of men's level of responsibility.

Another popular individualistic explanation of male violence is related to the loss of inhibitions that is caused by alcohol or substance abuse and is again based on the biological premise that men are naturally violent and that this violence is unleashed when they become uninhibited. Yet, research shows that a majority of domestic violence perpetrators are not alcoholics and that most heavy drinkers are not abusers. This association, between alcohol or drugs and violence against women, can lead to the dismissal of some violence or a sense that perpetrators have limited responsibility for their actions – because it is under the influence of alcohol that losing control is socially acceptable and often thereby excused. But the relationship between alcohol and domestic violence is

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39 Amy Holtzworth-Munroe and Gregory L. Stuart, "Typologies of male batterers: Three subtypes and differences among them," *Psychological Bulletin* 116, no. 3 (1994): 476-497.

40 Donald G. Dutton, "Treatment of assaultiveness," *Journal of Aggression, Maltreatment, and Trauma* 7, no. 1-2 (2002): 7-128.



complicated, and even when it is a factor in abuse, much of the evidence suggests that it is not a root cause but a compounding element.<sup>41</sup>

### **2.1.2. Family conflict as a cause of domestic violence**

Another set of theories that explain domestic violence focus on the family level and on views of conflict within families. This is a sociologically-informed perspective that originates from the works of Straus and Gelles in the 1970s.<sup>42</sup> Strauss, who took a general systems approach to violence between family members, suggested that violence is a system that operates at the individual, family, and societal levels as opposed to the result of individual mental disturbances. He argued that domestic violence has various causes, including stereotyped family violence learned in childhood that is reaffirmed through social and cultural interactions.

Family conflict scholars contend that the unique structure of families which are exposed to stress, along with a social acceptance of violence as a means of resolving conflict, are key to understanding violence. They propose that family conflicts arise from disagreements and struggles for power and resources within families, and so family conflict theories examine the way family structures encourage violence and argue that these structural factors, not just one individual, must undergo change in order to prevent conflict.<sup>43</sup>

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41 See: Dr. Sarah Galvani, *Supporting families affected by substance use and domestic violence* (University of Bedfordshire, 2010), 5; and Antonia Abbey, et al., "Alcohol and Sexual Assault," *Alcohol Research and Health* 25, no. 1 (2001): 43–51.

42 See: Murray A. Straus, "Some Social Antecedents of Physical Punishment: A Linkage Theory Interpretation," *Journal of Marriage and Family* 33, no. 4 (1971): 658-663; and Richard J. Gelles, *The Violent Home: A Study of Physical Aggression between Husbands and Wives* (Newbury Park, CA: Sage, 1972).

43 Helen M. Eigenberg, *Women Battering in the United States: Till Death Do Us Part* (Prospect Heights, IL: Waveland Press, 2001).

### 2.1.3. Societal-level causes of domestic violence: the power motive

Feminists have offered a third view of domestic violence that considers family dynamics but, unlike family conflict theories, frames this type of violence as rooted primarily in the patriarchy and sexism that is entrenched in contemporary societies. From this perspective, patriarchal structures that ensure gender-based power inequalities within society are key to understanding the problem of domestic violence. For feminists, domestic violence is not an individual-level problem but a reflection of the social domination of men throughout history and to this day, which has subjugated women to a second-class status that the violence perpetrated against them attempts to maintain through a variety of control tactics meant to subordinate.<sup>44</sup> Feminists argue that men who beat their wives are living up to accepted Western cultural prescriptions of aggressiveness, male dominance, and female subordination and are using physical power as a means to enforce a dominance to which they believe they are entitled.<sup>45</sup>

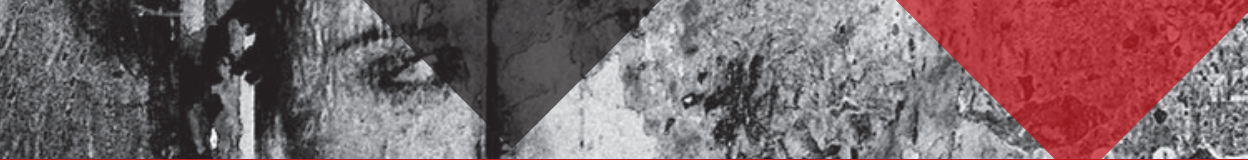
An interesting link between domestic violence and patriarchy has been addressed by Totten, who argues that underprivileged males use violence toward women to compensate for their relative lack of access to the traditional benefits of patriarchy. According to Totten, as these men try to attain an ideal of patriarchy and male power within their friend and family groups, they use violence toward their female partners as one measure of their masculinity. He calls violence one of the few resources over which such men have control; whereas men with more resources, he notes, often have the power or privilege to commit other, less visible forms of abuse.<sup>46</sup>

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44 R. Emerson Dobash and Russell Dobash, *Violence against Wives: A Case against the Patriarchy* (New York: Free Press, 1979).

45 Ibid.

46 Mark Totten, "Girlfriend Abuse as a Form of Masculinity Construction among Violent, Marginal Male Youth," *Men and Masculinities* 6, no. 1 (July 2003): 70-92.



According to mainstream feminist theories, a batterer’s “power motive” and their use of coercion and violence derive mainly from the use of external social resources, such as gender, to maintain dominance over their intimate partner and keep them oppressed. However, this view is limiting, and it is just as important to understand a batterer’s motive in terms of their own psychology. It is possible, for instance, that a batterer’s feelings of powerlessness originate from their lack of internal resources and poor sense of self-worth. Feeling out of control over their own life and future may lead to a reactionary need to exert control over an intimate partner. Thus, it is important to explore the power motives of abusers at the individual level because gaining a better understanding of the role that internal power resources play may shed more light on the etiology of battering and inform and expand current theories on domestic violence that can help improve treatment programs.<sup>47</sup>

The feminist perspective on domestic violence has been very influential in the design of treatment programs, and educational curriculum that emerged from the Domestic Abuse Intervention Project, commonly known as the Duluth Model, has led the way. The model, created in the aftermath of a brutal domestic violence homicide in Duluth, Minnesota, conceptualizes domestic violence as a pattern of physical, psychological, and sexual abuse that is used to intentionally dominate a partner. Through a constellation of mutually reinforcing behaviors, including coercion and violence, a male batterer gains control over his partner’s actions, thoughts, and feelings so that her own agency is undermined.<sup>48</sup>

A widely-used graphic presentation of the Duluth Model is known as the Power and Control Wheel. It places power and control at the center of the cycle of domestic violence, with eight “spokes” that represent coercive and manipulative tactics, all within an outer wheel of physical and sexual violence. The behavior categories represented by the spokes align with

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47 Shelly Marie Wagers, “Deconstructing the “Power and Control Motive”: Developing and Assessing the Measurability of Internal Power” (Ph.D. diss., University of South Florida, 2012).

48 Ellen Pence and Michael Paymar, *Education Groups for Men Who Batter: The Duluth Model* (New York: Springer, 1993).

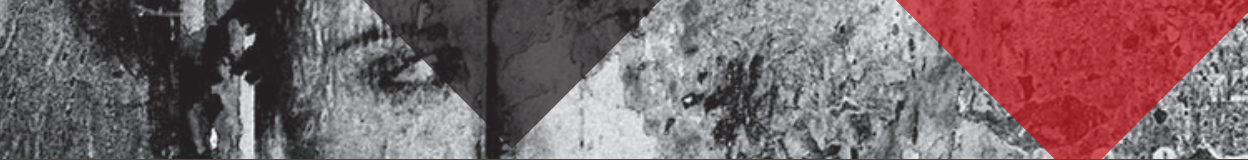
external social power resources that perpetrators can use to exercise their dominance over victims, though the exact behaviors of perpetrators vary depending on the external or social power resources they have access to as well as the degree to which they have more resources than their partner.<sup>49</sup>



DOMESTIC ABUSE INTERVENTION PROJECT  
202 East Superior Street  
Duluth, Minnesota 55802  
218-722-2781  
www.duluth-model.org

49 Ibid.





Researchers remain uncertain as to why perpetrators of domestic violence feel the need to exert and maintain power in their intimate relationships, and the fact that power can be conceptualized and defined in many ways makes the question even more complex to answer. Indeed, power can manifest in different forms and, according to Websdale, may be felt in some senses by men who abuse their partners but not in others.<sup>50</sup> Recently, some theories have suggested that power is not a monolithic construct, proposing that there are personal and social forms of power. Social power is linked to the capacity to exercise control over others and depends on having resources, information, and knowledge. Personal power, on the other hand, originates from internal resources and control over oneself; and those who lack personal power are therefore more likely to be violent.<sup>51</sup>

The conceptual framework on which this study relies understands domestic violence as structural and motivated by power and control, and thus informs an examination of the power imbalances between men and women. Like the Duluth Model, this study characterizes domestic violence as a pattern of actions meant to control or dominate an intimate partner and views these tactics by men within the context of societal conditions that support men's exertion of power over women. Furthermore, this research is intended to support ongoing discussions between criminal and civil justice institutions, the community, and victims to close gaps and improve responses to domestic violence.

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50 Neil Websdale, *Familicidal Hearts: The Emotional Styles of 211 Killers* (New York: Oxford University Press, 2013).

51 Daphne Blunt Bugental and Jeffery Clayton Lewis, "The Paradoxical Misuse of Power by Those Who See Themselves as Powerless: How Does It Happen?" *Journal of Social Issues* 55, no. 1 (1999): 51-64.





### **3. FORMS AND IMPACTS OF DOMESTIC VIOLENCE**

Drawing on the narratives of women who have suffered domestic violence, this chapter examines the root causes of violence, its forms and impacts, and issues related to why victims stay in or leave violent relationships. For the purpose of analysis, these stories are juxtaposed with theories on violence and international research on the topic. While every story of domestic violence is unique, it is possible to identify common themes and patterns in violent relationships as well as in the behavior of victims and perpetrators; and these patterns are present across different cultures and strata.

#### **3.1. How women get into violent marriages and what triggers violence**

In this section, the question of whether it is possible to recognize violent men before they exhibit violence is interwoven with theories on the root causes of violence. Seventeen out of the twenty women interviewed said their husbands were not violent in the beginning of their marriage and gave no early warning signs that violence would come later. These women said they would not have chosen to be with violent husbands if they had seen any such indications. For the sake of the continuity of some stories, to honor the integrity of women's bravery, and for reasons of clarity, many quotes appear unedited in this text.

Nina<sup>52</sup> shared that she learned early on in her marriage that her husband had presented a false image of himself during their courtship:

*“...he was not violent whilst we were dating. He was a sweetheart and he wouldn’t kill a fly. However, a week into the marriage, we were sitting down and talking and he looked at me in a mean way and said, ‘How I fucking tricked you.’ I guess he said that to let me know what was waiting for me in the future.”*

Boja also wished she would have been told about her husband’s violent tendencies before she married. Once she separated from him, she learned that he had also been violent to his first wife, and she was disappointed that nobody warned her.

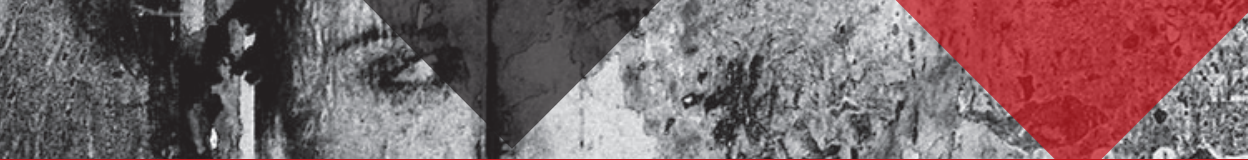
*“He is from a nearby small town, and one local cab driver once said to me, ‘You know, your husband is like his father, who also used to go out a lot and who used to beat his wife as well, and his wife was a very nice woman. He abused her a lot. Some people say that she died from all the beatings; she died young.’”*

Another woman from same town, Nada, spoke about how her stepchildren had told her of their father’s violence toward his former wife. She had been wealthy and had managed to leave him, but not before he beat her, and the police intervened. Therefore, it came as a surprise to Nada that the police did not believe her when she called for help, for they had already handled complaints about the same man from his previous wife.

Natasha talked of the love she and her husband shared, remembering with sadness how they met at a romantic spot in Sarajevo during the war and then met again later and began dating. He was not violent during this time, and she proudly recalled how they had struggled financially at the start of their marriage but had started a family.

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52 As noted in Chapter 1, pseudonyms have been used to protect the anonymity of women subjects.




*“There were some problems and arguments at the time, but I did not think much of that. For example, if I made one meal instead of what he wanted, because I misunderstood him, that food would end up on the floor. But I did not see a big problem there. I thought, well, we are young, we just got married, and we don’t have permanent jobs or our own apartment. I saw the pressure on him of being a provider for the family. He did not allow me to work even though I was more educated than him, but he wanted me to take care of the child.”*

Natasha’s story is a telling example of how patterns of violence take hold. Her husband’s attitude – that he is in control, has the power in the relationship, and is solely entitled to make decisions about his life and hers – reflects his sense of entitlement as a man. The dynamic he imposed on their relationship manifested in demands (not suggestions) such as that Natasha stay home and care for their child, despite the clear need for her to earn income. And, as he “took charge,” Natasha fell into denial, trying to justify his behavior as a result of the pressures he faced. Looking back, and having spent time in a safe house, she can see that there were tell-tale signs of violence that she chose to ignore, wanting to believe things would get better; and even now, Natasha is not completely free from the power of societal discourse that dismisses bad behavior from men as a result of financial pressures or due to negative social influences. She wants to understand his behavior and continues to work very hard to make her marriage work, though she does want the violence to end. Her strong belief in the institution of marriage and the importance of keeping a family together is a factor, and she does not want to believe that her husband’s long-term and severe violence toward her and her children is entirely his responsibility.

Alisa also did not know her husband was violent when she married him after dating for eight months:

*“It’s true, every one of them is nice when you are dating. As the saying goes: ‘When he is trying to attract you he gives you sugar, once you are with him he does not even give you bread.’ It was just like*



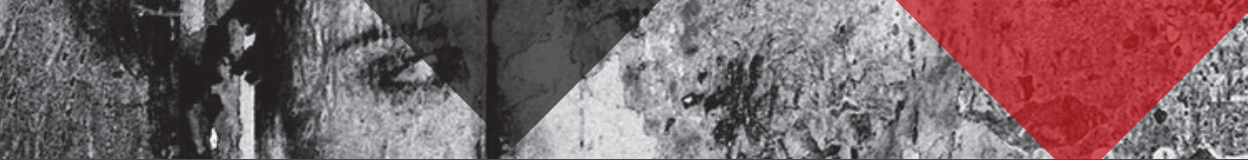
*that in my marriage and I felt it all too well... As soon as I started living with him problems began immediately, constant problems. Initially, they were not big problems, those that you cannot solve, but it was psychological harassment, shouting, and things like that. I used to leave and come back and we would argue. However, when our first child was born, he slapped me for the first time for no reason. The baby was less than 40 days old, and for some reason he was angry. That's how it started. I told him, don't do this ever again. But, with no reason, he would come home and be angry over something – little things, like if I did not clean something – and he would become violent. He kicked me out of the house when our child was six months old because he was screaming in his crib. He kicked us out on the street, where I spent most of the night; and later I went to my in-laws' to sleep. I don't even want to remember some of these things."*

Sabina was married at 21 before giving birth to her daughter at 22:

*"In the beginning, everything was nice. We are from different backgrounds, but I fit in very well, though I needed lots of time to get accustomed to his way of life. He is from Montenegro and I am from Bosnia... The problems started when I gave birth to a baby girl and my mother-in-law said 'fuck her with that female child,' because they wanted a boy. She never accepted our girl and brought a blue blanket for the baby, and kept saying how much she wanted me to give birth to a boy soon..."*

Ana also shared that the problems in her marriage started with the birth of her first child.

*"We lived nicely for two years and then I realized that he was pathologically jealous... Even when we were together in bed he did not believe me [that I was faithful]; but the kids were born and we stayed together. The marriage was unbearable. My ex-husband*



*was violent to his father as well... His father was violent to his mother, too, and that is the reason they also divorced."*

Only one woman, Beba reported that her husband had been diagnosed with a serious mental health problem. Their marriage was pleasant before the onset of his schizophrenia, and now that he is taking medication the relationship has improved. Beba's story illustrates that mental health problems can in some cases be the cause of domestic violence, though this is typically not considered a cause, but a risk factor.<sup>53</sup> Moreover, it is often women who are exposed to domestic violence that suffer mental health problems as a consequence – such as depression, anxiety, and posttraumatic stress disorder.<sup>54</sup>

Two of the women interviewed reported that violence started almost immediately after they were married. This was the case with Ema, a minor who hardly knew her husband before she lived with him. Just one month after their marriage, her husband became severely violent. He did not have mental health or substance abuse problems; but he expressed to Ema that he was entitled to beat his wife. She was separated from her family, unemployed, and powerless. He even took away her mobile phone and forbade her from calling anyone. Though he was also a young man, just six years older than Ema, he assumed that he had a license to full control and power over her that allowed him to abuse and beat her as he pleased.

While Ema's husband very quickly exhibited extreme violence, most women in this study said that their husbands were initially kind, progressing over time into violence and eventually pushing boundaries so that use of violence became common in their family. The pattern they described reflects the cycle of violence outlined by psychologist Lenore

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53 Stephen H. Dinwiddie (1992) "Psychiatric Disorders Among Wife Batterers," *Comprehensive Psychiatry*, Volume 33/Issue 6: 411–416.

54 See: Jorielle R. Brown, Hope M. Hill, and Sharon F. Lambert, "Traumatic Stress Symptoms in Women Exposed to Community and Partner Violence," *Journal of Interpersonal Violence* 20, no. 11 (2005): 1478-1494; and Victoria M. Follette, et al., "Cumulative Trauma: The Impact of Child Sexual Abuse, Adult Sexual Assault, and Spouse Abuse," *Journal of Traumatic Stress* 9, no. 1 (1996): 25-35.

Walker in 1979.<sup>55</sup> The length of this entire cycle may be just one day, or may take weeks or months, and it is different in every relationship; and not all relationships follow the cycle, as some women report being under constant siege with little relief. But many abusive relationships can be broadly represented by the cycle (see the graphic below<sup>56</sup>), which has three phases:

- 1) Tension building – when verbal abuse begins over common issues. During this phase, victims try to please the abuser and avoid violence, but are not successful.
- 2) Acute battering – when physical violence begins, frequently triggered by an external event or the abuser’s emotional state rather than by something the victim does.
- 3) The honeymoon – when the abuser expresses remorse in the aftermath of violence and tries to minimize the abuse, perhaps even blaming it on the victim. At this stage, abusers may be loving, generous, and helpful, and are likely to offer apologies and promises that the abuse will not happen again.

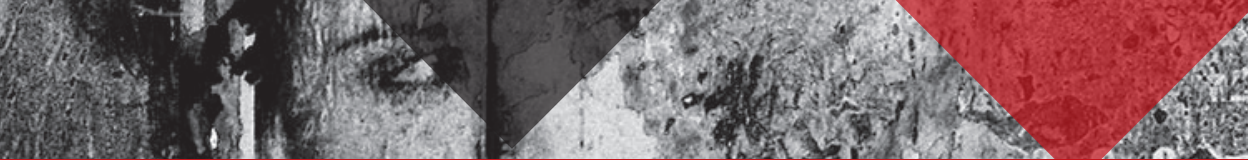
## Cycle of Violence



<sup>55</sup> Lenore E. Walker, *The Battered Woman* (New York: Harper and Row, 1980).

<sup>56</sup> Source: [http://www.maws.mb.ca/cycle\\_of\\_abuse.htm](http://www.maws.mb.ca/cycle_of_abuse.htm)





This cycle helps explain why some victims stay in violent relationships, because the honeymoon phase gives them a false sense that things will change and that leaving is unnecessary. A manager of a safe house who spoke with the researcher for this study said that victims of violence frequently describe this pattern to her, and that they are misled by the honeymoon phase. Still, this does not explain cases in which men engage in violence straight away, as was true for two young women who separated early in their marriages and one older woman who stayed married for a long time. For these women, there was no tension-building phase; instead, violence was inflicted immediately and severely.


Zara remained married for 26 years to an extremely violent man, despite that fact that her marriage was abusive from the very beginning. Her husband and his family live in a remote village, identify as religious, and use religion to excuse their behavior. Yet, as Zara experienced and Walker has found, the religiousness of perpetrators does not prevent them from committing domestic violence.<sup>57</sup> Zara did leave her husband once, staying in her parents' home whilst pregnant; and during that time, he was kind and gentle. But, as soon as she returned, he was violent again. Zara's husband used violence in a controlled way and was able to restrain himself when he chose to, but frequently chose not to.

How an abuser uses violence can tell us important facts about his ability to control violent impulses. In most cases, the aggression men exhibit against women is not random and unconstrained but is used instrumentally to control, punish, and intimidate; and cohabiting relationships and marriages are frequently seen by such men as a license to abuse. This contrasts with individualist theories that identify uncontrollable biological and psychological factors or substance abuse as the causes of domestic violence – all of which continue to be commonly understood as the causes of violence in BiH.<sup>58</sup> In this study, only one woman's abuser had a diagnosed mental health condition. Furthermore, the narratives

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<sup>57</sup> Walker, *The Battered Woman*.

<sup>58</sup> Halilović and Huhtanen, *Gender and the Judiciary*.

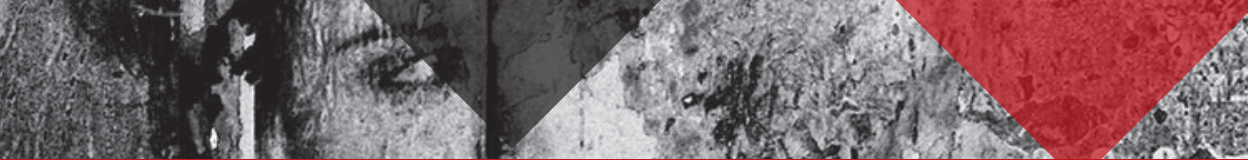


shared in interviews contradicted the popularly-held belief that alcohol is a cause of domestic violence. Almost half of women interviewed said their husbands did not drink any alcohol, and of those who said their husbands had problems with alcohol, all claimed that the violence they experienced had not occurred when their husbands were inebriated. And while it is true that external factors such as poverty and job loss sometimes exacerbated the violence these women experienced, violence occurred even if these factors were not present.

Medina, who was staying in a safe house at the time of her interview, is an example of the fact that domestic violence is not isolated to lower economic classes that may be more affected by external factors. The manager of the safe house, who has worked for many years to support victims of violence, explained that violence is simply most visible among poorer people, because they seek help through public institutions, whilst wealthier people often access private resources that allow them to keep their affairs more secret. Though poverty can contribute to violence, it is not itself a cause of violence; and women in marriages in which financial problems are not an issue also experience violence. This was the case with Medina:

*“...My husband is not an alcoholic or a drug addict, he is a religious man, but he never wanted to do anything about his behavior... That patriarchal upbringing of his left him thinking that women should live without being asked anything or without having any rights to their own life, children, or marriage. Usually, [violence] would start with a disagreement, even though I did not have the right to argue with him. He would beat me up with anything he could grab. We did not have problems with money; we earned well, and built two houses together.”*

The narratives of women in this study echoed what sociological literature on domestic violence has indicated for quite some time – that it is a mechanism used by men to control women, and one which men learn is



acceptable and tolerated.<sup>59</sup> The men described in these interviews, who frequently came from families in which violence was used against women, dominated their wives by repeatedly placing them in a subordinate position. These men believed that even law enforcement and the judiciary would tolerate their violence because they feel they are entitled to behave violently in order to maintain control in their marriage.

### 3.2. Types and degrees of violence


Domestic violence takes on many forms – it can be physical, emotional, financial, and sexual, and may involve intimidation, stalking, insults, and so on. With the recognition that domestic violence is a public and a social problem, research has increasingly begun to identify different forms of violence apart from physical assault. In Bosnia and Herzegovina, a number of these various forms of violence are listed in laws that protect against domestic violence.”<sup>60</sup>

During interviews for this research, women usually spoke openly about the violence they had experienced, despite how emotional this was for them. Yet, it was clear to the interviewer that speaking about sexual violence or having been humiliated in front of others, especially their children, was particularly difficult for these women. In this section, the types of violence described by women interviewees is presented and analyzed. While it may seem that a disproportionate amount of space is given over to disturbing details of this violence, this is intentional – because, too often, women do not have the opportunity to tell the story of how it feels to be exposed to regular and severe violence in an intimate relationship, especially with the protection of anonymity that was offered

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59 Michael P. Johnson, “Conflict and Control: Symmetry and asymmetry in Domestic violence” in *Couples in Conflict*, eds. Alan Booth, Ann C. Crouter, and Mari Clements (Mahwah, NJ: Erlbaum, 2001), 95-104; and Kersti A. Yllo and Murray A. Straus, “Patriarchy and Violence against Wives: The Impact of Structural and Normative Factors” in *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families* (New Brunswick, NJ: Transaction, 1990), 383-399.

60 See: FBiH Law on Protection from Domestic Violence, FBiH Official Gazette, no. 20/13; RS Law on Protection from Domestic Violence, RS Official Gazette, nos. 102/12 and 82/15.



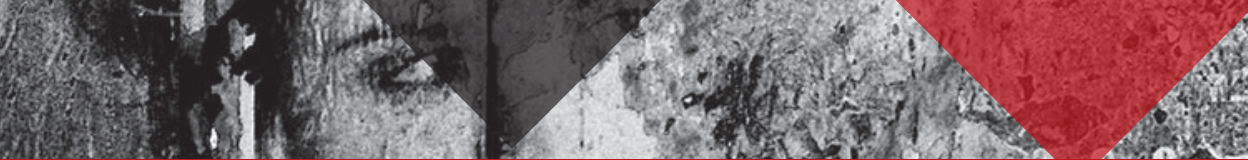
by this research. It is important to recognize and validate these experiences and, furthermore, they may increase awareness among professionals who deal with domestic violence about the reality of the lives of women victims. Understanding that some women face regular threats of strangulation, the use of weapons, sexual assault, and isolation is important to the development of effective prevention strategies and best practices for legal sanctioning.

### 3.2.1. Physical violence

All of the women who took part in this study spoke about having experienced physical violence, including pushing, hair pulling, punching, strangulation, kicking, and other forms of assault, sometimes involving actual or makeshift weapons. In Boja's case, her children witnessed extreme physical violence:

*“There were some glasses on the table and he started throwing them at me but I moved away and he missed. Then, I came into the house and he came after me and started hitting me. The children were there – our daughter, eight, our son, five years old, our daughter of three years, and our three-month old baby. He started hitting me and he knocked me unconscious, so that I don't remember some things, but the little three-year old says now that her father wanted to kill her mother. She used to love him so much, but now she does not want to say that he is her father. She says to the other children that their father took a knife and wanted to slaughter mummy... The police took me to the emergency room... I was so badly injured.*

Anabela still lives in a violent marriage, but says that things are better than they used to be and that her husband doesn't hit her as much. She recalled how he always used to target her neck, face, and eyes.



*“He always wanted to strangle me and he would go for the eyes... He used to call me a whore and say that I was looking at men with those eyes, so I guess he wanted to blind me so that I could not see anything. He is very jealous. He was even jealous of his father who used to live with us...”*

Dusanka also described her very violent husband as jealous:


*“...he got hold of me and pushed me into a small kitchen outside the house. I struggled so that he wouldn't be able to push me inside and I cut my hands holding onto some tools... When I am outside, I'm less scared, so I was trying to stay outside. He beat me badly in there and I had bumps all over my skull... My son took me to my brother's, but [my husband] beat me again because I had left... I had no other choice but to report him... The problems were always there. He is so jealous and he doesn't know what he wants. One time, my parents had to call the police to come and get me. It was three years ago and he was beating me with a big military belt.”*

Ana says her husband was jealous as well, and beat her for any little thing that displeased him:

*“He would always find some reason to beat me, [such as] if the knife and fork were not placed the way he liked... He was jealous and I was not allowed...to go anywhere, even if one of our children was with me. I was not allowed to say hello to any men. It was terrible. He beat me in front of the children and they started to complain. Our older son especially, I was afraid that he would have conflict with his father and I told the children not to get involved.”*

Gordana talked of how her husband beat her even when she was at her most vulnerable:

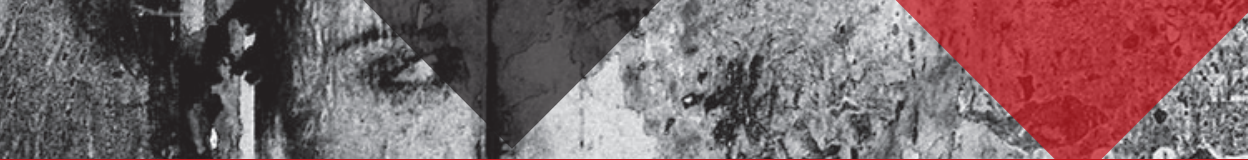
*“He beat me even after I had a kidney operation and was supposed to be recovering in bed. He came home drunk and on drugs after working the night shift and he beat me.”*



Ema who was a minor at the time of her marriage, spoke with great difficulty about her experiences. She said that when she was three weeks pregnant – very soon into their marriage – her husband started beating her severely, to the degree that she felt he wanted to kill her. However, when her mother came to visit, he behaved kindly, proving that his violence could be controlled.

*“...I did not want to say anything to my parents. When my parents came, he was behaving nicely, but as soon as they left he asked me what I had told them and he beat me again. After that, I called my parents and told them, and they came and took me home... I stayed with my parents for two months and then he came with his uncle and said that it wouldn’t happen again and he apologized. I didn’t want to go back but my father told me to, because of the baby, [and] I was scared that if I had an abortion I would not be able to have more children in the future. I returned to him, thinking that he had changed, but on the fifth day he beat me so badly. He did not allow me to have a phone, so I couldn’t contact anyone. After two months, I managed to take a phone from his grandmother and I called my parents and told them to come and take me to the police.... He used to do all sort of things to me. He would cut my hair, he put a knife to my neck, and he used to tell me very ugly things, awful things...”*

Ema’s is another story which reaffirms that domestic violence is not just a series of random, uncontrollable acts but a tool that can be used to obtain power and install fear. Ema’s husband, and the other perpetrators described by women in this research, were able to conceal their behavior when necessary and exhibit kindness when expedient. Often, this ability of abusers to censor their behavior leads women to feel that they will not be believed if they report violence. As a result of her trauma, Ema began stuttering and has severe panic attacks that continue even after her separation from her husband. And, despite being an extremely violent man in possession of firearms, Ema’s husband was not incarcerated and was allowed unsupervised visitation rights to their one-year old child.




Amina who suffered long-term and severe violence that included rape, described how her adult son finally intervened:

*“The first time I came to this safe house was in May of last year. I was so badly beaten that the ambulance drove me here. I would not have reported [my husband], our son did that. I have a 20-year-old son and a 14-year-old daughter... I was ashamed to tell anyone [what was happening] so I put up with humiliation, beatings, swearing, spitting.... He used to beat me up, take off my clothes, and make me stand naked on the balcony so that neighbors would see me.*”

Amina explained that she had returned home after her husband had promised he would not beat her following the issuance of a restraining order. She wanted to be with her children, who did not want to live in the safe house. But, she was met with violence:

*“He punched me and I fell on the floor... My dentures fell out and my t-shirt and tights were all ripped up. He threw beer from a beer glass over me... He used to beat me up with those thick beer glasses and I am still uncomfortable when I see them. He was strangling me, and he grabbed a scalpel.... He beat me for probably one hour. His mother and father were sitting outside and they did not come inside and help me even though the door was open. I said I would call the police and he said ‘whore, if you call police, I will slaughter you.’ After some time, I managed to grab my purse and escape.”*

Most of the women interviewed had not been spared from physical violence even during their pregnancies. This was especially hurtful, as the violence endangered the babies they were carrying. Indeed, Zeljka had several miscarriages as a result of her husband’s beatings. And Ema described being hospitalized during her pregnancy:



*“It was during Eid, and he beat me and some water leaked out of me. I went to the hospital. He did not inform my mother and father... Every day, he kicked me in the stomach, and then I stole his grandmother’s mobile phone and called my mother to come and get me. ...I reported him again, and again they didn’t do anything, except say he would not do it anymore.”*

Una also suffered violence during pregnancy:

*“He used to kick me out of the house and I slept outside with one small child when I was pregnant. The first time I ran away to the safe house, I was so scared because our older child stayed with him. He beat our children as well.... That’s why wherever I go, I take the children with me.”*

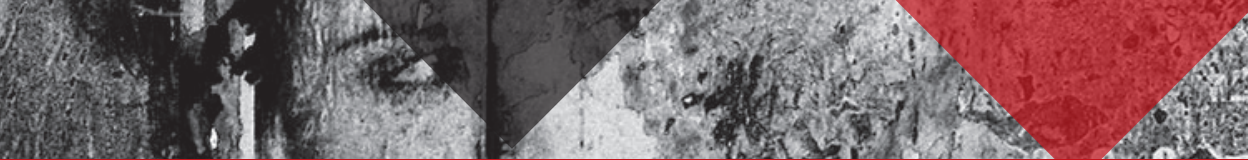
Maja said her husband, who beat her when she was pregnant, accused her of carrying other men’s children:

*“He beat me when I was pregnant... [and] when I got pregnant with the second child he also beat me. He claimed that I was with someone else and that the child was not his, but it was not true. I didn’t even go anywhere or go out.”*

In the case of Medina, who is now in a safe house, her husband did not beat her during her first pregnancy, yet he did during her second. But for Alisa, it was the fact that she was pregnant at all that seemed to trigger her husband’s violence:

*“Our problems started one month after I said I was pregnant. He did not want a child, and he and his mother kicked me out of the house. I left and he called me to tell me to have an abortion. I didn’t want to. Just before I was due, he called and begged me to return. I returned, but he drank and he forced himself on me [sexually]. He took out his frustration on me and on that child.”*





Eventually, Alisa was beaten so severely that she received head injuries requiring a five-hour neurosurgery to address a brain hemorrhage. Still, her husband is allowed unsupervised visitation rights to their small child.

It is not uncommon that women experience domestic violence during pregnancy and this has been reported in other similar research. Women are especially vulnerable during pregnancy and yet this vulnerability does not prevent, and may in some cases actually exacerbate, violence. How often domestic violence is the cause of miscarriage or complications in pregnancy is very difficult to determine; however, evidence shows that women are more likely to suffer postpartum depression if they are victims of domestic abuse.<sup>61</sup>

A study by the World Health Organization (WHO) on violence against women found that pregnant women who had experienced physical or sexual partner violence, or both, reported more induced abortions.<sup>62</sup> That study also demonstrated significant associations between sexual violence in a relationship and unintended pregnancy and/or abortion.<sup>63</sup> Further, research shows that being in a relationship with an abusive partner can impact women's sexual decision-making and their level of control over contraceptive methods, sometimes resulting in unintended pregnancy and abortion.<sup>64</sup> Some studies also show that violence can increase if a husband and his family desire a male child and his wife bears or is carrying a female child.<sup>65</sup>

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61 Heather Douglas and Tanja Stark, *Stories from Survivors: Domestic Violence and Criminal Justice Interventions*, T.C. Beirne School of Law, The University of Queensland, 2010.

62 World Health Organization, *Summary Report: WHO Multi-country Study on Women's Health and Domestic Violence against Women* (Geneva, 2005).

63 Christina C. Pallitto, et al., "Intimate partner violence, abortion, and unintended pregnancy: Results from the WHO Multi-country Study on Women's Health and Domestic Violence," *International Journal of Gynecology and Obstetrics* 120, no. 1 (2013): 3-9.

64 Elizabeth Miller, et al., "Reproductive Coercion: Connecting the Dots between Partner Violence and Unintended Pregnancy," *Contraception* 81, no. 6 (2010): 457-9; and E. Emenike, S. Lawoko, and K. Dalal, "Intimate partner violence and reproductive health of women in Kenya," *International Nursing Review* 55, no. 1 (2008): 97-102.

65 Meerambika Mahapatro, et al., "Domestic Violence during Pregnancy in India," *Journal of Interpersonal Violence* 27, no. 15 (2011): 2999-3015.

### 3.2.2. Sexual violence

In both research and institutional responses to domestic violence, marital rape is often overlooked for number of reasons. For one, many victims do not recognize unwanted sex with their husband as rape; and service providers, police, and prosecutors often do not ask about it. Also, marital rape is often grouped under the broader umbrella of intimate partner violence in studies, and is not isolated for separate examination of specific correlations and risks. On the other hand, research on sexual violence generally does not always distinguish whether rape happens in the context of an intimate relationship or not. Knowledge of and intervention strategies for marital rape thus lag behind other types of violence against women.<sup>66</sup>

As suggested by Bagwell-Grey et al., this research took into account women's own definitions and conceptualizations of intimate sexual violence.<sup>67</sup> Women in this study were given space to speak about forced sexual experiences in terms with which they were comfortable and were not asked directly if they were raped, though some classified their experience in this way. Women were asked if their husband had forced or coerced them to have sex, and a number of women talked about this experience.

Una explained:

*"I wasn't up for it because of everything that was happening between us, and from my perspective, sex was forced on me. He asked me to do stupid things that I did not want to do, some perversions. When I say 'don't do that,' he should stop. But I was refusing and it was still happening, and that is not love making; that is something disgusting. I had no desire for it, so it was a kind of forced."*

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66 Meredith E. Bagwell-Gray, Jill Theresa Messing, and Adrienne Baldwin-White, "Intimate Partner Sexual Violence: A Review of Terms, Definitions, and Prevalence," *Trauma, Violence and Abuse* 16, no. 3 (2015): 316-335.

67 *Ibid.*



Zara said her husband had forced her to have intercourse; an experience made even more shameful and humiliating for her because her teenage son witnessed it:

*“Our son was in the seventh grade and [my husband] beat him and then beat me. My son escaped to another room. My husband forced me to have sex with him. My son looked through the crack in the door and saw everything. I was aware that he was looking, and that is an image I will never get out of my head. He wanted to see that I was ok.... My husband tried to strangle me in front of the children, and I would get very short of breath. He forced me and children to watch the film ‘Kuduz’ and then he would...start beating me.”<sup>68</sup>*

For Dina, sex with her husband was never a pleasure, and she freely described her experience as rape, saying:

*“He practically raped me every time. I never wanted him.”*

Amina, who was a victim of severe physical violence and various forms of humiliation, also talked openly of rape:


*“Yes, he raped me whenever he felt like it. He would not sleep with me for 3 to 4 months and then he would just come in and force me. He did whatever he wanted and in any way he wanted.”*

Nada recalled extremely violent experiences of sexual assault by her husband, which were difficult to discuss:

*“Yes, he forced me [to have sex] in a very horrible way. ...I am uncomfortable talking about it. He used a police stick and shoved it inside of me.”*

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<sup>68</sup> *Kuduz* is a famous film set in Bosnia and Herzegovina from the 1980s in which a wife, who cheats, is viciously killed by her husband, who is portrayed as basically decent and pushed to tragic ends.



An intimate relationship is reasonably expected to be a place of security, trust, and affection; and violence in intimate relationships, especially sexual violence, is often experienced as a serious violation that leaves victims feeling confused, angry, ashamed, betrayed, and in a persistent state of fear that they may be attacked again.<sup>69</sup> One very poignant example of an abuse of trust in an intimate relationship was shared by Natasha, who is not only a victim of severe and long-term abuse, but also of wartime rape. During the war, Natasha was raped by three men and left to die in a minefield, but she managed to survive. The experience was extremely traumatic and she did not even disclose it to her parents, but she did tell her husband, and he has used it to manipulate her:

*“He uses this secret against me and reminds me about it in the most awful ways if we have an argument. He knew everything about me, because I was honest with him, but he humiliates me.”*

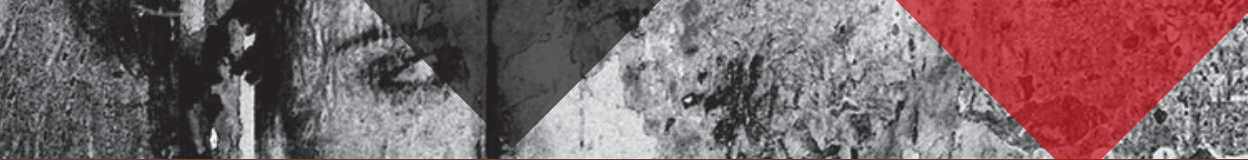
Natasha said that her husband also raped her more than once, and that their third child was conceived as a result of one of these assaults. For Natasha, this type of abuse by her husband is the worst kind to endure, because he knows how significant this trauma was for her and to repeat it has demonstrated how cruel he can be.

The stories of marital rape told by women in this study reflect research that defines it as a severe trauma with many damaging effects. Marital rape is almost always repetitive and, furthermore, is frequently combined with other types of violence that add to the severity of the consequences experienced by victims. Apart from issues such as unwanted pregnancy, myriad psychological problems can result from marital rape, rendering women even more vulnerable and with less agency to leave violent relationships.<sup>70</sup>

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69 David Finkelhor and Kersti Yllo, *License to Rape: Sexual Abuse of Wives* (New York: Holt, 1985).

70 S. Boucher, J. Lemelin, and L. McNicoll, “Marital rape and relational trauma,” *Sexologies* 18, no. 2 (2009): 95-97.



According to the manager of a safe house in Sarajevo who spoke with the researcher, the problem of marital rape is further complicated by the fact that women themselves often do not initially recognize forced sex within marriage as a form of violence. She contends that most victims of domestic abuse are victims of sexual violence, but that they only recognize this once they attend workshops. Even though they may admit that sex occurred in their marriage against their will, she says they are very unlikely to label what their husbands or partners did as sexual abuse. Other research has reported similar challenges and barriers, suggesting that a sensitivity to the perspective of women victims must be incorporated into a careful approach to identifying whether they have experienced marital rape.<sup>71</sup>

Marital rape – like other forms of violence – represents a husband’s attempt to establish dominance and control over his wife, who he may see as his property and thus feel a sense of entitlement to sexual access.<sup>72</sup> Establishing the presence of marital rape within the context of domestic violence is of utmost importance as it relates to criminal justice interventions, as this kind of violence is associated with an increased risk of lethality. Numerous studies support this link and the question of whether marital rape is occurring is an integral part of various lethality assessment tools. Alongside a perpetrator’s ownership of weapons, threats made with weapons, drug and alcohol abuse, and extreme jealousy, forced sex is understood as a red flag that a woman’s life may be at risk.<sup>73</sup> Therefore, service providers and criminal justice professionals must be aware of the significance of uncovering a history of sexual violence in a relationship and must take this into consideration when assessing a woman’s safety.

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71 Neil Websdale, *Understanding Domestic Homicide* (Boston, MA: Northeastern University Press, 1999).

72 Raquel Kennedy Bergen and Elizabeth Barnhill, “Marital Rape: New Research and Directions,” National Online Resource Center on Violence Against Women, [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=248](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=248) (accessed November 3, 2015).

73 Jacquelyn C. Campbell, ed., *Assessing dangerousness: Violence by sexual offenders, batterers, and child abusers* (Thousand Oaks, CA: SAGE, 1995).

### 3.4. Children exposed to and victimized by violence

This study makes a point to refer to children being exposed to violence instead of witnessing violence, as informed by Lynn Hecht Schafran, who argues that witnessing violence and being exposed to it are different experiences with different consequences.

*Articles about domestic violence sometimes describe children as witnesses, a problematic term for two reasons. First, 'witness' implies a passive bystander, whereas children are deeply engaged with everything that happens in their family environment. Second, a child might never see or hear the physical or sexual abuse yet be profoundly harmed by the atmosphere of fear in which he or she lives. The preferred terminology is children 'exposed' to domestic violence.<sup>74</sup>*

The negative effects of domestic violence on children are well documented.<sup>75</sup> Children in violent homes are more likely to be victims of physical and emotional violence themselves and grow up with a number of various other associated consequences.<sup>76</sup> Typically, children exposed to domestic violence respond in one of two ways: they become quiet and withdrawn or loud and aggressive.<sup>77</sup> A review of the literature shows that these children develop more emotional and behavioral problems and are prone to take more unnecessary risks.<sup>78</sup> A study from Northern Ireland shows that domestic violence also negatively affects the educational attainment of children, along with their self-esteem and ability to form

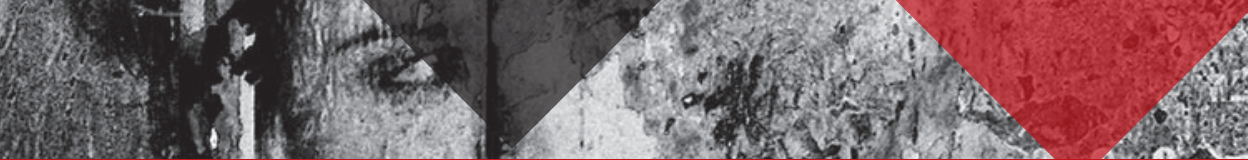
74 Lynn Hecht Schafran, "Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience," *The Judges' Journal* 53, no. 3 (Summer 2014).

75 Joy D. Osovsky, "Children Who Witness Domestic Violence: The Invisible Victims," *Social Policy Report IX*, no. 3 (1995): 1-16.

76 Todd I. Herrenkohl, et al., "Intersection of Child Abuse and Children's Exposure to Domestic Violence," *Trauma, Violence and Abuse* 9, no. 2 (2008): 84-99.

77 Dorothy Byrne and Brian Taylor, "Children at Risk from Domestic Violence and their Educational Attainment: Perspectives of Education Welfare Officers, Social Workers and Teachers," *Child Care in Practice* 13, no. 3 (2007): 185-201.

78 Stephanie Holt, Helen Buckley, and Sadhbh Whelan, "The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature," *Child Abuse and Neglect* 32, no. 8 (2008): 797-810.



relationships.<sup>79</sup> Other research shows that children exposed to violence in the home exhibit significantly poorer verbal skills than their peers and that domestic violence indirectly affects the intellectual abilities of children through its influence on maternal depression and the quality of the home environment.<sup>80</sup>

A 2006 UNICEF report estimated that as many as 275 million children worldwide were exposed to violence in the home – a number it qualified as conservative because many countries have no data to determine this number, as is the case in BiH. In the report, UNICEF urged that serious attention be brought to the issue of children’s exposure to domestic violence and confirmed other research findings that violence affects the learning, social skills, behavioral control, and emotional health of children.<sup>81</sup> This is especially important for children in their first several years of life, when they are particularly vulnerable due to the key developmental stages of infancy and early childhood; and yet, domestic violence is actually more prevalent in the homes of younger children than those of older children.<sup>82</sup>

Women in this study spoke extensively about the violence their children experienced in the home. All of them said that their children suffered emotionally and psychologically. Even if the violence occurred out of their sight, they would hear it or see the bruises afterward. These children were frequently frightened of their fathers and grew up in atmospheres of fear and repression. Boja explained that her children were not allowed to bring anyone home, because the noise of children irritated her husband. Amina recalled with great sadness how her children watched her husband humiliate her in the worst possible ways, creating such fear in her daughter that she refused to leave home to play with her friends because she was scared her father would attack her mother. Women reported that

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79 Byrne and Taylor, “Children at Risk from Domestic Violence and their Educational Attainment...”

80 Alissa C. Huth-Bocks, Alytia Levendosky, and Michael A. Semel, “The Direct and Indirect Effects of Domestic Violence on Young Children’s Intellectual Functioning,” *Journal of Family Violence* 16, no. 3 (2001): 269-290.

81 UNICEF, *Behind Closed Doors: The Impact of Domestic Violence on Children* (New York: 2006). See: <http://www.unicef.org/media/files/BehindClosedDoors.pdf>

82 Brett V. Brown and Sharon Bzostek, “Violence in the Lives of Children,” *CrossCurrents*, no. 1 (August 2003).



their children would sometimes try to protect them, and when they were older, would even fight with their fathers in retaliation.

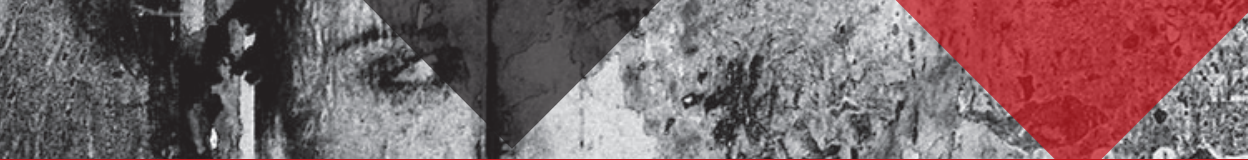
Una spoke of how her husband kicked her out of the house one night, forcing her to leave two of her children, including one who was just a small baby that was still breastfeeding. The next day, Una found the baby in a state of shock and hunger. Natasha shared that she finally left for the safe house after her husband was so violent that her children were certain he wanted to kill them all:

*“That was the longest night in my life. I barricaded the door of one room and finally tried to sleep with the children. My youngest son was so scared that he was afraid to go to the toilet, just next-door. That night, he urinated in a bottle because he thought his dad would do something to him. The children were always by my side. They would try to defend me even if they knew their dad would push and hit them as well.”*

Apart from being exposed to violence, children are often the targets of violence by their abusive fathers – a fact that emerged strongly in this research. Only a few women who were interviewed said that their husbands were violent only toward them and not toward their children. All the others described various incidents in which their children were physically injured, including by being punched, slapped, kicked, and having objects thrown at them. Ana talked about the long-term effects this has had on her daughter:

*“Sometimes she just wakes up and starts to cry... She still talks about how he locked her in the bathroom and hit her with the remote control, and how he overthrew the dining table during dinner and everything mummy made crashed to the floor. When somebody shouts, she gets scared. He scared her so much that she is still frightened. I have taken her everywhere – to psychologists, to traditional healers – just to get the fear out of her. The side-effects of him have impacted her education and everything else.”*





Natasha, who lived with violence for a very long time, recalled how her children used to beg her husband to stop beating her:

*“..He used to drag me through the house, pulling me by my hair, kicking and punching me. I could not see what was happening, but I would try to open one eye to see where my children were. The two of them would hide under the table trembling and crying and begging him to stop beating me. Once, he punched my daughter a few times in the chest...”*

In Alisa’s case, her seven-month-old baby was the direct victim of her husband’s violence:

*“He was injured on his back, with bruises, and [my husband] hit him in the stomach, too. I could somehow put up with being beaten, but to beat a seven-month-old baby, I cannot bear; and for that reason, I am dissatisfied with the sentence he got.”*


Zeljka said that her daughter was frequently the victim of violence in their home:

*“He would beat her up so badly that she would be all black and blue; it was as if he wanted to kill her. I would try to stop him. I would give my life, just so that my child stays alive. Luckily, she got married young and left the house, and I left him as well.”*

The consequence for children who are exposed to violence and who grow up in violent homes are not limited to individual-level effects; and a number of studies show that there are intergenerational impacts of domestic violence. In what Brown and Bzostek call a “disturbingly prophetic pattern,” male children exposed to violence are more likely to be abusers as adults and female children exposed to violence are more likely to be abused.<sup>83</sup> Similarly, compared to non-abusers, abusers are

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83 Ibid.



much more likely to have had violent fathers. Domestic violence is a learned behavior, after all, and the children of batterers learn that violence is normal in intimate relationships.<sup>84</sup> This is something that the women interviewed for this research talked about when reflecting on why their husbands were violent, often commenting that their husbands' fathers had also been violent toward their mothers, and that their husbands had learned early in life that this was an acceptable model for a family.

Interviewees also expressed fears that their daughters will or have become victims of domestic violence because this is the only family dynamic with which they are familiar. This is a very valid concern; for there is strong evidence that daughters exposed to violence in the home are indeed at a greater risk of becoming victims themselves without certain interventions.<sup>85</sup> One interviewee spoke with great pain about the fact that her daughter is now exposed to violence in her marriage, as her mother was. The manager of a safe house drew attention to this issue as well, telling the story of a young woman who had recently come to the shelter to escape her violent husband. The manager recognized her because, some years ago, she had been in the same shelter as a child, when her mother left her violent father.

The implications of the intergenerational impacts of domestic violence are not just isolated to particular families, but are long-term and society-wide. Providing appropriate and immediate support to families in order to break intergenerational patterns of violence is a key to prevention, and benefits society as a whole. Thus, resources for judges who work on domestic violence cases suggest that special consideration be given to whether children have been exposed to violence – a variable which, when established, is commonly viewed as an aggravating factor in judicial sentencing. For instance, according to the Sentencing Guidelines Council for the United Kingdom:

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84 David A. Wolfe and Peter G. Jaffe, "Emerging Strategies in the Prevention of Domestic Violence," *Domestic Violence and Children* 9, no. 3 (1999): 133-144.

85 David Indermaur, "Young Australians and Domestic Violence," *Trends and Issues in Crime and Criminal Justice*, no. 195 (2001).

- *Exposure of children to an offence (either directly or indirectly) is an aggravating factor.*
- *Children are likely to be adversely affected by directly witnessing violence or other abuse and by being aware of it taking place while they are elsewhere in the home.<sup>86</sup>*

The *Judicial Benchbook* on domestic violence that was developed by BiH judges – who reviewed sentencing practices in BiH alongside best practices recommendations from the international context – similarly qualifies the exposure of children to violence as an aggravating factor in the application of sanctions:

*The court is encouraged to pay special attention to the potential consequences for children who have witnessed or been exposed to domestic violence. It is recommended that child witnesses of domestic violence are considered an aggravating factor in the following cases:*

- *child witnesses physically present when the violence was taking place*
- *child witnesses not physically present, but able to hear the violence/abuse and see its consequences later*
- *child witnesses not physically present and cannot hear the violence/abuse, but can see its consequences afterwards.<sup>87</sup>*

Despite these recommendations, though, the impact of violence on children does not seem to be reflected in actual judicial sentencing in domestic violence cases in BiH, which will be discussed further in the next chapter.

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86 United Kingdom Ministry of Justice, Sentencing Guidelines Council, *Overarching Principles: Domestic Violence – Definitive Guideline* (2006).

87 Galić and Huhtanen, *Judicial Benchbook*.

### 3.5. Leaving and returning to an abusive relationship

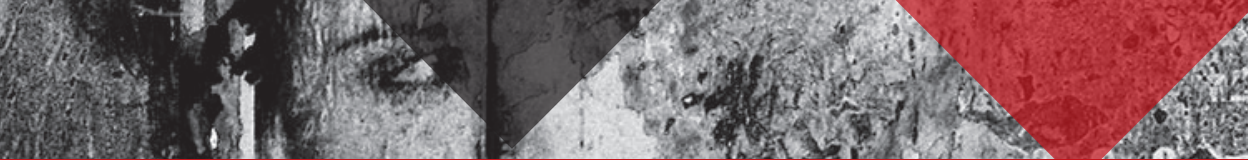
Leaving an abusive relationship is a process, not a moment, and most women leave and return several times before leaving one last time. The process women go through to extricate themselves usually includes periods of denial and self-blame that can lead to self-doubt, until women “come to recognize the reality of the abuse and to identify with other women in similar situations.”<sup>88</sup> When this happens, women can finally focus on disengaging and recovering from the abusive relationship. Understanding this process can help people to be more accepting and less judgmental when women return to abusive situations.

Of the women interviewed for this study who had tried to leave their husbands, all but one returned at least once before trying to leave again. At the time of this research, two of these women had very recently returned home to be with their husbands and both said that they had not experienced violence for several months. One of them, Natasha, has endured long-term and extreme violence. After spending some time in the safe house and attending group counselling sessions, she decided to resume her marriage, convinced that she and her husband will be capable of resolving conflict without his use of violence.

Most of the other women who said they had returned to their violent marriages expressed regret about this decision, because in every case, the violence recurred. Anabela especially exhibited regret about returning, remarking that the violence has never stopped. She disclosed feeling very ashamed that she had returned after her family and support services offered her assistance. While she is very depressed about living in her violent marriage, she is concerned that if she were to ask again for support in leaving, people may not be willing to help.

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<sup>88</sup> Etienne G. Krug, et al., eds., *World report on violence and health* (Geneva: WHO, 2002), 96.



All of the women who participated in this study said that leaving their violent relationship was very difficult, which has been the finding of research conducted on this topic across the world. They identified a number of barriers to leaving, including functional challenges such as a lack of resources or a lack of family support, and also more personal roadblocks such as the hope that the violence would end and a sense that they had made too considerable an investment in the relationship. And the fear that leaving would negatively impact their children, along with concerns about being stigmatized by society, felt like additional barriers. Those women who remained in their marriages for a long time in spite of violence talked about how they had tried to make their marriage work; and the way they spoke reflected deep convictions about the institution of marriage and the necessity of this social and family structure – and this strongly-held value by some women can be yet another barrier to leaving an abusive marriage.

Social science research has attempted to identify some of the reasons women stay in violent relationships. Bell and Naugle list eight factors that reflect the stories told by women interviewees in this study:

- *Commitment to the relationship, especially for victims who have been in abusive relationships for longer durations*
- *Women who report being more invested in “saving” the relationship or admit having emotional attachment to the batterer may be more likely to remain in violent relationships*
- *Lack of financial and housing resources, lack of child care, few relationship alternatives, lack of employment or education, batterers’ promises to change, fear of batterer retaliation, and social pressure*
- *Victim is exhausted emotionally, spiritually and mentally and sees no hope*
- *Abuser made her believe that it is her fault and victim feels it is probably her fault and that she deserves it or asks for it*
- *Abuser says she is not employable by anyone and that she will not be able to survive*

- *Abuser threatens her that social services will take her children away and that he will keep the children because she does not have resources*
- *Abuser threatens to use more violence and portrays victim as unstable and unworthy.*<sup>89</sup>

Maja explained that she had left and returned in the past, but that the violence in her marriage subsided when she left again and seriously considered divorce:

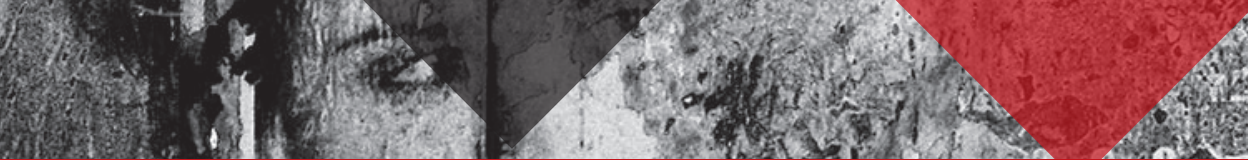
*“He called me to come back [the first time] and promised there would be no problems; and then he made a mess of things again. I tried and tried, but he finally beat me so badly that I came to the safe house and asked for help in getting divorced. When I asked him for the papers to file for divorce, he completely calmed down. He saw that I was serious. I told him that I’d had enough of abuse and that I would no longer tolerate it, because I have been abused since my childhood. Really, he calmed down after that. It has been a year-and-a-half that he has been ok. Sometimes he gets upset, but I take the children and go out... Now, our biggest problem is that our son is aggressive.”*

In Amina’s case, she returned to live with her husband even after an order of protection was issued because she missed her children and wanted to be with them. Her husband promised that he would not approach her, but he did not honor his word:

*“I was cleaning the storage space when he came in, referred to something he did not like, and started beating me. There was a large fridge, and he opened the door and started hitting me on the head with the fridge door. All I wanted was to get to the phone, which I had left in the sitting room. Somehow, I managed to grab*

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89 Kathryn M. Bell and Amy E. Naugle, “Understanding Stay/Leave Decisions in Violent Relationships: A Behavior Analytic Approach,” *Behavior and Social Issues* 14 (2005): 21-45.




*the phone whilst he was still beating me. I called the police, but he grabbed the phone and smashed it, and then grabbed a knife... He pressed my head and my chest down with his knees. At that moment, his father came in and pushed him away and I grabbed the pieces of the phone and rushed out."*

Research shows that professionals who deal with domestic violence often blame victims for returning to violent relationships and may express frustration that their efforts to help have been "wasted." This attitude was noted among judges and prosecutors in BiH who have commented with exasperation that women often drop charges and return to violent homes.<sup>90</sup> The manager of a safe house that spoke with the researcher for this study reflected on the issue of women returning to abusive relationships and how it can affect the attitudes of professionals and thereby the overall support of victims:

*"When you work with one woman three to five times, it can occur to you to ask, 'why am I doing this?' and 'who am I helping?' But, I have 12 years of professional experience with victims of violence and... [I believe] prosecutors and police do not have enough knowledge about violence itself. We have situations in which we call the police and they tell us that a woman has called them many times but whenever they arrive, she back-pedals and changes her mind... Yes, but one day she will not back-pedal. There will be a time when she feels powerful and encouraged by someone who has come to intervene. Sometimes, women back-pedal because of negative views of the police, or because they don't have enough information.... What are the next steps in protection? The police ask if she wants to come with them to file criminal charges, to put [her abuser] in prison, and she gets scared thinking about what he will do when he gets out of prison."*

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<sup>90</sup> Halilović and Huhtanen, *Gender and the Judiciary*.



As this safe house manager said, there is a day when many women will no longer back-pedal, and will leave an abuser for good. This was explored in interviews as well, and the reasons that the women subjects of this study finally left violent relationships were consistent with other research showing that women tend to reach a tipping point when they feel they can no longer mentally endure the abuse, they fear for their life, or they feel they must protect their children. This last reason is notable because children can be a factor in the decision of women to both stay and leave violent relationships. Indeed, Rhodes, et al. argue that mothers face the conflicting inclinations to spare their children from harm but also keep their family together and shield their children from any instability that may result from the involvement of the legal system.<sup>91</sup> In this research, women cited four common reasons for leaving:

- The violence reached a level at which they feared for their life
- The children expressed that they wanted their mother to leave
- They were kicked out of the house by their husband
- They could no longer psychologically or emotionally handle the increasing violence they faced

When Nina finally left her husband, she felt it was a matter of survival:

*“When you are fighting for your life and running away from a maniac who is hunting you...marriage doesn’t matter anymore, what people think does not matter, and the only important thing is to save your children and yourself from that hell.”*

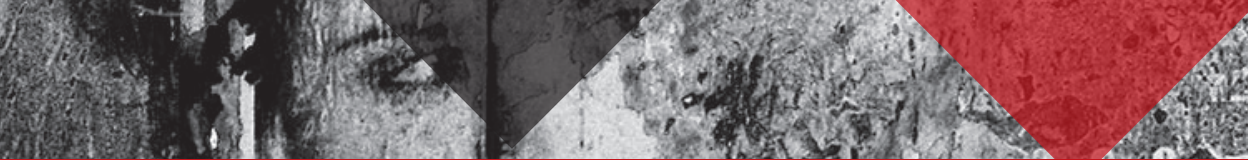
Nada remembered how and why she finally left her husband, with the help of family members:

*“Well, I simply could not put up with it anymore and I finally left the house in July 2012 – when I realized that I could not make*

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91 Karin V. Rhodes, et al., “I Didn’t Want to Put Them Through That’: The Influence of Children on Victim Decision-making in Intimate Partner Violence Cases,” *Journal of Family Violence* 25, no. 5 (2010): 485-493.





*it work with him and that he would never allow me anything. The 27th of July is my birthday and I had asked him for 10 KM to go and have a haircut. I always earned money; we lived in a village and I took care of the livestock and worked very hard. He said, 'why do you want to have a haircut?' And I said, 'well, my birthday is coming up,' and he told me no. I don't even celebrate birthdays, but at least I wanted to have a haircut twice a year... I told that to his son and he tried to intervene, and then [my husband] beat me so badly, just before my birthday. My sister called and I was crying and she insisted I tell her the truth... She arranged everything with [the manager] to place me in the safe house, but she told me that unless I firmly decided to leave, I shouldn't go, because it would be worse if I left and came back. I told her that I had decided, that I couldn't bear it anymore...*


The concern of Nada's sister that her husband's violence could escalate if she left and returned is not unfounded; it is in leaving that many women face the greatest risk. Research shows that when women leave abusive relationships, violence often escalates, and this is sometimes related to lethal outcomes. The women interviewed for this study were all scared of leaving and, for the majority of them, violence did not end when they left unless they sought shelter in secure locations such as safe houses. This reflects studies on the topic from around the world. For example, research from the US determined that rape and homicide are most likely to occur during or immediately after the break-up of a relationship.<sup>92</sup> As Finkelhor and Yllo found, men who rape in these instances use sexual domination as retaliation and, because they often "feel they have nothing more to lose," may be particularly brutal.<sup>93</sup>

Faced with such extreme and even vengeful violence, it is perhaps not surprising that some correlation has been found between the choice by women to leave violent relationships and murdering their murder of their

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<sup>92</sup> Finkelhor and Yllo, *License to Rape*.

<sup>93</sup> *Ibid.*, 25.



husbands. Though, as Ann Jones pointed out somewhat controversially in her 1980 book, *Women who Kill*, when women are acquitted of killing the men who abuse them, often it is “not because reasonable women, like reasonable men, are *justified* in defending themselves...[but instead] their ‘crime’ is psychologized and their defense becomes a kind of special pleading centered not in their social conditions but in their impaired psyche and their sex.”<sup>94</sup>

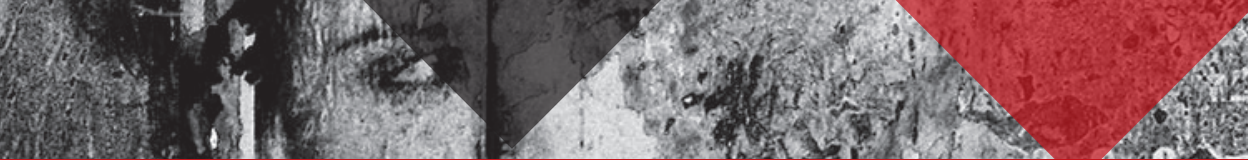
It is clear that living in and moving past a violent relationship is very difficult. And, while it may seem unusual that women would stay in a marriage for the sake of their children, and thus allow them to be exposed to violence, this is a complex issue, as confirmed by this study. In various ways, the fathers described by women interviewees have used – and still use – their children as tools of power and control. Some told their wives with great confidence that the courts would give them (the fathers) full custody because their wives had no housing of their own or any regular income. Often, they threatened that they would be able to convincingly portray their wives as crazy and would get full custody of the children that way. By instilling a real fear in women that they may be separated from their children, many men create a situation in which a woman’s choice to stay is the only rational choice she feels she has.

Dina, whose husband threatened to kill her when she told him she was going to leave, still deals with his threats and manipulations to this day – which now involve their children. Sometimes, he takes their son into the woods and then calls her and tells her that he will kill their son and himself. On the weekend, when he used to take both of the children, he left their daughter behind at the police station several times and took only their son for a visit, so that Dina had to travel by public transport 20 kilometers to collect her upset and abandoned daughter.

In Dina’s case, her 11-year-old son ended up living permanently with his father, and her daughter with her. This is extremely painful for Dina, who

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94 Ann Jones, *Women Who Kill* (Boston: Beacon Press, 1996), 378-9.




now has no contact with her son. Initially, the court gave Dina custody of both children, and visitation rights to her husband – who exploited one of these visits to take permanent custody of their son. Dina did not want to involve the police in order to force her son’s return but was increasingly desperate to see him. She agreed that he could live with his father – who turned her son against her over time – as long as she got regular visits, but her husband no longer allows even that. Now, her only option is to go through the courts and yet she fears this will turn her son further away from her. Despite the fact that Dina left her violent former husband and used legal means to establish custody of their children, she continues to be harassed by him, feels powerless to stop him from exhibiting psychological violence toward her family, and feels she risks losing her son forever.

### **3.6. Power, control, isolation, and misogyny**

Recognizing why men are violent is important to developing tailored responses to violence that support women and children while helping men learn how to stop abusing. The manager of a safe house discussed the importance of identifying violent men in order to break patterns of violence. In one very telling example of how this pattern manifests otherwise, she explained:

*“We had a woman who came to us with four kids, and four or five years later, another woman came and her surname was familiar to me. Well, it turns out [the same husband] had found another wife and was abusing her as well. If we don’t address the root of the problem, it cannot be stopped.”*

Popularly held ideas about violence in the family – including that it is caused by alcoholism, unemployment, or a lack of education – were challenged by the stories told by women in this study, as they have been by international research on the topic. Analysis of the narratives shared in interviews, especially of discourse on male and female roles, demonstrated that all the men described by women in this research expressed a strong



desire to exert power in their relationship. For example, it was common that they felt entitled to approve or disapprove of their wife's choices, even regarding the smallest issues, such as whether they could get a haircut or when they could have a bath. Many of the women lived in an atmosphere of total control by their husband, and were ordered to quit their job or stop their education.

Though this kind of aggression is more passive than physical abuse, it is used as a similar means of control, as illustrated by the Power and Control Wheel introduced in Chapter 2. Various forms of control, power, and violence were described by the women in this study; and many said that their husbands had gradually started exhibiting manipulative behaviors before becoming openly jealous, possessive, and controlling. After control came violence, and then the violence secured the control. Maja described her husband's jealousy:

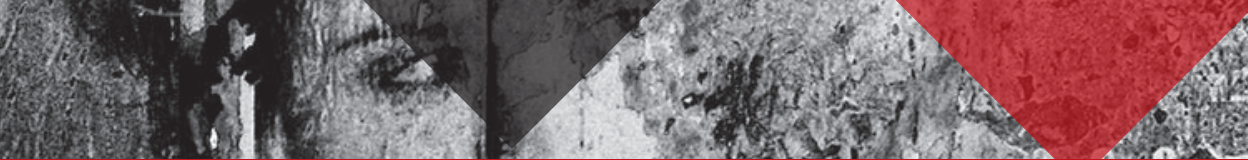
*"He calls me all the time. Yesterday, I went out to do some administrative stuff and he called me three times. Then in the evening he came home and asked me where I had been. There had been a silence when we spoke, and he got suspicious, but I was only waiting for a bus. But he got angry and then went to bed and didn't talk to me at all... I worked last year, but he constantly called me asking where I was and what I was doing, etc. He is very jealous, and maybe if he wasn't it would be different."*

Dina said her husband also used to try to control her every move:

*"He constantly came to my work and called me on the phone. I literally could not get myself new underwear without him saying 'what do you need that for?'"*

Una talked about how her husband controlled her as well:

*"He controlled what I wore, how I behaved, if I could go to a hairdresser. He did not allow me to wear anything tight...from the*



*beginning. He would check my phone [to see] who texted me. He checked my Facebook profile and did not allow me to have male friends on Facebook. He was incredibly jealous..."*

Half of the women interviewed for this research also discussed their husbands' use of isolation to control them. In these cases, their husbands objected to their wives interacting with anyone outside immediate family. The women described being isolated progressively, over time, as more and more restrictions were imposed on them by their husbands, who used various manipulations to break the ties they had with family and friends.

Nada explained how this isolation was enforced gradually:

*"If somebody came, my sister or his sister or if we had anyone visiting, I always had to stand aside. I had to serve coffee and withdraw without saying anything... He would tell me, 'You haven't got anything to say.' And later, he would tell me I am stupid and call me all sorts of names – 'whore' and things like that, even though I was never even remotely interested in other men. So, what had been a normal life started to be living in hell. Step-by-step, he forbade me most things. He would say that my family shouldn't visit anymore, and that I should be working [in the house]... If I wanted to go somewhere, he would say, 'you better do some house work and no one should be visiting you.' He did not have contact with his family either, he was that kind of man, and I couldn't go anywhere without him. When we needed something from the shop he would give me 10 or 50 mark and I would purchase something and he would ask me to give back the exact change."*

A number of the women who took part in interviews mentioned that not having money for their own use kept them in violent relationships for longer. This was also true for Dusanka who said a radio program on violence that described some of the tools of control used by abusers helped her see her own reality more clearly:

*“He did not allow me to earn money or to have contact with people. I was close with three female friends, but he did not allow me to see them. I was listening to this radio program and recognizing myself. He did not allow me to go to work. He used to beat me, until I left my job...”*

While most women in this study said that their husband encouraged or demanded they break ties with their family and friends, for those who lived in remote villages, this form of isolation more significantly complicated their attempts to leave or seek support. Violence is less visible in those areas, especially if a victim is disconnected from friends and family. Indeed, research shows that isolation is an element of domestic violence in both rural and urban contexts, but as Websdale noted, rural households are isolated in two senses.<sup>95</sup> There is a geographic isolation, which can help to keep violence hidden and reduce efforts to both seek and provide help. But there is also what Websdale calls sociocultural isolation, generated by “rural family life, gender roles, and patriarchal ideology,” which keeps rural women “particularly vulnerable to battering and passive policing.”<sup>96</sup> Although the geographic isolation of rural communities is obvious, it is important to understand sociocultural isolation as well; for, these compounding factors are met by limited resources in rural communities, amplifying the need for continued research into the unique needs of victims in these areas.<sup>97</sup>

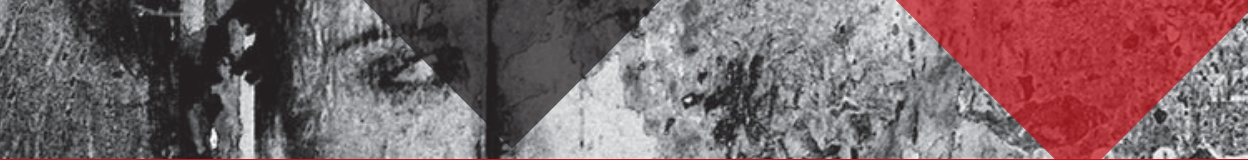
The violent husbands described by women in this study employed various strategies in order to place blame on their victims, which is yet another form of manipulation and control. Men who engage in victim-blaming emphasize that their victim is “troubled” and try to convince them that they are unstable, stupid, and unworthy. The victim’s supposed instability is then cited as justification for their abuse, which an abuser claims is merely a strategy to control or improve their behavior. As irrational as it

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95 Neil Websdale, *Rural Women Battering and the Justice System: An Ethnography* (Thousand Oaks, CA: SAGE, 1998).

96 *Ibid.*, 84.

97 *Ibid.*




may sound to women who have never experienced domestic violence, women in abusive relationships frequently feel they are responsible for their own abuse. In this study, many women reported feeling this way and some wondered if their lack of assertiveness had given their husband a license to abuse. Women also tended to blame external factors for the violence they had experienced, from their husbands' parents, to his keeping the wrong company, to the stresses of unemployment or money problems. Often, these women had taken, changed, or left jobs, had separated themselves from family and friends, and had accommodated any variety of irrational requests in the hope that their compliance would stop the violence; and when it continued, many had finally come to realize that these external factors were not the real cause of their abuse. And yet, the accommodations they had made in the meantime put them at greater risk by placing them in a position of financial dependency and social isolation, and the emotional manipulation of their husbands' victim-blaming left them feeling ashamed and guilty about having been abused at all – making it even more difficult to disclose the abuse and leave the relationship.

Women discussed a number of strategies they had used to avoid violence, reflecting findings in other studies that abused women often adopt active strategies to maximize their safety and that of their children. What could appear as capitulation or passivity to an outside observer may in fact be a woman's "calculated assessment of what is needed to survive in the marriage."<sup>98</sup> For instance, around half of the women interviewed said they had quickly given in to the demands made by their husbands, in order to keep peace in the house. Their relationships were already patriarchal in structure – the women did all the housework and childcare, had few or no personal financial resources, were expected to attend to their husband's sexual demands, and their husbands had the final say on any matters concerning family life – and within this framework, these women did all they could to limit violence.

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98 Krug, et al., *World Report on Violence and Health*, 95.

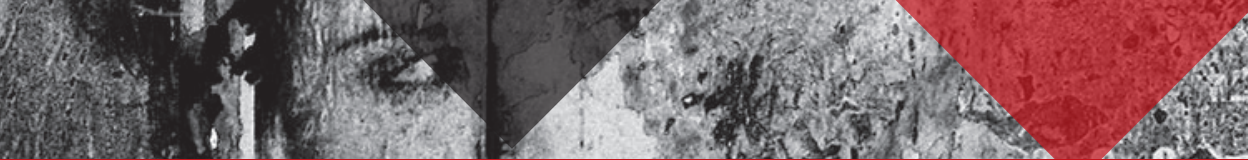


One theme that emerged very strongly in interviews was a sexual distrust of women interviewees by their violent husbands. These men spoke very negatively about women's sexuality and accused their wives, beyond all reason and without any evidence, of seducing other men. This negative attitude toward women was also applied to their daughters, who were often stigmatized for their femininity and for being a female. It was not uncommon for these men to become violent toward their daughters and to call them names such as 'hooker' and 'prostitute.' Several women spoke with particular sadness about the violence and emotional abuse endured by their daughters. Dina talked in some detail about this:

*"He was more violent to our daughter than to our son; and now he does not even want to recognize her as his daughter. He said that she is not his and he is trying to convince our son that she is not his sister. As much as she tries to hide it, she suffers a lot because of her father's rejection. ...Is it normal that her brother, who is 11 years old and who loved his sister, says that his 16-year-old sister is a whore who slept with 15 men and that he hates her and wants to stab her with knife? That is the attitude my husband passed on to our son."*

This story is telling. Violence by men toward women impacts children in various ways; and in this case, is hurtful to Dina's daughter on a number of levels – leaving her without the love of her father *or* brother – and has taught Dina's son that it is acceptable to disrespect, humiliate, and hurt women. By using derogatory and sexualized terms for their daughters, men reveal a deep-seated belief that women are of less worth than men. This language also manifests the stereotypical dichotomy of a woman as either a whore or a virgin, in which any behavior seen as less than "pure" is reason for distrust. Reducing women to their sexuality in this way, and thereby humiliating them, is a form of emotional and psychological abuse, and one that highlights, once again, the importance of understanding male entitlement rooted in patriarchy as a causative factor in violence.





All the women who took part in this study were exposed to severe violence that included physical, emotional, and psychological abuse. All but two women were exposed to long-term violence that lasted from 10 to 21 years. Using Johnson's typology, discussed in Chapter 2, the violence these women experienced can be classified as domestic violence battering.<sup>99</sup> While the women who were asked to participate in this research did not represent the spectrum of abuse that women face overall – which includes what Johnson calls situational violence, for instance – data from the US shows that just under 20% of women who experience domestic violence experience domestic violence battering. This means they are likely to be exposed to violence that includes the use of weapons, strangulation, and sexual assaults. Half of these women will also be stalked.<sup>100</sup>

This study indicated that alcohol and unemployment can be contributing factors to violence, but are not causal factors. The women interviewed for this research reported that only three of their husbands exhibited violence when drunk, and of the two who were unemployed, one exhibited violence long before his unemployment. Instead, a combination of different factors are more likely to explain severe violence.

Still, one key element appears to be the need or sense of entitlement to be in control and have power in a marriage, fueled by notions of patriarchy and distrust of women; and along with learned models of violence, this appears to be a strong predictor of a violent relationship. This patriarchal paradigm persists as long as men believe their violence will be tolerated and they see that society is remiss to do anything to prevent it. And here is where a strong judicial response can come into play, by sending a clear message that violence is a social ill and that the law protects women. If men are not rewarded for violence, the cycle of violence may be more easily broken.

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<sup>99</sup> Johnson, "Patriarchal Terrorism and Common Couple Violence..."

<sup>100</sup> Ross Macmillan and Catherine Kruttschnitt, "Patterns of Violence Against Women: Risk Factors and Consequences," No. NCJ 20836 (Washington DC: US Department of Justice, 2005).






## **4. THE RESPONSE OF THE CRIMINAL JUSTICE SYSTEM AND ASSOCIATED SERVICES TO DOMESTIC VIOLENCE: THE EXPERIENCE OF SURVIVORS**

In interviews, the women who participated in this study talked about their experiences with the criminal justice system and associated services. This research was focused on uncovering and identifying issues relevant to the judiciary; but as women told their stories, it became clear that the work of the police, social services, and safe houses could not be separated from the overall legal process and also had to be addressed. And so, this chapter examines all these elements in the order a woman is likely to encounter them, starting with the police response, followed by that of safe houses and social services. In the second part of the chapter, issues related to domestic violence and the courts are addressed, reflecting patterns that emerged in interviews when women spoke about concerns such as personal safety, child custody, divorce hearings, or property disputes.

### **4.1. Reporting violence to the police**

The police are often the first to respond to domestic violence when they are called by victims. The way victims are treated by police, including whether they take time to explain her rights and whether they encourage prosecution, has a demonstrated and considerable impact on the safety of



victims and on prosecution rates.<sup>101</sup> A negative or judgmental attitude by police may discourage victims from seeking help from police or the justice system in the future.<sup>102</sup> An analysis of the stories shared by women in this study indicated that their experience with police fell into three broad categories:

- The police were indifferent, tried to avoid involvement, and placed responsibility on the couple themselves, social services, or the judiciary to find a solution.
- The police approach was confusing because, while they were friendly, they encouraged the couple to reconcile, shifted blame to the victim, seemed to consider the perpetrator's needs more than the victim's, and discouraged prosecution.
- The police were engaged, sympathetic to the victim, showed genuine concern about their safety, and encouraged prosecution.

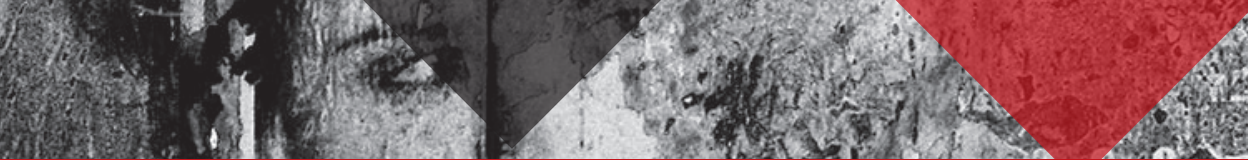
In this research, women most commonly experienced the first two approaches by police, with only two women encountering police who they felt were truly concerned. Still, the majority of these women had multiple contacts with the police and said that their experience largely depended on the officers with whom they dealt. It appears that the police response is more dependent on the attitudes of individual officers and their views on or knowledge about domestic violence than on the particular intervention strategies implemented by the police in different communities.

Anabela's experience has been of police who were repeatedly indifferent and unwilling to become involved. She felt they did the minimum, issuing warnings to her husband despite reoccurring violence and numerous calls, and only arresting him once because he became violent toward the police themselves. On one occasion, when she had been severely beaten, a

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101 Martha L. Coulter, et al., "Police-Reporting Behavior and Victim-Police Interactions as Described by Women in a Domestic Violence Shelter," *Journal of Interpersonal Violence* 14, no. 12 (1999): 1290-1298; and B. Joyce Stephens and Peter G. Sinden, "Victims' Voices: Domestic Assault Victims' Perceptions of Police Demeanor," *Journal of Interpersonal Violence* 15, no. 5 (2000): 534-547.

102 T.K. Logan, et al., *Women and Victimization: Contributing Factors, Interventions, and Implications* (Washington, DC: American Psychological Association Press, 2006).




policeman asked her why she didn't just leave her husband and told her that it could have been worse. He wondered if she had provoked her husband and put the blame on Anabela. She no longer calls the police because they don't make her feel safe and she sees no point.

Emma has also had a bad experience with the police. They responded several times after she was severely beaten but never arrested her husband, even though Emma was a minor. Once, when they responded to a call after Emma was viciously beaten while pregnant, they told her, *"You can live together, everything will be fine... Now, go on young lady, and make us some coffee."* After separating from her husband, Emma contacted the police several more times because he continued to threaten her. They told her they had spoken to him and he would no longer do it, and yet the intimidation did not end.

Nada did not call the police immediately after she was beaten, but two days later when she decided to leave. She asked that they be there so that she felt safer collecting her things. They did come, but questioned her about why she hadn't gotten medical attention and then sat down outside and had a soft drink and a chat with her husband. They told Nada that she didn't need to press criminal charges because her injuries weren't severe, and she followed their advice. Later, after she had separated from her husband, he threatened Nada again and she again sought protection from the police. After several attempts, they finally believed that she was at risk and took more concrete measures. This was important to Nada, who said:

*"I just wanted someone to believe me and to tell me that I was right, that I was not making these stories up. I was not asking for something impossible."*

Nina's experience was also varied and depended on the officer. Initially, she had a bad experience. The police came to the house and did not even try to speak with her husband because he was drunk, reasoning that they would talk to him when he sobered up. She felt they were indifferent to

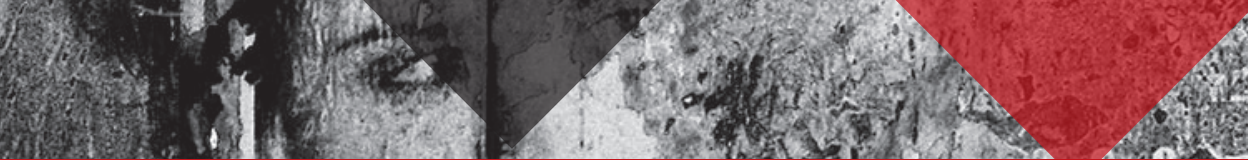


her and were more concerned with her husband – the perpetrator – from whom they finally collected a statement six months later. However, when she went to the police station to give a statement of her own, she encountered an officer who was very helpful and encouraging. She said that this meant a lot to her at the time and provided her with the sense of safety. The officer told her:

*“Don’t give up on prosecuting him. Many victims get confused when they go to court, but he has to know what he has done, then maybe he won’t repeat it.”*

In Boja’s case, the police did act to protect her, helping to transfer her and her four children to a safe house. Yet, they did not arrest her husband, who was extremely violent, had inflicted grievous bodily harm to her, and had threatened her with a knife. Although they did help her to safety, Boja feels it is unfair that she and her children were taken from the house instead of her husband. In Boja’s view, at the end of the day, the interests of men are always placed above those of women, even when men are perpetrators of domestic violence. Further, she believes her husband enjoyed not only his privilege as a man in her case, but was also helped by the fact that his cousin is the chief of police. Similar issues were raised by half of the women interviewed, who expressed their suspicion that the police were not objective in their cases because they knew the perpetrator personally or were connected to him in some way, especially in smaller towns. This has also been reported in the literature as an obstacle to women seeking justice and protection.

Medina is one of the women interviewed who lives in a small and remote village. She was a victim of long-term violence, but was scared to call the police. Finally, when she decided to leave her husband, she did call them, and when they arrived they urged her to make peace with her husband, which she strongly refused. The police also told Medina that she couldn’t remove her children from the house. But, adamant that she would not leave without them, she was undeterred; and so the police told her that



she had to leave the village to report the incident and press charges in the nearby town. Medina was willing to do this, but instead of offering her a ride, the police asked her how she planned to get there without a car. This interaction, as well as the examples above, indicate that what Belknap found in 1995 is still true, at least in BiH – police officers are reluctant to make arrests in cases of domestic violence and prefer to handle these calls with attempts at mediation.<sup>103</sup>

As in other studies, the women who participated in this research were dissatisfied with the police primarily because they had failed to act as a social control agent.<sup>104</sup> An extensive review of policing related to domestic violence in the UK uncovered a number of important issues that must be taken into account by police, including the quality and speed of their response and the ability of officers to keep women and children safe and give them the confidence that they will be protected. Police officers also need to be able to assess future risk and long-term safety, as well as gather evidence to support a prosecution. And, very importantly, police must understand that victims can appear to be uncooperative when they are actually terrified, under the control of the perpetrator, and in desperate need of support.<sup>105</sup>

Most of the women in this study encountered negative attitudes and a lack of compassion from police; and examples of police trying to force them to reconcile, not treating violence seriously, or offering inexplicable leniency toward the perpetrator were far too common. These experiences led some women to give up calling the police altogether, echoing international studies that show that interactions with the police can influence women's future help-seeking behavior, such as calling the police again,

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103 Joanne Belknap, "Law Enforcement Officers' Attitudes about the Appropriate Responses to Woman Battering," *International Review of Victimology* 4, no. 1 (1995): 47-62.

104 Margaret E. Martin, "Policy promise: community policing and domestic violence victim Satisfaction," *Policing: An International Journal of Police Strategies & Management* 20, no. 3 (1997): 519-31.

105 Her Majesty's Inspectorate of Constabulary, "Everyone's business: Improving the police response to domestic abuse," 2014.

filing a protective order, or reporting a violation of a protective order.<sup>106</sup> The attitudes of law enforcement and judicial professionals can be, and are often, harmful and demoralizing to women, which increases the sense of despair and powerlessness that so many victims of abuse already battle.<sup>107</sup> The overwhelmingly negative experiences that women interviewed for this research had with the police suggests the need for officer training and a revision of police procedures related to domestic violence.

## **4.2. The response of social services and safe houses to domestic violence**

In interviews, women often spoke of social workers and of how they either supported or further victimized them. Women who sought divorce were sent to social workers to access services and to negotiate child custody issues and visitation rights. These are important steps in the process of addressing domestic violence and social workers act as a link between courts and the family in cases of child welfare and divorce.

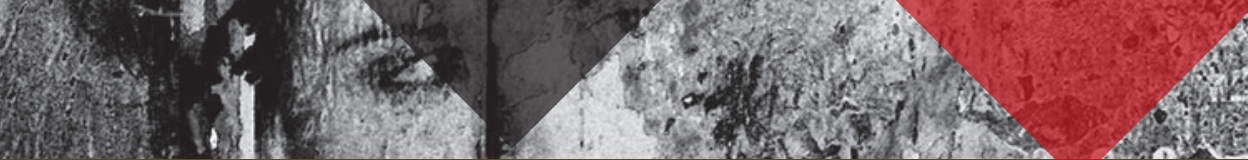
Overall, social workers did little to deter violence or help women interviewees feel safe. In only two cases were social workers present when victims were leaving their husbands or when they were injured and needed to go to the hospital. When it came to negotiating visitation rights, social work centers gave little regard to the danger posed to children by perpetrators of domestic violence, granting abusive men – some with alcohol problems – unsupervised visitation. In addition, when developing visitation parameters for cases in which a protection order had been issued, social workers often failed to account for the needs and circumstances of victims. For instance, women reported that they were supposed to ensure that their abusers see their children, even when a restraining order instructed a perpetrator not to approach or be within a

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106 JoAnn L. Miller and Amy C. Krull, "Controlling Domestic Violence: Victim Resources and Police Intervention" in *Out of the Darkness: Contemporary Perspectives on Family Violence*, eds. Glenda Kaufman Kantor and Jana L. Jasinski (Thousand Oaks, CA: SAGE, 1997), 235-254.

107 Edna Erez and Joanne Belknap, "In Their Own Words: Battered Women's Assessment of the Criminal Processing System's Responses," *Violence and Victims* 13, no. 3 (1998): 251-267.





certain proximity of the victim. Several mothers asked how they were supposed to deliver their children to a man who had been ordered not to approach them. The women in this study felt that these issues were not seriously considered by social workers.

A number of women also felt that social workers had offered them very little compassion regarding the violence they experienced and had treated their separations just like any other divorce. If these women were resistant to the visitation rights awarded to their former husbands out of a fear that their children would not be protected during those visits, social workers sometimes threatened them with legal action. Overall, most of the women who participated in this research viewed social work practices very negatively and felt that their meetings with social workers were often intimidating. Further, they felt they had little choice but to comply with conditions they were sometimes reluctant to accept. Some women remarked that they felt their former husbands, the perpetrators of violence in these cases, were treated with more respect and consideration than they were as victims.

The stories of these women reveal tendencies among social workers in BiH that strongly contrast established best practices for cases of domestic violence. According to guidelines from the US, it is of the utmost importance that social workers are familiar with the dynamics and consequences of domestic violence and the damaging effect it has on women and children so that they can thoroughly assess their safety and provide effective protections. Ultimately, these guidelines stress that perpetrators of domestic violence must be held accountable for the threat their violence poses to their families.<sup>108</sup> This demand for accountability is exactly what women who were interviewed for this study said was lacking in the social workers they encountered.

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108 Children's Administration, .Washington State Department of Social and Health Services, *Social Worker's Practice Guide to Domestic Violence* (2010).

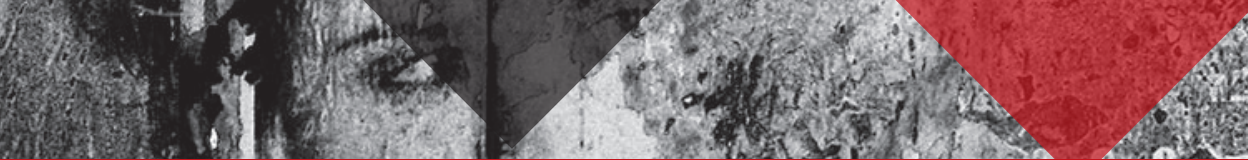
Apart from concerning themselves with the welfare and safety of victims, especially children, social workers also need to act as an empowering agent for women who have been exposed to violence. However, no women in this research reported having such an experience and instead said their concerns for their children were dismissed. And these fears were and are justified; for, research shows that any visitation provided to an abuser may be an opportunity for abuse, sometimes involving high levels of violence for both the mother and the children.<sup>109</sup>

While women had almost entirely negative things to say about the social workers they dealt with, their experiences at safe houses, on the other hand, were almost entirely positive. Most of the women interviewed had spent some time in a safe house, and all of these women said they had been apprehensive about leaving home, worried about what they would encounter, and unsure of how they would live collectively with other women; but they felt they had no other choice. For Amina, the safe house meant safety for her, but her teenaged children chose to stay in their home, which made leaving her husband very difficult for her. With the support of counselors and other women at the safe house, though, she managed to stay almost 10 months.

Beyond providing psychological support to women, staff members at safe houses also offer practical assistance in navigating judicial services, seeking financial support, and finding employment. These staff receive regular training on domestic violence research and best practices. Perhaps this is why women say the key difference between safe houses and the other services they have come into contact with is the approach they encountered. Whilst police and social workers frequently placed blame on these women and acted with disregard for their safety by minimizing the offense they suffered, staff members in safe houses acknowledged and recognized their suffering. Many women reported that they had finally spoken openly about the violence they experienced, and finally understood that such violence should not be tolerated, once they were in a safe house. And, despite having

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109 Lorraine Radford and Marianne Hester, *Mothering through Domestic Violence* (London: Jessica Kingsley, 2006).



difficult realizations and undergoing painful personal transitions, all of the women interviewed in this research spoke warmly about their time in safe houses.

### **4.3. Women who choose not to prosecute, request a lesser sentence, or recant their accusations against their abuser**

Some of the women in this study did not file criminal charges against their husbands even after suffering severe violence, mostly because they remain married and do not want to disrupt their families. Some were unsure of their rights and of what would happen if they reported the violence:

*“If I knew then what I know now I would immediately report him... I was disconnected from the world, isolated in our house and garden. When we resisted him, he would announce, ‘Now, I will torture you...’ How can you explain that to someone? Who would believe me? He lied to the police that it was our son that was beating him. One time, my son was defending me when [my husband] went for me with an axe, but [my husband] said that he had been defending himself.”*

Sometimes, women don’t press charges because they believe the judicial process will be lengthy and expensive, and they don’t believe they will be able to prove their case. This was true for Una, whose situation is complicated by the fact that she is a Serbian national living in BiH. She is not certain of her rights and does not know how she will meet the costs that she assumes are associated with a criminal trial:

*“Yes, they asked me twice if I wanted to press criminal charges; the social workers and the police. I said that I didn’t want to drag this through the courts. When I called the police, I expected they would*

*act to punish him, take him to prison.... but the police said 'No, you need to file a criminal complaint, they need evidence,' etc. I asked them if they would act if he killed me. He had put a knife under my throat. Maybe the next time he would stab me.... They told me I had to prove it. But how, if only a six-year-old child can confirm that [my story] is the truth? That's why I did not press charges. Where I am going to find money for lawyers, and how do I prove it [if] they want evidence and all that? Who will testify for me? I am not from here, and I don't know if the neighbors will tell the truth. He's lived here all his life, not me. Why would they do that for me? When I went to the safe house, they also asked me if I wanted to press charges. I said I needed to think about it. I was confused and felt like I was in a bad dream, and I was simply looking for shelter and needed some peace."*

Three women in this study chose to drop the criminal charges they had filed against their husbands. In Natasha's case, she did so after deciding to return home following a prolonged stay in a safe house. She believes that the counselling she received in the safe house helped her re-evaluate the dynamics that exist between herself and her husband, and she feels he will no longer be violent toward her.

The issue of women dropping domestic violence charges was discussed with judges in BiH in a previous study. Those judges expressed dissatisfaction that this occurs, often framing women who fail to appear or who drop charges as having wasted the court's time.<sup>110</sup> This has been addressed extensively in literature from other countries as well. For example, one US study noted:

*While it is the duty of the judge to be objective, judges are disgruntled when the victim fails to appear resulting in dismissal. It is easy to see how a judge might ponder their responsibility to keep the community safe versus victims' rights when victims fail*

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110 Halilović and Huhtanen, *Gender and the Judiciary*.

*to appear only to return later on a new charge with more severe signs of abuse. Other court workers feel that victims not following through waste their time and energy. All of these issues within the justice system hinder the speediness of the court process for cases of domestic violence, making it difficult for victims who want the help of the court system to put an end to their abuse. Sadly, stakeholders within the legal system, prosecutors, police, judges, and social workers alike, oftentimes assert that the victim is to blame when a male assailant goes free.<sup>111</sup>*


Anabela withdrew domestic violence charges against her husband and regrets doing so. Her marriage has not improved and she still endures her husband's violence. Initially, she filed charges when the police came, but as time passed, she chose not to move forward with the legal process. She feels now that it would have been better if she had not been allowed to change her mind. Whether victims should be permitted to drop charges or prosecution should be mandatory has been heavily debated in the literature.<sup>112</sup> In BiH, a victim's potential withdrawal of charges should not influence the criminal prosecution of a domestic violence case, which is done *ex officio*. However withdrawal of a victim's testimony frequently results in the dismissal of criminal proceedings. Legal professionals in BiH must decide whether this is an acceptable outcome in domestic violence cases, or if mechanisms should be put in place to ensure that such cases move forward even in the absence of victim testimony.

Ana, from Bijeljina, withdrew charges one time and then went ahead with charges another time. When she dropped the charges, her husband had kneeled in front of her begging her to return to him and promising he would no longer be violent. He was fined 200 KM. When she did decide to follow through with the criminal charges, after he continued to inflict severe violence against her and their children, he was fined 500 KM and

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111 Darrell Payne and Linda Wermeling, "Domestic Violence and the Female Victim: The Real Reason Women Stay!" *Journal of Multicultural, Gender and Minority Studies* 3, no. 1 (2009).

112 Jo Dixon, 2008, "Mandatory Domestic Violence Arrest and Prosecution Policies: Recidivism and Social Governance", *Criminology & Public Policy*, Volume 7, Issue 4, pages 663–670



received a two-year suspended sentence. Ana found this discouraging, for she sees these two outcomes as essentially the same and feels a suspended sentence is far from fair punishment.

All of the women in this study said that their cases were decided with suspended sentences. The majority felt suspended sentences did not serve to punish the perpetrator or deter his violence in the future. Based on their own experiences, these women all felt that any woman's experience with the courts – whether related to a criminal trial or a divorce hearing – crucially impacts how she deals with her history of trauma and violence.

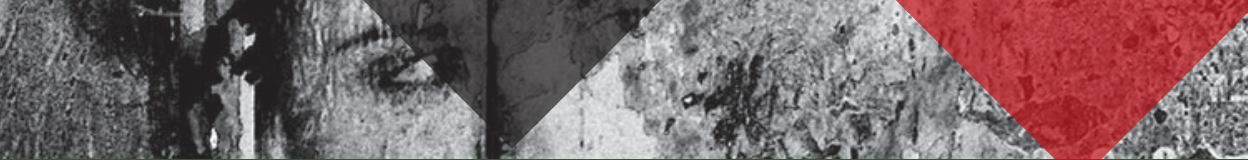
Judges in BiH report that they see many victims of domestic violence plead for lesser sentences for perpetrators, often due to concerns that the entire family will be financially impacted by their incarceration. Judges say they often fulfil the wishes of these victims, and see this as a way to support reconciliation.<sup>113</sup> Still, some victims of domestic violence are adamant in pursuing justice. Amina, Medina, and Dina are all awaiting judgments in their cases months after they gave their statements; but they remain determined not to give up. Medina said she had no doubts about getting a divorce or filing criminal charges against her husband:

*“I thought this process would be quicker. I waited six months for the first hearing for the divorce and eight months for the criminal trial. When I met with the prosecutor for the first time, she gave me confidence. And [she] told me that unfortunately many women drop charges and are no longer interested in the criminal process. However, I was determined.”*

Nina also said that the words of a prosecutor were encouraging to her when she filed domestic violence charges. He told her:

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113 Halilović and Huhtanen, *Gender and the Judiciary*.



*“Please do not give up on the charges. Many people come here, file charges, and then give up when it comes to court. Don’t withdraw your charges. He needs to see what he has done....”*

The prosecutor also advised Nina to find a job, because it would offer her independence and peace of mind. Nina was emboldened by this and spoke with great respect about the prosecutor. This kind of advocacy on the part of prosecutors is important because, as Lewis et al. argue, the law is one part of the strategy of resistance used by women who live with violence.<sup>114</sup>

#### **4.4. Safety in court and the role of judges**


In interviews, it was clear that the role of judges and courts in dealing with domestic violence is extremely complex. Indeed, judges in BiH have identified a number of dilemmas they face in trying to balance sanctions for perpetrators with respect for the wishes of victims and the ideal of objective justice.<sup>115</sup> Yet, no matter the complexities, judges do play a critical role in protecting victims and ensuring the accountability of perpetrators. And, as the manager of one safe house pointed out, many women are frightened about going to court and don’t know what to expect. For most of them, the experience is something completely new:

*“For many women here, going to court is so alien, it’s as if I told you that tomorrow you will be going to Mars.... Some don’t receive support and understanding, but for those who do get verbal or non-verbal signals of support and encouragement, it means a lot. Sometimes, women are so stressed in the courtroom, knowing they need to continue living in the same city with [the perpetrator] and allow him contact if they have children.... It would be better if they never had to meet at all. Why does she need to see him and meet him if she is prosecuting him for violence?”*

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114 Ruth Lewis, et al. “Protection, Prevention, Rehabilitation or Justice? Women’s Use of the Law to Challenge Domestic Violence,” *International Review of Victimology* 7, no. 1-3 (2000): 179-205.

115 Halilović and Huhtanen, *Gender and the Judiciary*.



Many women commented on how important it was that they felt safe in court because of how frightened they felt in the presence of their abuser. Beba is satisfied with the way her case was handled by the court, which gave her husband a suspended sentence and mandated mental health treatment. In their first court appearance, when Beba was pregnant, her husband became agitated; and she felt the judge had supported her:

*“[My husband] shouted that I really just wanted a divorce, and that I was looking for other men.... The judge was nice to me, told him to be quiet, and said that it was my turn to speak and not to interrupt me.”*

For Medina, the supportive attitude of a judge in her divorce hearing played a big part in motivating her to pursue justice:

*“The female judge listened to me very carefully. She let me say whatever I needed to say. I told her that this was my first time in court and she helpfully explained the procedure. She explained my rights and even told me something that the prosecutors did not – that I could seek financial compensation from my husband...”*

Gordana said she was not prepared for the questions she faced in court, and felt intimidated by her husband’s lawyer:

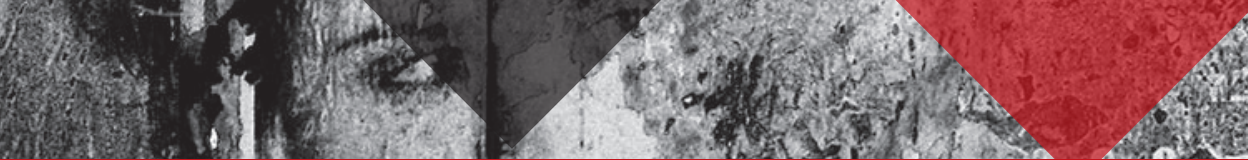
*“The judges asked me to tell them how much I wanted in damages, but no matter what I said, my husband’s lawyer would object. He was a very strong and persuasive lawyer and I felt mentally weak. Over the years, I have mentally deteriorated and I go to therapy. He told the court many ugly things and that I am crazy...”*

The way women are treated in court is critical to their ability to confront their experience of violence. Research shows that the demeanor of judges specifically is crucial in domestic violence cases.<sup>116</sup> Victims of long-term domestic abuse frequently suffer from PTSD, anxiety, and depression;

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116 James Hardeman, *Implementation of the Abuse Prevention Act (209A)* (Waltham, MA: Brandeis University, 1995).





and if they are treated in court with suspicion or if their suffering is trivialized, the experience can affect their recovery process or lead them to recant their statement or withdraw charges. In order to support women victims, it is vital that the common traits of violent men are known to judges and prosecutors, since these men are often able to limit their violent and abusive behavior to the confines of their homes, appearing polite and even charming in court or with the police. Research has also found that victims report feeling empowered and listened to by judges whom they identified as good-natured, supportive, and informative toward victims but firm toward abusers. And, victims who experience judges who are supportive are more likely to cooperate with prosecutors.<sup>117</sup>

#### 4.5. Orders of protection

In cases of domestic violence, victims are usually awarded protection in the form of a restraining order that is served relatively quickly. Women spoke at length in interviews about orders of protection and, for many, the fact that a restraining order had been served against their abuser indicated that the system cared about their safety. However, for some, these orders did not serve their purpose. Ema said her husband violated a restraining order and was not punished for it. And the same was true for Dina's husband:

*“He had restraining order but he would still approach me, and nothing. He was never punished for this.”*

Amina, who is still in the process of the criminal case against her husband, said that he also violated an order of protection. According to Amina, he was fined 1500 KM for the violation, which he has still not paid, but he remains free to live his life. She feels this situation epitomizes how unfair the system is to victims of domestic violence:

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<sup>117</sup> James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses*, Northeastern Series on Gender, Crime, and Law (Boston: Northeastern University Press, 1999).

*“He is enjoying his life, has a car, lives in our house with the children, and I am in the safe house, living from Saturday to Saturday, when I see my children again.”*

Alisa spoke of how her husband violates her order of protection by trying to see their child at his own convenience:

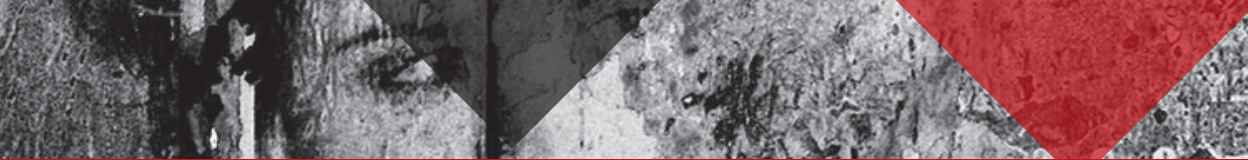
*“He will come with a bag full of beer and announce that he wants to see our child. I tell him that he can see him as it says in the court order but he will start shouting and saying that he can see him anytime he wants. He gets into arguments with my father, who always protects me.”*

Research shows that consistent enforcement of orders of protection is crucial for victims of domestic violence and that even a short time in jail for abusers who violate these orders indicates the seriousness with which the legal system views domestic abuse. Giving abusers “second chances” endangers victims and sends a message that orders of protection are not really orders at all. One very simple approach that appears to increase the compliance of perpetrators is that judges pair the issuance of an order with a verbal warning that violations will be punished. This also communicates to the victim that she has a right to be safe and that the community will not tolerate domestic violence. Further, judges can alleviate some of the threat of retaliation by emphasizing that the decision to issue an order of protection “is the responsibility of the court, not the victim.”<sup>118</sup>

Women interviewed for this research spoke of the conflict between orders of protection and the need to communicate about children or facilitate their former husband’s visitation rights. These women are left struggling to enable visitation with little practical support from social workers. This was noted by the manager of a safe house, who expressed frustration

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118 Minnesota Advocates for Human Rights, “Judicial Responses to Domestic Violence,” <http://www1.umn.edu/humanrts/svaw/domestic/link/judges2.htm> (accessed November 3, 2015).



about the frequency with which orders of protection clash with the visitation rights awarded to fathers.

Alisa explained how this works in her case:

*“I hand over our child by sending him to [my former husband] while I watch through the window until he reaches him, and he returns him in the same way. It is not far. We see each other without making contact or approaching each other.”*

#### **4.6. Suspended sentences, suspended justice?**

The women in this study who were persistent in seeking justice in the courts and did not drop criminal charges against their abusers reported having negative experiences overall and being disappointed with the judgments they received. The majority of women interviewed did not appear in court and were informed of a sentence against their abuser by post. And some did not even get that. Alisa, for instance, has not been informed about the judgment in her abuser’s case, but has heard from others that he received a suspended sentence and maybe a financial fine. She feels let down by this outcome. She suffered severe violence that almost killed her, and her husband also beat their baby.

Boja’s husband also got a suspended sentence for domestic violence. She learned of the verdict by post, and says she was never called to court to tell her story. Instead, the court heard her husband’s testimony that he regretted his actions and the verdict was decided with only this to consider. Boja feels his punishment is inadequate and that it would be more appropriate if he was incarcerated or made to do community work – so that he pays in some way for what he did and is compelled to understand that it was wrong.

Nina – one of the women who both filed for divorce and filed charges for domestic violence – was not asked to testify in court either. She inquired

several times with the prosecutor about the status of her case and was told she just had to wait. Nina's husband was very violent, even knocking her unconscious in front of their children and threatening to slit her throat, but he also got a suspended sentence, which she feels sent the wrong message:

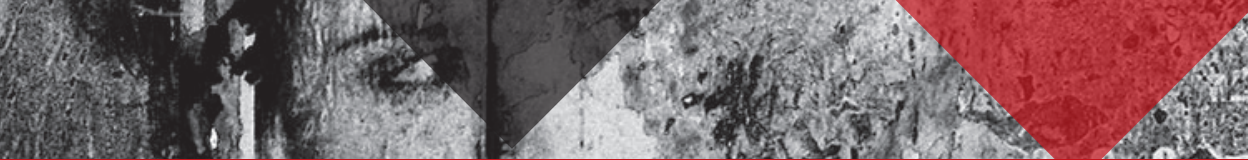
*“If he at least had to pay something or spend 10 days – if not more – in prison, just to realize that he did something wrong. To him, this doesn't mean anything. If he marries again he will do the same, and that woman will call the police and again nothing will happen... The fact that he is registered somewhere as a violent man means nothing. To the children and to me, this did not bring any resolution.”*

This study confirmed what others in BiH have previously demonstrated about domestic violence case evaluation by judges – that mitigating circumstances are routinely taken into consideration but aggravating circumstances are not.<sup>119</sup> This means that men who have been severely violent can declare their regret and expect that this will be taken as a mitigating factor with little consideration of its sincerity. In all but one case, the victims in this research were deeply dissatisfied with the sentences their abusers received and could not understand how their violent husbands were not seen as dangers to their family and to society. Indeed, in some cases, judges actually classified these abusers as “family men,” even after years of their having severely beaten their wives and children, and then refusing to pay alimony. In interviews, women expressed that this qualification and the decisions of judges to offer suspended sentences invalidated their experiences and made them feel that their lives were not valued. These women view the system as unsupportive of victims and built to excuse and acquit perpetrators.

Furthermore, a lack of consideration of aggravating circumstances such as strangulation, sexual assault, and being violent in front of the children fails to take seriously the lethal risk for victims and implies to perpetrators

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<sup>119</sup> See: OSCE, *Ensuring Accountability for Domestic Violence*; Petrić and Radončić, *Izveštaj i analiza praćenja krivičnih postupaka u oblasti rodno zasnovanog nasilja...*; and Galić and Huhtanan, *Judicial Benchbook*.



that violence will be tolerated. And as this research shows, the proper assessment of these factors in the process of judicial decision-making has farther-reaching effects for women victims. These victims overcome enormous psychological and emotional obstacles to file charges and sometimes risk the violent retaliation of their husbands by doing so. They press on because they hope that they will not only see justice done in their case but will receive legal affirmation that domestic violence is unacceptable in any case. When their abuser is instead identified as a “family man,” or appears to be treated with more respect than his victim, these women’s notions of justice and fairness are upended and the value and trust they have placed in the judicial system is undermined. Various studies confirm what women in this research indicated about the importance of court verdicts in either empowering or disempowering victims.<sup>120</sup>

All of the women who took part in this study were victims of long-term violence. They all experienced physical violence, and many experienced sexual violence, strangulation, and threats to their life. Yet, the duration and severity of this trauma to victims was neither recognized nor considered in the courts or reflected in their verdicts. Often, judges relied only on details of the most recent attack a victim suffered and failed to assess the longer-term dynamics of a perpetrator’s abuse, making it nearly impossible to evaluate the actual risk to his wife and children and the potential that his violence may escalate or become lethal. Clearly, this practice can be problematic for a number of reasons. Research shows, for example, that women who have previously been threatened by firearms are twenty times more likely to be murdered.<sup>121</sup> Dina and Ema both experienced the threat of injury by firearms, but this was not reflected in the sentences their former husbands received.

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120 Heather Douglas, “Criminal Law’s Response to Domestic Violence: What’s Going On,” *Sydney Law Review* 30 (2008): 439-469.

121 Jacquelyn C. Campbell, et al., “Assessing Risk Factors for Intimate Partner Homicide,” *National Institute of Justice Journal*, no. 250 (2003): 14-19.

Any threat to kill a victim – with or without firearms – along with prior attempts at strangulation and forced sex, or increased physical violence over time, also indicate a greater risk of lethality.<sup>122</sup> These indicators were present in most of the cases represented in this study and yet were not considered by judges and are not reflected in orders of protection or sentences. But, because most of the women interviewed for this research were also not asked to testify in court, judges were not aware of their experience of violence and did not have all the information they needed to calculate the risks to victims. And these risks are real. In fact, research from the US shows that women are nine times more likely to be killed by an intimate partner than by stranger.<sup>123</sup>

Half of the women who took part in this study said they feared for their lives and believed that their husband would kill them, and maybe their children. They received verbal threats of murder before and after separation from their abusers, sometimes including explicit details of his homicidal fantasies. Examining the risk factors related to intimate partner homicide, Campbell found that this form of homicide has different dynamics from other forms, and that the number-one risk factor is prior domestic violence.<sup>124</sup> Considering this evidence, it is no wonder that women in this study took the threats of their abusers seriously. These women were exposed to any number of the risk factors that increased the likelihood that their abuse could escalate to a lethal level, including strangulation, which is an especially concerning indicator because many studies show that the vast majority of strangulation deaths occur in the context of domestic violence.<sup>125</sup>

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122 Jacquelyn C. Campbell, et al., "Risk Factors for Femicide-Suicide in Abusive Relationships: Results From a Multisite Case Control Study," *Violence and Victims* 21, no. 1 (2006): 3-21.

123 US Bureau of Justice Statistics, *Homicide trends in the United States* (Washington, DC: 2004).

124 Jacquelyn C. Campbell, et al., "Intimate partner homicide: Review and implications for research and policy," *Trauma, Violence and Abuse* 8, no. 3 (2007): 246-269.

125 Dean A. Hawley, "A review of 300 attempted strangulation cases, part III: Injuries in fatal cases," *The Journal of Emergency Medicine* 21, no. 3 (2001): 317-322. Also see: Chicago Police Department, Domestic Violence Newsletter, "Strangulation and Domestic Violence: Dynamics and Law," February 2010, [https://portal.chicagopolice.org/portal/pls/portal/!PORTAL.wwpob\\_page.show?\\_docname=784775.PDF](https://portal.chicagopolice.org/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=784775.PDF) (accessed November 3, 2015).


#### 4.7. Additional contact with the courts: divorce, child custody, and division of property

In BiH, cases of domestic violence are addressed in one court process, with divorce and child custody dealt with in another, and the division of marital property in yet another. All of the women in this study who have been through these lengthy processes were frustrated with their duration, associated complications, and costs. They also reported being treated badly by their husbands in divorce proceedings and during the process of property division, and felt dissatisfied with how the court had handled these circumstances. This was a time when they were still dealing with the aftermath of abuse, still being threatened by their husbands, and were attempting to make a living in order to negotiate custody. All of these women had left their homes and were living in safe houses or had rented a flat on very little income, and their husbands frequently used court appearances to insult and disempower them, and to disadvantage them economically. Some abusers saw the judicial process as an opportunity to scare and humiliate their victims, as Dusanka's former husband did. He accused her of having had an affair with her late sister's husband, and told the court she was residing at her brother-in-law's address:

*"I had filed the official record of my address, but his lawyer contested it. I had to bring witnesses to court to confirm where I was living."*

Gordana remembered how stressful her divorce process was and said she was insulted by her husband and his lawyer, even after they were warned by the judge. She couldn't afford a lawyer of her own, which made her feel particularly vulnerable. In his disposition, her husband's lawyer called Gordana "a parasite," which she found incredibly offensive and could not believe was even allowed in court.

Boja shared that she was very insecure in court for her divorce hearing. Her husband had already received a two-year suspended sentence and she was afraid that he might do something to her when they left the



courthouse. She was impressed at how tough the judge was, who lectured her husband about how he must care for his children and pay alimony. But when it came to the process of dividing marital property, Boja recalled the process as a disaster. She was treated very badly and, in that case, the judge focused entirely on how much Boja had put into the house and what she bought. She felt that her earnings and investment in the property she built together with her husband were completely undervalued and that his violence was treated as a non-issue.

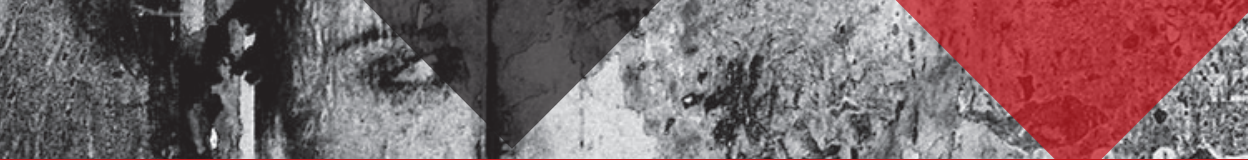
All of the women in this study who divorced said that the issue of violence was no longer considered after criminal proceedings. Yet, many of their husbands used divorce hearings as an opportunity to disempower these women by inflicting more psychological abuse. Even in cases like Dusanka's, in which the judge was professional and kind, there was no mention made of the years of violence she had endured. The fact that women must again face their abusers in order to divide marital property, which requires expensive attorneys and additional paperwork, creates further stress; and in interviews, women wondered why this cannot all be done at the same time and in the same process. In the US, Australia, and Canada this issue has been addressed by the development of family courts, discussed in the next chapter.

Amina, who was living in a safe house at the time of her interview, made the poignant comparison of her experience to that of a refugee. In her case, she filed domestic violence charges over a year ago, gave her statement six months later, and is still awaiting a verdict. She expressed frustration that she is in the safe house while her abuser remains at home:

*"I am in treatment and I'm not violent and haven't done anything to anyone, but I am the one still suffering injustices. "*

Even women who do not file criminal charges in cases of domestic violence have experiences with the courts if they seek a divorce. Even though Nada did not press criminal charges against her husband, she





remembered her multiple court experiences vividly and with great disappointment. She and her husband did not have children together, but she still had to appear in court six times to finalize their divorce and divide their property. The court permitted her husband to discuss her morality at length, and to accuse her of sleeping with other men, while she was hardly given an opportunity to say anything in reply:

*“I did not expect the court to pamper me, but just to treat me with bit of humanity... I respected the court, ideas of justice and all that. So, that was what I expected, and I thought I would have an opportunity to say what happened. But so many ugly things were allowed in that courtroom and so many irrelevant things... The judge allowed him to insult me so many times and to call me whore, and he did not intervene. The only time the judge intervened was to tell him to take his chewing gum out.”*

The experiences that women interviewees had with the BiH criminal justice system reveal a number of issues that must be given consideration if victims of domestic violence are to be treated fairly and protected appropriately. From the moment women take action to end violence, they are confronted with obstacles. Police are often indifferent or blame the victim; social services are inconsiderate of the needs and fears of victims and overly accommodating to abusers; and the criminal justice system sends the message through lenient sentencing that domestic violence is tolerated. Throughout the system, factors that indicate a woman’s husband could murder her are ignored; and in courts, judges prioritize mitigating circumstances that help perpetrators walk free. It should be no surprise that women drop charges, recant, or never seek justice at all for domestic violence. How the criminal justice system can address domestic violence in a way that protects victims, acts as a preventive mechanism, and demonstrates to society that violence is unacceptable will be discussed in the next chapter.






## **5. WAYS FORWARD IN SUPPORTING SURVIVORS AND PREVENTING DOMESTIC VIOLENCE: THE ROLE OF THE CRIMINAL JUSTICE SYSTEM**

In this final chapter, research findings presented in this report are used to consider their potential in helping understand how the criminal justice system can support victims and prevent domestic violence. The women who took part in this research have been or still are exposed to severe forms of violence in their families, including physical, psychological, emotional, and sexual violence that often occurs in combination. This study explored why some women chose to stay in violent relationships and why some did not press criminal charges or dropped them, and women shared a variety of concerns that had prevented them from leaving home or pursuing justice – from fear of retribution by the perpetrator, to worries that their family would be negatively affected, to a lack of trust that the system would adequately protect them, to anxiety that they would not be believed and would be unable to navigate the criminal justice system.

This research found that of those women who did press charges, their experiences with the legal system were often disappointing and their cases ended in decisions that ran contrary to their ideas of justice. These women felt that their abusers had been treated leniently, and that the needs and rights of perpetrators were given more weight than those of victims. For these women, their victimization continued even after they

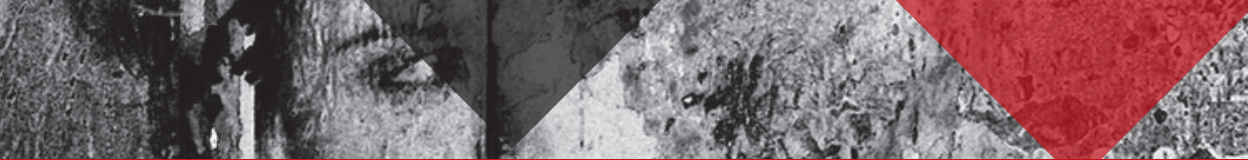


left their abusers, in multiple legal processes. This chapter will address some of these issues by considering international practices and exploring how the judicial system in BiH can be made more accessible to and sensitive toward victims and can ensure that perpetrators receive the clear and firm message that violence will not be tolerated. These questions cannot be answered without first examining societal and criminal justice discourses on domestic violence. A lack of knowledge, coupled with stereotypes, creates these discourses, which are unhelpful to victims, their families, and society, and which influence judicial decision-making, including the assessment of aggravating and mitigating circumstances.

### **5.1. Rethinking discourses on domestic violence in Bosnia and Herzegovina**

In interviews, as the women who participated in this research discussed their treatment by their families, police, social workers, and judicial professionals, discourses on domestic violence dominated their narratives. These discourses are interrelated and largely inform the way families treat women and the ways women themselves deal with violence. Women reported being treated as the cause of violence and made to believe that if they would only do or change certain things that the violence would stop. Women were coerced into submissiveness, overpowered, and controlled by their husbands as a “normal” part of daily life.

The idea that violence is “normal” or that its inevitability ought to be accepted is an attitude many women encountered in their dealings with police officers and social workers. Yet, when the police, for example, try to reconcile a husband and wife in the immediate aftermath of violence and express that staying together is the most important priority, they only further confuse victims of domestic violence – who are in the midst of a painful, frightening, and bewildering experience as it is. Often, women do not know how to make sense of the violence they have endured and seek



support from various agencies that have the power to protect them and help them understand and define what has happened to them. Thus, it is especially problematic if these agencies, through their discourse, explicitly or implicitly reinforce the idea that violence is acceptable.

Public discourse on domestic violence largely underpins institutional discourse, and this is evident in judicial processes and verdicts on domestic violence in BiH, where it is not uncommon that a perpetrator is characterized as a “family man” and provider, dismissing the damage his violence has done to his wife and children. But, discourses that support the idea that domestic violence is a normal and private part of family life are not unique to Bosnia and Herzegovina. Looking into court discourse and defenses used in domestic violence cases in the US, Erez found that these cases were dominated by male abusers’ views and stereotypes of women. Defense attorneys commonly questioned the mental health of the victim or argued that the victim was the primary aggressor, and victims’ experiences of violence were often denied and minimized in court – just as the women in this study reported.<sup>126</sup>

Rosemary Hunter problematizes the issue of institutional discourses versus personal narratives on domestic violence. She argues that a discrepancy exists because, while legal reforms have been motivated by theories of domestic violence developed by feminist advocates, the lawyers and judges who implement laws do not necessarily share this feminist understanding of violence. In fact, according to Hunter, their understanding of domestic violence is more likely to be informed by the media, popular culture, and social and institutional discourses that are often contrary to feminist discourse.<sup>127</sup> Hunter suggests that reconciling these different narratives of domestic violence requires that the evidence in any case not be manipulated so as to fit one view or another, and power and control therefore need to be taken into account. Further, the history of a relationship and any indications of other forms or patterns of violent

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126 Edna Erez, and Tammy A. King, “Patriarchal Terrorism or Common Couple Violence: Attorneys’ Views of Prosecuting and Defending Woman Batterers,” *International Review of Victimology* 7, no.1-3 (2000): 207-226.

127 Rosemary Hunter, “Narratives of Domestic Violence,” *Sydney Law Review* 28, no. (2006): 733-776.

or abusive behavior should be considered. In every case, Hunter advocates a contextual approach that asks: “Does the evidence point to a relationship of mutual conflict, or does it point to the exercise of power and control by one partner over another? Were ‘reconciliations’ genuine or coerced? Can any children involved really be protected from future violence and the effects of violence without also protecting their mother?” Finally, she argues that “decisions should never be based on the denial or minimization of violence, or excuses and victim-blaming.”<sup>128</sup>

Erez contends that stereotypes held by police about domestic violence continue to undermine police and court practices and that victim-blaming by police, prosecutors, judges, and other court staff can distort the reality of domestic violence, downplay the risk faced by women in abusive relationships, and thereby discourage women from utilizing the system. Common practices employed by defense attorneys in domestic violence cases, such as attacking the truthfulness of the charge and the credibility of the victim, tie the proof of a defendant’s guilt to the perceived credibility of the abused woman – who may be viewed as unconvincing if she is too timid to give a coherent, reliably narrated testimony.<sup>129</sup> Such defense strategies depend on public and institutional discourses on domestic violence, and so it is important to examine discourses that blame victims or excuse perpetrators. These discourses seriously undercut prevention efforts, and to change them, judicial professionals must be aware of the root causes of violence, the characteristics of perpetrators, and the damage violence does to society as a whole.

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128 Ibid, 774.

129 Edna Erez, “Domestic Violence and the Criminal Justice System: An Overview, *Online Journal of Issues in Nursing* 7, no. 1 (January 2002), <http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume72002/No1Jan2002/DomesticViolenceandCriminalJustice.html> (accessed November 3, 2015).

## 5.2. Coordinated criminal justice responses


Laws in BiH meant to protect against domestic violence were developed with a recognition for the necessity of a coordinated criminal justice response in cases of family violence. The police response should be immediate, and coordinated with the prosecutor, courts, and social services to facilitate the issuance of an order of protection. These orders are usually issued within 24 hours and their violation is supposed to result in a monetary fine. Properly enforced, they offer needed respite to victims. Yet, in BiH, as in other countries, the enforcement of orders of protection is crucial to supporting victims of domestic violence; for a failure to do so enforces only the notion that women's victimization will be tolerated.

International practices also highlight the importance of a coordinated criminal justice response in addressing domestic violence. Research shows that this response needs to reflect a determined, comprehensive approach in which police, prosecutors, and judges consider information such as a perpetrator's previous convictions, substance abuse history, current and previous restraining orders and civil court orders, child welfare issues, and responses to previous domestic violence interventions.<sup>130</sup> Studies from the UK offer a number of recommendations for improving responses and enhancing effectiveness, including the development of more multi-agency partnerships to support vulnerable victims and deal with chronic offenders. Additional recommendations include victim advocates to support victims through the criminal justice system, improved evidence gathering, specially-trained prosecutors, specialist courts and specialist training for judges, awareness training for all legal practitioners, and greater attention to equality and diversity issues across the system.<sup>131</sup>

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130 Kerry Healey, Christine Smith, and Chris O'Sullivan, "Batterer Intervention: Program Approaches and Criminal Justice Strategies," No. NCJ 168683 (Washington, DC: US Department of Justice, 1998).

131 Marianne Hester, et al., *Domestic Violence: Making it through the Criminal Justice System* (International Centre for the Study of Violence and Abuse, 2003).



Research has also shown the need for regular monitoring and review of the criminal justice system, and this is something that has been missing in BiH. Further analysis is necessary to evaluate the effectiveness of sanctions and protective measures and to identify gaps and weaknesses in the system. A 2009 report published by the OSCE found that protective measures were not utilized in BiH.<sup>132</sup> This study shows that progress has been made in this respect over the last six years; protective measures are now issued and safe houses are available. Still, more insight is needed to determine how this impacts prevention. And, what works within the system also demands further analysis.

Some researchers also assert that, by learning from preventable tragedies, light can be shed on less understood risks.<sup>133</sup> Best international practices prescribe that effective criminal justice responses to domestic violence can properly identify the aggressor in a fractious relationship and take into account how post-traumatic stress might affect the victim. For example, victims who feel safe to express their anger may unwittingly give the impression that they are perpetrators, and injuries inflicted in self-defense, such as scratches, may be more immediately apparent than serious bruising.<sup>134</sup> Along with the provision of adequate training and guidance, care should be taken to appropriately select, supervise, and support professionals who work with perpetrators and victims of domestic violence.

### **5.3. Assessing lethality in domestic violence cases**

There are a number of reasons why it is important that the risk of lethality be knowledgably assessed in domestic violence cases. In the context of the criminal justice system, it is imperative to move beyond ‘common

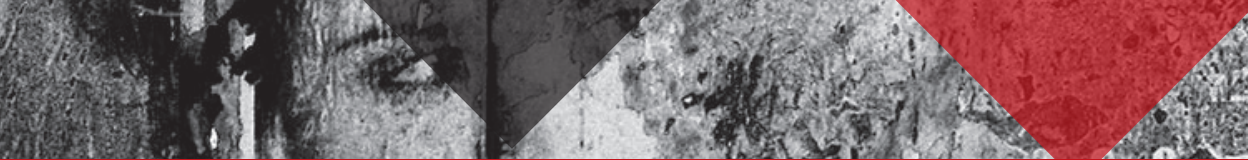
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132 Organization for Security and Co-operation in Europe, *Response to Domestic Violence and Co-ordinated Victim Protection in the Federation of Bosnia and Herzegovina and the Republika Srpska* (Sarajevo: 2009). See: [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2010092008370731eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2010092008370731eng.pdf)

133 Mary Barnish, *Domestic Violence: A Literature Review* (London: HM Inspectorate of Probation, 2004).

134 Healey, Smith, and O’Sullivan, “Batterer intervention...”





wisdom' toward research-based practices that can distinguish cases of domestic violence from cases of domestic violence homicide.<sup>135</sup> But assessing lethality will require that judicial professionals outgrow the limiting approach of evaluating single incidents and begin to look at the bigger picture of domestic violence within each family.

While this research did not specifically look at cases of domestic violence homicide, it emerged in interviews that the women in this study were exposed to serious risk factors associated with domestic violence homicide. Yet, those women who experienced these risk factors and who engaged with the criminal justice system consistently reported that these factors were not taken into consideration by judicial professionals. In fact, interviewees noted that these professionals not only seemed uninterested in the details of their abuse, but that the often painful and embarrassing details they did share were not reflected as aggravating circumstances in sentences. This matches the findings of a 2011 OSCE review of 289 criminal cases of domestic violence in Bosnia and Herzegovina, in which aggravating factors almost never impacted judgments or sentences.<sup>136</sup>

A significant body of research has identified common risk factors associated with domestic violence homicide. Most notably, threats or assault with a gun or other weapon increase by 20 times the likelihood that a woman will be murdered.<sup>137</sup> Threats to kill – which a number of the women interviewed for this study experienced – are also a significant risk factor, estimated to increase the risk of murder by 15 times.<sup>138</sup> The women in this research were also exposed to a variety of combinations of other risk factors associated with lethality, including attempted or successful strangulation, forced sex, stalking, and extreme jealousy.<sup>139</sup> Estrangement, whether by physical separation or legal proceedings (e.g. for divorce), has

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135 Jacquelyn C. Campbell, "Commentary on Websdale: Lethality assessment approaches: Reflections on their use and way forward," *Violence Against Women* 1, no. 9 (2005): 1206-1213.

136 OSCE, *Ensuring Accountability for Domestic Violence*.

137 Campbell, et al., "Assessing Risk Factors for Intimate Partner Homicide."

138 Ibid.

139 Phyllis W. Sharps, et al., "The Role of Alcohol Use in Intimate Partner Femicide," *American Journal of Addictions* 10, no. 2 (2001): 1-14.

also been identified as an indicator of lethality that increases the risk of domestic violence homicide by three to five times.<sup>140</sup> However, the most prominent risk factor for domestic violence homicide is domestic violence itself; and numerous studies have shown that the majority of such homicides were preceded by domestic violence against a woman by a man – regardless of which partner was killed.<sup>141</sup>

One of the most effective tools currently used to evaluate the risk of lethality in cases of domestic violence is known as the Danger Assessment (DA).<sup>142</sup> Developed by Dr. Jacquelyn Campbell with direct input from victims of domestic violence, shelter workers, law enforcement, and other clinical experts, the Assessment uses a weighted system to score yes/no responses to risk factors associated with domestic violence homicide. The following questions, in combination with a 12-month calendar on which victims record incidents of abuse using a 1 to 5 scale, make up the DA:

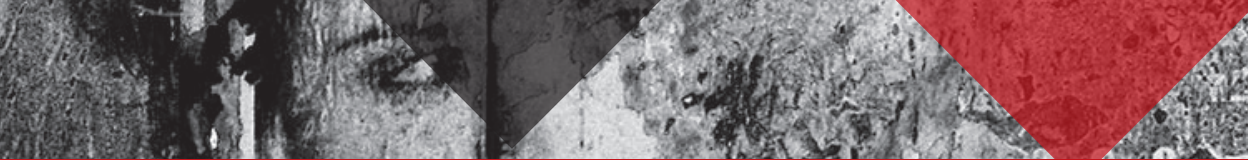
1. Has the physical violence increased in severity or frequency over the past year?
2. Does the abuser own a gun?
3. Have you left the abuser after living together during the past year?
4. Is the abuser unemployed?
5. Has the abuser ever used a weapon against you or threatened you with a lethal weapon?
  - a. If yes, was the weapon a gun?
6. Does the abuser threaten to kill you?
7. Has the abuser avoided being arrested for domestic violence?
8. Do you have a child that is not the abuser's child?

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140 Campbell, et al., "Assessing Risk Factors for Intimate Partner Homicide."

141 See: James E. Bailey, et al., "Risk factors for violent death of women in the home," *Archives of Internal Medicine* 157, no. 7 (1997): 777-782; Jacquelyn C. Campbell, "'If I can't have you, no one can': Power and control in homicide of female partners" in *Femicide: The Politics of Woman Killing*, eds. Jill Radford and Diana E. H. Russell (New York: Twayne, 1992), 99-113; Jacquelyn C. Campbell, et al., "Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study," *American Journal of Public Health* 93, no. 7 (2003): 1089-1097; Judith M. McFarlane, et al., "Stalking and Intimate Partner Femicide," *Homicide Studies* 3, no. 4 (1999): 300-316; Kathryn E. Moracco, Carol W. Runyan, and John D. Butts, "Femicide in North Carolina, 1991-1993: A Statewide Study of Patters and Precursors," *Homicide Studies* 2, no. 4 (1998): 422-446; and Websdale, *Understanding Domestic Homicide*.

142 See the Danger Assessment here: <https://www.dangerassessment.org/DATools.aspx>

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9. Has the abuser ever forced you to have sex when you did not wish to do so?
  10. Does the abuser ever try to strangle (choke) you?
  11. Does the abuser use illegal drugs (not including alcohol)?
  12. Is the abuser an alcoholic or problem drinker?
  13. Does the abuser control most of your daily activities? For example, does he tell you who you can be friends with, when you can see your family, how much money you can spend, or when you can take the car?
  14. Is the abuser violently and constantly jealous of you? (For example, saying, "If I can't have you no one can.")
  15. Have you ever been beaten by the abuser while you were pregnant?
  16. Has the abuser ever threatened or tried to commit suicide?
  17. Does the abuser threaten to harm your children?
  18. Do you believe the abuser is capable of killing you?
  19. Does the abuser follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don't want him to?
  20. Have you ever threatened to commit suicide?

Even in the absence of scoring, the DA can still serve as an important resource for criminal justice professionals. The questions are based on decades of research that has identified the behaviors and characteristics of abuse that are most lethal for victims of domestic violence and can serve as important guides in the investigation, prosecution and sentencing of perpetrators. The DA may be particularly valuable to judges, for whom the identification of risk factors associated with increased violence and lethality should become a standard practice in domestic violence case evaluation and sentencing.

## 5.4. Assessing aggravating and mitigating factors

The women who participated in this research reported experiencing a number of aggravating factors in their cases, some of which are explicitly recognized in law and some that clearly warrant consideration even if they are not. For example, several victims reported being strangled and many also described being raped and sexually abused. Victims reported being physically attacked during their pregnancies as well, and in at least one case, were intentionally punched and kicked in the belly. Moreover, many victims said their children had been exposed to the violence directed against their mothers, and in some cases were abused themselves. And yet, all of these women's abusers received suspended sentences.

Criminal law in BiH officially recognizes a basic form of domestic violence, for which the sanctions are a monetary fine or jail time, as well as the following specific categories of aggravated forms, for which the only sanction is jail time:

- children/juveniles are exposed to domestic violence
- use of weapons or dangerous tools
- grievous bodily injury

In addition, the law in the Republika Srpska recognizes the presence of a minor (under 18 years of age) as a qualified form of domestic violence. But still, as the OSCE report revealed, BiH courts are not taking into consideration these legally-defined aggravating factors and applied any such factors in only 40% of cases.<sup>143</sup> According to the report:

*Cases that carried a suspended sentence embraced the full spectrum of domestic violence offenses. The cases monitored included frequent accounts of beatings, slapping, physical assault causing "severe" or "grievous" injury, or use of weapons such as knives or firearms and*

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143 OSCE, *Ensuring Accountability for Domestic Violence*, 21.

*explosive devices. Verbal abuse was frequently reported, including death threats...*<sup>144</sup>

It also noted that perpetrators are not charged for separate associated crimes:

*There appears to be a reluctance to combine domestic violence charges with other charges such as child abuse... [and] charges for sexual violence are almost totally absent from domestic violence proceedings, even if they have been alleged during the proceedings.*<sup>145</sup>

Courts have the opportunity to use empirical research to inform judicial practice, and in BiH, this must be the basis for new understanding among judicial professionals of the various characteristics and impacts of domestic violence. Research shows, for instance, that children who are exposed to domestic violence suffer long-term consequences to their mental, intellectual, and social development.<sup>146</sup> And as discussed above, threats with or the use of lethal weapons – which many of the women in this study reported experiencing – is known to substantially increase the risk of lethality.<sup>147</sup> It is crucial that law enforcement and justice professionals in BiH bring awareness to the gravity of these aggravating factors and appreciate that even factors that are not officially recognized in the criminal-legal framework – such as stalking, sexual assault, strangulation, or extreme jealousy – should be considered. Indeed, the General Principles of Meting out Punishments direct the courts to take into account “all the circumstances bearing on the magnitude of the punishment,” including the degree of danger or injury to the victim and the past conduct and personality of the perpetrator.<sup>148</sup> This leaves ample

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144 Ibid., 19.

145 Ibid., 33-34.

146 Lynn Hecht Schafran, 2014, “Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience” *The Judges Journal*, vol 53 no 3.

147 Campbell, et al., “Assessing Risk Factors for Intimate Partner Homicide.”

148 See: Criminal Code of Bosnia and Herzegovina, Article 48, “General Principles of Meting out Punishments,” Section 1:



room for the courts to identify factors such as strangulation and extreme jealousy as aggravating circumstances.

BiH courts have demonstrated a lack of appreciation of the nature of domestic violence in their application of mitigating factors as well. The OSCE review found that mitigating factors were applied in over 70% of cases as a justification for a lesser or suspended sentence, far outweighing the use of aggravating factors.<sup>149</sup> The most commonly cited mitigating factors were:

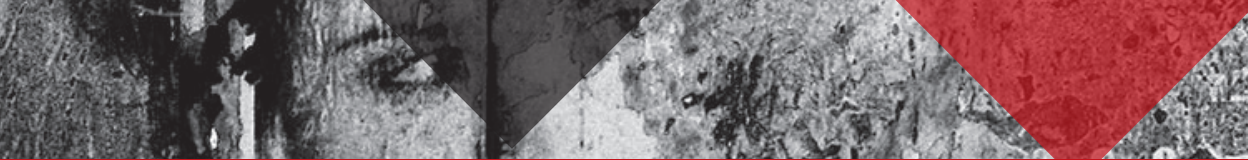
- a lack of prior convictions
- an admission of guilt
- expressing remorse for the crime
- “proper behavior before the court”
- characterization as a “family man”

While the lack of a prior criminal record is understandably relevant in criminal proceedings and sentencing, the lack of prior *convictions* should not be equated with a lack of prior abusive behavior. Indeed, as interviews revealed, victims of domestic violence may experience extreme forms of violence, abuse, and control before law enforcement or the courts ever have the opportunity to identify, prosecute, and convict a perpetrator. It is also notable that a perpetrator’s characterization as a “family man” is applied as a mitigating factor, and frequently. This implies that raping, strangling, beating, and terrorizing his family does not preclude a man from being identified as a “family man.” And yet, if the same offenses were to have been directed against a stranger, would they be so easily dismissed? What message do the courts send to society – and indeed, to families – by suggesting that simply having a family makes one less culpable for violence? If BiH society sees families as the basic unit of that society, then

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*The court shall impose the punishment within the limits provided by law for that particular offense, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offense, the degree of danger or injury to the protected object, the circumstances in which the offense was perpetrated, the past conduct of the perpetrator, his/her personal situation and his/her conduct after the perpetration of the criminal offense, as well as other circumstances related to the personality of the perpetrator.*

149 OSCE, *Ensuring Accountability for Domestic Violence*, 21.



protecting families against internal abuse and terror protects society itself. Moreover, a failure to take domestic violence seriously is a failure to recognize its intergenerational nature, and this offers little hope of preventing domestic violence in future generations.

## 5.5. The leadership role of judges in the prevention of domestic violence

Whether domestic violence is treated as a serious legal matter that is worthy of the court's time, attention, and contemplation may largely depend on judicial leadership. In this sense, judicial leadership refers to the willingness of judges to step forward and take on the issue of domestic violence – by knowledgeably determining the risks presented to victims and the wider community and by delivering sentences commensurate with the crimes committed. Leadership of this sort from judges represents an opportunity to prevent domestic violence by limiting recidivism by previous perpetrators and intervening in the cycle that leads to the commission of similar crimes by future generations.

In his book *Battered Women in the Courtroom: The Power of Judicial Response*, James Ptacek shared the story of a US case that reflected the dangerous notion that domestic violence is not a serious matter, with a devastating outcome:

*In March of 1986, Pamela Nigro Dunn went to court to obtain a restraining order against her husband, six weeks after their wedding. In an affidavit submitted with her request, she wrote:*

*“I’m a prisoner in my apartment. He locks me in and takes the phone cord out. He choked me and threatened to kill me if I try to leave. He made me work only where he works... My life is in danger so long as he is around.”*

*She was given an order by Judge P. Heffernan prohibiting her husband from contacting her. In a hearing 12 days later, she was verbally chastised by Judge Heffernan for arranging for a police officer to escort her to her apartment so that she could gather her things. With both Pamela Dunn and Paul Dunn before him, Judge Heffernan said the following:*

*“This is pretty trivial... This court has a lot more serious matters to contend with. We’re doing a terrible disservice to the taxpayers here. You want to gnaw on her and she on you fine, but let’s not do it at the taxpayers’ expense.”*

*Telling Pamela that she didn’t need an escort, Heffernan told her to “act as an adult.” ...In August 1986, less than five months after this hearing, Pamela Dunn was brutally murdered by her husband. According to news reports, she was abducted at gunpoint by her husband at a street corner. Nine hours later she was found face down in a puddle at a town dump, she had been shot, stabbed and strangled. Pamela Dunn, who was five months pregnant, was 22 years old.<sup>150</sup>*

In addition to demonstrating how important it is to take domestic violence seriously, this case also revealed the extent to which domestic violence can be a hidden crime and yet still pose a significant threat. Indeed, in this case, there were no criminal charges before the court and Paul Dunn had no criminal record. In her sworn affidavit, though, Pamela Dunn had reported being exposed to extreme jealousy, isolation, and threats against her life – all factors that are associated with the risk of lethality.

Certainly, the mandate of judges to deliver justice outside of preconceptions and without prejudice to one party or the other can be challenging, and may be complicated by heavy workloads and too little time.<sup>151</sup> Yet,

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<sup>150</sup> Ptacek, *Battered Women in the Courtroom*, 4-5.

<sup>151</sup> Donna Martinson (Honorable) and Margaret Jackson, *Judicial Leadership in Domestic Violence Cases: Judges Can Make a Difference* (The FREDA Centre for Research on Violence Against Women and Children, 2012).





as the Honorable Donna Martinson and Dr. Margaret Jackson noted in a 2013 paper:

*...improvements can be made. There are aspects of what judges strive to do that are so fundamental to the effective administration of justice that they must be addressed by judges. The barriers that exist within court institutions can and should be tackled by judges. In family violence and other continuing conflict cases, the stakes, particularly for children, are extremely high. They can be seriously harmed. The longer the problem continues, the more harmful the situation can become and the more difficult it will be to resolve.<sup>152</sup>*

A call for judicial leadership in cases of domestic violence is a call for judges to enforce the rule of law and support social and behavioral norms that align with the principles of equality. Based on their leadership position within the criminal justice system, judges are in a unique position to set the tone for police and prosecutors by encouraging, if not insisting, that they conduct thorough investigations and develop comprehensive case files accompanied by appropriate charges. This is also an opportunity for judges to lead the way forward in cultivating social norms – based on established criminal-legal parameters which identify domestic violence as unacceptable – that no longer tolerate family violence.

Finally, judges can work to deconstruct dominant discourses in the courtroom by ensuring the safety and comfort of victims in order to give them a full and fair opportunity to tell their stories. And, judges can and should avoid composing judgements that suggest there is any excuse or justification for threatening or abusive behavior against a perpetrator's family. The wide discretion judges have to interpret and enforce laws should ultimately be used in the interest of justice; in this case, to prevent domestic violence.

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<sup>152</sup> Ibid.

## 5.6. Specialized domestic violence courts

Specialized domestic violence courts have been established in countries around the world, with over 50 in Canada, nearly 100 in the United Kingdom, and over 200 in the US.<sup>153</sup> While the operational model for these courts varies between and within countries, common motivations for their creation include more efficient case processing, decision-making by professionals with specialized training, greater accountability for offenders leading to reduced recidivism, the development of victim support services, and better coordinated response across agencies and institutions.<sup>154</sup> There are three models for domestic violence courts: 1) civil protection order courts, 2) criminal offense courts, and 3) integrated civil-criminal courts.<sup>155</sup> To date, the second model – specialized criminal courts dedicated to domestic violence – is the most prevalent and provides the advantage of being able to closely monitor compliance as well as victim and family safety. However, this model does not enable judges to address relevant civil-legal matters such as orders of protection, questions of child custody and support, and divorce. Specialized integrated civil-criminal courts thus have obvious advantages by joining both the criminal and civil docket. An additional advantage of the integrated model is that it typically involves formal coordination with other services so that families affected by domestic violence have access to a ‘one-stop shop’ where they can receive numerous services in one location.

Studies examining the impact of specialized domestic violence courts consistently demonstrate that these courts are more likely to provide services to victims that they would otherwise not receive.<sup>156</sup> Victims also

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153 Samantha Moore, *Two Decades of Specialized Domestic Violence Courts: A Review of the Literature* (Center for Court Innovation, 2009), 2.

154 *Ibid.*, 3.

155 Emily Sack, *Creating a Domestic Violence Court: Guidelines and Best Practices* (Family Violence Prevention Fund, 2002), 24-29.

156 Harrell, A., L. Newmark, and C. Visher. 2007. Final report on the evaluation of the judicial oversight demonstration, volume 2: Findings and lessons on implementation. Final report for the National Institute of Justice. Washington, DC: National Institute of Justice.

Henning, K and Klesges, LM. 1999. Evaluation of the Shelby County domestic violence court: Final report. Shelby County: TN.


tend to report having more positive experiences in specialized courts than in standard courts.<sup>157</sup> And, most notably, research shows that victims are more motivated to leave abusive relationships when they have access to a specialized domestic violence court.<sup>158</sup>

Domestic violence courts are more likely than non-specialized courts to mandate a wide range of special conditions for offenders, including their participation in counseling programs and substance abuse treatment, drug testing, intensive probation supervision, and regular judicial status hearings to verify compliance.<sup>159</sup> Some studies have linked the establishment of specialized domestic violence courts to increased conviction rates, but the data is limited.<sup>160</sup> There are also a number of reviews of these specialized courts that have revealed their role in reducing the duration of domestic violence cases. The degree to which this is true varies, from one study that noted a 74% reduction<sup>161</sup> to two others that revealed a 25-50% reduction in case processing time.<sup>162</sup> This is an important issue for women victims who are attempting to move on

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Newmark, L, Rempel, M, Diffily, K and Kane, KM. 2001. Specialized felony domestic violence courts: Lessons on implementation and impact from the Kings County experience.

- 157 Eckberg, D. and Podkopacz, M. 2002. Domestic violence court in Minneapolis: Three levels of analysis. Presentation, American Society of Criminology Annual Conference. Chicago, IL. November 15, 2002.
- Gover, Angela A. 2007. "Specialized domestic violence court in South Carolina: An example of procedural justice for victims and defendants." *Violence Against Women*, Vol. 13, No. 6, 603- 626.
- Gover, A. A., MacDonald, J. M., and Alpert, G. P. 2003. "Combating domestic violence: Findings from an evaluation of a local domestic violence court." *Criminology and Public Policy*, 3: 109-132.
- Hotaling, G., and Buzawa, E. 2003. Victim satisfaction with criminal justice case processing in a model court setting. Washington, D.C: National Institute of Justice.
- 158 Henning and Klesges, *op. cit.*  
Hotaling and Buzawa, *op. cit.*
- 159 Angene, L. 2000. Evaluation report for the San Diego County domestic violence courts. San Diego, CA: San Diego Superior Court.
- Gondolf, E. W. 2005. Culturally focused batterer counseling for African American men. Final Report for the National Institute of Justice. Washington, DC: National Institute of Justice.
- Harrell et al., *op. cit.*  
Newmark et al., *op. cit.*
- 160 Goldkamp, J., Weiland D., Collins, M., and White, M. 1996. The role of drug and alcohol abuse in domestic violence and its treatment: Court experiment. Final Report for the National Institute of Justice. Washington, DC: National Institute of Justice.
- Davis, R, Smith, B.E., Rabbitt, C. 2001. Increasing convictions in domestic violence cases: A field test in Milwaukee." *The Justice System Journal* 22: 62-72.
- Eckberg and Podkopacz, *op. cit.*
- 161 Angene, *op. cit.*
- 162 Davis et al., *op. cit.*  
Cissner, A.B., Labriola M., and Rempel M. 2013, Testing the Effects of New York's Domestic Violence Courts



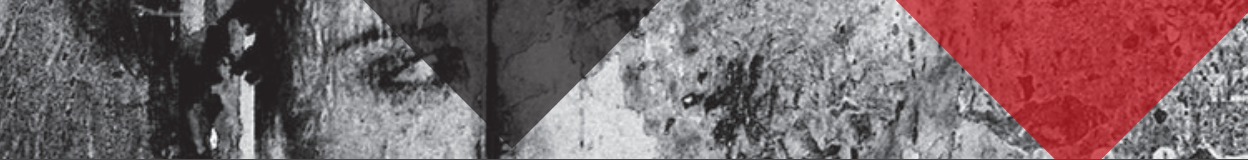
from their experience of abuse, and interviewees in this study expressed frustration with the complications and duration of legal processes.

## **5.7. Best practices to prevent domestic violence from the bench**

While there is no exact formula with which the judiciary can prevent domestic violence, there is overwhelming evidence that a thorough, evidence-based response is more impactful than the application of individual discretion and practitioner opinion. In other words, practices must be consistent and must take into consideration the larger context and history of abuse. The *2014 Judicial Benchbook: Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina* elaborates on a number of common sense recommendations that, if followed, could significantly shift judicial practice in BiH toward international norms and standards that are based on empirical research. This would not require a single change to the criminal-legal framework and would thus allow the judiciary to improve judicial practice without undertaking lengthy legislative revisions.

Essentially, criminal justice professionals in BiH must better utilize existing laws on domestic violence. Some progress has been made, for example in issuing orders of protection within 24 hours of a report of domestic violence. Women in this study found this practice reassuring, and some felt these orders helped them begin to move on and break free from their violent relationship.

International practices show that guidelines and trainings for professionals who work with victims of domestic violence are key to providing the right support. When police are trained to support victims of domestic violence, this is reflected in their handling of domestic violence cases. The immediate arrest of perpetrators and the issuance of protective measures serves as a warning to abusers and signals that women victims are not helpless but are endowed with rights by a system that supports them.



The way that criminal proceedings are handled and cases of domestic violence are resolved are key factors in changing social discourse and preventing violence in families. Some judges in BiH and internationally argue that the wishes of victims for leniency in sanctions against their abuser must be taken into account, others feel they should not be. This is a complex call for judges to make, for various reasons. Yet, the fact that some victims call for leniency or some choose not to testify must not be viewed as a systemic failure or a waste of time. These same victims may need protection again in the future and any earlier attempts on their part to reconcile their relationship must be understood as a strategy used to negotiate the complicated problem of domestic violence, not as a misuse of the system.

This study shows that domestic violence is a complex and severe problem affecting not only immediate family members but also society as a whole. The findings strongly support other research which indicates that appropriate response by the criminal justice system encourages women to report violence and shows perpetrators that they are not above the law. Thus, professionals who come into contact with victims of domestic violence must be educated about its impacts and characteristic in order to tailor their response. And, this response need not be void of emotion to be appropriate; in fact, for women in this study, moments in which judicial professionals exhibited kindness and understanding were validating and, for some, represented personal turning points. But, support and understanding for victims must also be followed up by a mandate to hold perpetrators truly accountable. For women victims, calling police to their home or entering a police station to report their husband's abuse is extremely difficult. When victims exert their agency in this way, it must be understood as an act of courage and not a betrayal of "family values." Indeed, ultimately, victims must see that the violence they have experienced will not be tolerated.





