

# Working Paper on Intervention Against Domestic Violence in Germany<sup>1</sup>

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## Part 1: The Intervention Sequence and the Response to Core Questions

### 1 Empirical Data and case story

This working paper is based on two multiprofessional workshops in which the intervention responses to domestic violence were explored (see [background paper](#)). Each workshop comprised two half-day sessions, and a focus group methodology was used. Participants were given a case story in three sequences to discuss. Six “core questions” were introduced during the discussions. The stories were agreed across the four countries, but adapted to fit the national context when necessary.

Participants in the German workshops on domestic violence were: 4 police from 4 towns, 3 public prosecutors at 2 district courts, 3 family court judges from 3 cities, 2 lawyers/attorney from 2 cities, 2 social workers from 2 youth welfare offices, 2 family assistance social workers, 1 school social worker, 1 gynecologist, 5 counsellors from specialist NGOs (2 intervention centres, 1 women’s counselling centre, 2 refuges).

For the German workshops on domestic violence the story was as follows:

#### 1<sup>st</sup> PHASE OF THE STORY

*Anna, (32) moved three years ago with her husband Alex to a medium-sized town, some 200 km distant from the area where her family lives. She has two children, on seven years and one six months old. There have been loud quarrels in their marriage, increasingly so last year when Anna was pregnant with her 2nd child. The neighbors in the flat above them called the police twice because of this; the police came, but they found no sufficient reason to intervene. Another neighbor has noticed several times that she has bruises, but does not know her well enough to speak to her about it. The older child, who began school last fall, has not yet made any friends and shows an unusual degree of aggressive behavior. Anna has repeatedly asked her family doctor to prescribe her sleeping pills and complains of chronic headaches.*

#### 2<sup>nd</sup> PHASE OF THE STORY

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*Six months later, the situation has escalated and Anna is now seeking help. She doesn't have family or friends in that city, and is too much ashamed to talk about this problem with work colleagues. Several of the professionals who have some kind of contact with Ana have begun to worry about the possibility of a domestic violence situation.*

*Her husband brings her to the hospital with bruises and a dislocated finger, he tells the nurse that she fell downstairs and she nods in agreement. But while she is alone and being examined, she admits that her husband caused the injuries. The hospital gives her a card with the national hotline number she can call for advice and help. She calls the hotline without telling them her real name or her address and asks what she can do; she tells them that she is very afraid of her husband but doesn't want to leave him because of the children. They tell her that she has the right to live without violence and advise her to contact the police, but they also tell her how to find a specialist NGO counselling center – and if she feels very threatened, a shelter – quickly, where she will be offered qualified help and support.*

### **3<sup>rd</sup> PHASE OF THE STORY**

*The violence has continued, and Anna now has very little hope and is thinking about the possibility of divorce. One evening she suggests a separation to her husband, because they are quarreling all the time. He becomes furious, hitting her and making such frightening threats that she calls the police.*

*The police take the threats very seriously and issue a police ban obliging the husband to leave the residence immediately and to stay away for a period of ten days; during this period he is prohibited from making contact with Anna in any way. The police also urge Anna to make a complaint and to separate permanently.*

*Anna refuses to make a formal complaint or a statement to the police. She makes contact with a specialized NGO support worker and confides that she is extremely frightened of what her husband might do to her if she makes a formal complaint. (He once said he would kill her if she ever left him). The support worker tries to reassure her, explaining how a court protection order can work for her safety. and offers to help her apply for such an order and to accompany her to the court.*

*Two days later, the support worker with the NGO calls her home to see if she needs further advice and support. The husband answers the phone, saying that he and Anna have made up their quarrel. . He sounds nervous and aggressive and tells the support worker to leave them alone and stop putting nonsense ideas inside Anna's head otherwise she (the support worker) will regret it.*

## **2 Intervention pathways from the perspective of professionals**

Domestic violence is not a legal concept in German criminal or civil law, although it may be present in police law or regulation in some Länder, and regularly appears in policy documents and police or justice department information websites and brochures. The federal Act on Protection Against Violence refers to “a person who intentionally injures the body, health or liberty of another person”. Police law in Lower Saxony specifies that the police can order someone to leave a residence and stay away “if this is necessary to avert a danger for the body, life, liberty or sexual self-determination of persons living in the same residence”. (This framing embeds the measure in one of the two established basic duties of the police: law enforcement and averting danger). There are no specific criminal offences or aggravating circumstances that refer to a domestic or relationship context. With respect to prosecution, the relevant guideline elaborating “special public interest” says that causing bodily harm should be prosecuted ex officio “if the victim, due to a personal relationship to the perpetrator, cannot reasonably be expected to lay a complaint”. This is now understood to mean that assault within a partnership or close relationship should be prosecuted without a victim's complaint, however, the prosecutor can decide not to press charges if the victim does not wish it.

- (1) As a professional what might lead you to try and discover whether this might be a situation of domestic violence? Or, on the other hand, what would keep you from getting involved?**
- (2) How might it come about that your institution or profession is the place to which the Anna turns for advice, intervention or support? Or how else might it happen that someone in your position would become involved?**

There are three main routes by which a woman experiencing violence by a partner can enter the intervention system. The first and longest standing route is by active help-seeking with the nearest local shelter or women's counselling centre (Beratungsstelle). These NGOs do a great deal of public awareness-raising and publicize the work they do, many have a hotline, and their national coordination centres maintain interactive websites where the nearest support service can be easily located. A great deal of professional education and training has taken place in many fields, such as social work, psychology and more recently in the health professions; the federal government has funded model projects, development of training manuals and other activities for several decades. Thus, the professionals in our workshops were very ready to think about the ways in which they might tactfully show concern and offer information on the availability of help and support. The physicians saw the request for sleeping pills and the chronic headaches as an opening for exploring causes of stress, the gynaecologist suggested that she would have seen Anna regularly during pregnancy and thus hoped there would be a basis of trust. The school social worker thought it very likely that she would be consulted about the aggressive behaviour and could invite the child to her office for a talk, and could then ask the parents to meet with her and cautiously probe for stress factors or conflict at home; several participants suggested that the neighbour might call a women's counselling centre to ask for advice and would be encouraged to express concern about the bruises and give Anna information. All of these approaches aimed at stimulating active help-seeking on the part of the victim. However, they also carry the risk that contact to the intervention system is broken or lost, since initiative and a certain amount of self-confidence are required for a victimised woman to seek help from an unfamiliar agency. Although it was generally agreed that Anna would, at this stage, probably minimize or deny any problems, the encouragement and information could be useful when she is ready to seek help.

The second route begins if the police are called to a residence. In tandem with the Protection Against Violence Act (2002), which (as a federal law) could only regulate court protection orders, all 16 Länder agreed to review and if necessary revise their police laws to ensure that the police could impose and enforce eviction orders for the duration of usually ten (now in some Länder 14) days. Detailed guidelines were written and the responsibility of the police to impose temporary bans is included in basic police academy training as well as in further training. Where the political will to make active use of this strategy is well-developed, there is now often a specialized police officer responsible for training, supervision and quality control of police attendance to possible cases of domestic violence (these were usually the police officers who came to our workshops!).

The Act aimed at a paradigm shift with the message "Whoever hits, goes". For the first time in dealing with family violence, not the victims but the perpetrators became the object of state measures. In order to combine this with an empowerment approach to the victims, the Act made civil protection orders beyond the immediate situation of endangerment available on application of the victim. With the Austrian model in mind, the drafters of the Act also aimed to have the municipalities or regions set up intervention centres that could receive information from the police, at least after imposition of a go-order, and then actively contact the woman and offer her information and support. This raised sensitive issues of data protection that have been resolved differently in the Länder. For the workshops we intentionally invited participants from Lower Saxony, where automatic notification of the NGOs has been established, and from neighbouring North-Rhine-Westphalia, where notification requires the explicit consent of the victim. By federal law, however, all police have a duty to send a report to the youth office (child protection office) if there is a child in the household when they visit a situation of domestic violence; thus, in both Länder at least one

agency would have been informed about a possible DV situation even when the police “found no sufficient reason to intervene”. In Lower Saxony there are designated support centres for victims (usually women’s counselling centres) and a growing number of designated perpetrator intervention centres, both of which are faxed a copy of the police attendance report, regardless of whether or not a criminal offence is found, and of whether or not a go-order was imposed. The consent of the data protection office to this procedure was based on averting danger of serious harm, but as one police officer said disarmingly “Who am I to say there isn’t?”, and in fact, they define it as an obligation without exception, if the “DV” box on their form is ticked.

Both workshops agreed that the police would have informed the youth welfare office, and it is possible that the school social worker would also have informed the same office of their concerns. Thus, a social worker would invite Anna to a conversation about the situation at home and the welfare of her children. Over the past 15 years, social workers in child welfare have become more aware and educated about partner violence, but there are still many who do not recognize the connections and focus solely on the children. The experience of those in our workshops is that women who are willing to put up with abusive treatment for themselves can be reached through talking about the possible negative effects on the child, but youth welfare has not yet developed standards for responding to DV situations as they have for child maltreatment. Some low threshold family support measures, such as a family care visiting midwife, or, if the situation is more difficult, a social-work family assistant could be provided. The intervention centre would also contact Anna and explain the police report and the help they can offer if and when she wishes. These calls are appreciated by almost all women, and in most cases, either an extended telephone consultation takes place or an appointment is made for advice/counselling in person.

The third route is, on the one hand, the oldest: it begins when the woman actively seeks to escape the violence, for example by going to a refuge; in the 1980s, this was the main and often only route into intervention. Early evaluation after introduction of police bans and pro-active “intervention centres” found that these tended to reach a different group of women from those in the shelters, and indeed, in the CEINAV workshops, one shelter estimated that only a little over 10% of the women who come to there had previously called the police. A less drastic route has recently become available: Either the woman herself or someone concerned about her can call a nationwide 24-hour telephone helpline that went into service in March 2013, established by a federal law, to address all forms of violence against women (via telephone, E-Mail and Chat). The law foresees that women, their social networks and organisations involved in giving advice or support will be given advice and referred to appropriate sources of help in the area where they live. A woman who is undecided about whether her situation should even be considered one of violence or whether she really wants to seek help could call just to ask for information or advice. We included this step in the German version of our stories (both DV and TSE). In a different story line, a woman might want to see her partner or ex-partner prosecuted for criminal violence, or wants to know how to find a divorce lawyer, and the helpline might open the door to such an active separation strategy. The prosecutors noted that women often go directly to court and ask for a protection order, and there are women who go directly to a lawyer.

The second phase of the story did not greatly change the access routes to help or support. The family court judge would be involved if Anna applied for a protection order, or for divorce, as would the lawyer. In some towns the intervention centre would refer Anna to a knowledgeable lawyer. The success of intervention is influenced by the extent and quality of inter-agency networks. Referrals, especially if not based on personal contact, can fail, since they always depend on the woman’s decision to follow the recommendation. Direct information-sharing from one agency to another is rarely allowed (data protection) and then only under legally specified circumstances

The story does indicate that the hospital suspects an intentionally inflicted injury, and that the staff (probably a nurse or medical assistant who would be doing the X-ray) explores the possibilities, but confirmation does not enable health care professionals to do anything more than give information

and encourage the victim to seek help. The duty of confidentiality is especially strong in the area of health care. Which of the “several professionals” in contact with Anna might offer help depends to some extent on the composition of the local “round tables”; a hospital or a school that has joined the network might offer Anna information, an average hospital or school would not.

**(3) Would you consider asking Anna directly about domestic violence, or what reasons might there be not to do so? How important do you think this is?**

The responses to this question were ambivalent. Asking directly and naming the problem can be enormously important, but carries the risk that she might “close down” and reject further offers of support. The consensus that emerged was that it depends on who asks and when and how it is done.

**(4) When might you pass on information to relevant authorities or institutions without the consent of the victim (resp. the family)? Or, on the other hand, what might keep you from doing so?**

For the police, there is no question that they write a report and send it to the NGOs and the youth welfare office, and if there is evidence of a criminal offence, it must go to the public prosecutor. The youth welfare office would have to inform the family court if there is danger of imminent harm to the child, but only then. In general, the support services attach high value to their duty to respect confidentiality and “informational rights”, so that they would not inform any authorities without first discussing this with the victim and obtaining her consent. Only when professionals see imminent danger of life and limb might they overrule the woman’s plea not to do anything and call the police, or, if the welfare of the child is endangered, inform the youth welfare agency. One shelter routinely informs child protection if a woman who has been staying in their shelter with a child leaves to go back to the abusive man, while others do so at take-in as well. This was clearly an ethical issue.

It was also the point at which both workshops discussed how the perpetrator could be called to account more effectively.

**(5) When could it be right / appropriate to initiate measures of protection from further violence even against the wishes of the victim? What concerns might prevent you from doing this, or cause you to hesitate?**

For support services, the threat to the social worker and the fact that the man has breached a no-contact order suggest informing the police, and for the police, the information would be reason to go there directly, search the flat if necessary, and expel him again under threat of a fine and arrest if he should do it again. The victim has no say in the matter. Indeed one police unit routinely checks the residence several times a day after a go-order was imposed. It is only an administrative infraction, but police coercive powers can be used to some effect if they choose.

From the point of view of the justice system, there would now be sufficient reason to try and persuade the woman to make a statement, perhaps arranging a judicial hearing of her as witness. When she sustains serious injuries, they would ask her again and again, but if she refuses to testify, there is no case. In any case, if a criminal charge goes to court it will almost always end in a fine, since even prison sentences up to 6 months have to be converted into a fine, and if the man has no prior convictions, he will certainly not go to prison. Thus, criminal prosecution produces not even temporary safety for the victim. It is possible, however, to require the man to attend a “social training course” or perpetrator programme.

**(6) What difference might or should it make if the family belongs to a cultural or ethnic minority/ has a migration background? Would your strategies of intervention differ in any way from what you have described in the first session of our workshop?**

The participants initially responded to this invitation to discuss cultural difference by describing the practical difficulties concerning language, residency status, or specific groups that are locally present.

**(6a) What difference might or should it make if the family belongs to a cultural or ethnic minority, such as a migration background, a different language spoken at home? In what ways is this present in your work?**

The immediate response in both workshops was to estimate of the percentage of families with a migration background in their work. It was generally disproportionately high relative to the population: estimates from support services were often 30%, from the police around 50%, and in a region with a high presence of migration the shelter reported 70% women with a migration background. The predominating group first named were ethnic Germans who immigrated from the former Soviet Union (described as speaking Russian and having a Russian culture, involving acceptance of men's use of violence as normal and abuse of alcohol). In one workshop, the discussion then moved to religious minorities living in communities that are resistant to integration, in the other, tradition-bound Turkish families and their extended networks. Main themes of the discussion in both workshops were (a) whether there is actually more violence in minority groups, or whether it was just more likely to be reported to authorities, and (b) the increasing diversity of, and rapid changes in migrant groups, due, for example, to refugees from conflict regions, temporary and shifting patterns of low-cost labor import by industries such as shipbuilding or slaughterhouses. The constantly changing presence of multiple groups in migration presents a challenge to all the professions in the workshops.

**(6b) Would your strategies of intervention differ in any way from what you have described in the first session of our workshop?**

Language barriers were foregrounded as an obstacle to intervention, to some extent intermingled with cultural differences (especially when women were kept at home and not allowed to learn German). With long-term immigration patterns, support services and the justice system find cultural mediators to translate and explain (in both directions). With short term or recent migration, developing a culturally competent response is much more difficult, although both the police and the support services mentioned that a wide variety of language experts were available. When immediate action is needed however, as when police attend a domestic violence situation, they may not have access to a translator.

A more complex effect of cultural encounters with minorities is described when professionals reflect on how preconceptions and stereotypes may subconsciously influence their understanding and recognition of violence, assessment of danger and possible escalation, ability to understand and deal constructively with the family and life context. Although all professionals were quite definite that their interventions methods would not differ between minorities and the majority, a number of stories were told in which the cultural background hindered successful intervention, or where appropriate intervention required considerably more time and effort to explore the unfamiliar context. All in all, the workshops pointed, on the one hand, to factors that could expose some women with a migration background to more prolonged and more dangerous violence, and on the other hand, to a higher probability that intervention may fail to protect or support them effectively.

In both workshops the professionals were very satisfied with how the intervention system has developed; consensus was that it has a very real potential for help at an early stage. A need was seen for more intervention strategies to change the behaviour of perpetrators, and for more and broader prevention. The main concern was that the system may not be sustainable, as continued efforts are needed to educate all actors and to build and maintain inclusive networks, and the commitment of policy-makers at all levels of government to these efforts does not seem secured.

## Part 2: Framing of the Problem and the Intervention

### 3 Framing Domestic Violence and intervention

#### (1) The one who hits has to leave

This frame defines the problem as unilateral physical violence, the solution as ensuring physical distance and thus immediate safety. The recipient of the go-order is told “You are the causer of a danger.” It positions the police duty to protect from harm as the appropriate means, and as a temporary measure, it implies that the period of safety should be used for further measures.

This is an official frame connected to the police ban. Police shall ban the perpetrator from the home. In some Länder the ban is issued for ten days in others it is 14 days. The police should verify that the perpetrator does not return during this time (however, enforcement varies regionally, and not all Länder or local authorities expect this of their police) and the woman legally cannot decide to let the perpetrator come back. This is supposed to protect her from her spouse pressuring her to let him in again. The police should patrol regularly to make sure he is not there and throw him out again if he is, because the perpetrator must take the consequences for his actions. The woman is free to go to a shelter if she wants to, but she can decide to stay.

„Wer schlägt muss gehen, das Opfer bleibt in der Wohnung“<sup>2</sup>

From the workshops:

Domestic violence also can be „just“ a loud fight, it does not necessarily have to be a criminal act. Nevertheless the violence, even if there is “just” yelling and shouting, has to stop and the appropriate means is to create time and space for the victim by sending the perpetrator away. Even if no go-order is issued, it can still be found to be domestic violence and police can inform the intervention centres and if applicable the youth welfare office. Police did not understand themselves to be intervening in such a case, rather as doing prevention. They stress their duty to protect and help. This can be seen also in other frames, where the counsellors see the police as “door openers to the help system”. Police explain that they send the perpetrator away also because they might not have enough shelters nearby and the woman should have the right to stay in her familiar environment. Professionals mentioned that many women do not want to stay in the flat, either not feeling safe or having bad memories. Nevertheless they think the perpetrator should be made responsible for his actions and the first step towards this is to send him away. Also if the perpetrator violates the ban, more consequences can follow. Professionals saw this measure as a low-threshold possibility that could not be used too often; in one case the police explained that in her district the officer would have to explain in his report why he did not send the perpetrator away rather than to explain why he did.

*Police: We talk about shelters all the time, well we for example want to proceed as follows, the one who hits has to go. The woman would remain in her environment with the children. We nearly also do so, maybe because we do not have enough shelters, and we rather say you have to see that the man // he will be banned. We take his keys, so that the children and she can stay in her environment. ... But we for example do it this way and then, when we issue this police ban, to have time, to be able to apply to the family court and so on, this is why usually we can issue the ban up to 14 days... In the rural areas we also try, if we have issued a police ban, to verify it. That*

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<sup>2</sup> BMFSFJ (2010): Mehr Schutz bei häuslicher Gewalt. Informationen zum neuen Gewaltschutzgesetz, Online: <http://www.bmfsfj.de/blaetterkatalog/164870/blaetterkatalog/index.html>, 17.10.2014

*means not regularly, I don't know, at least once a day, maybe twice, that is depending on, you cannot know// you cannot determine this in advance, that we contact this address.*

## **(2) The woman has to take action / Responsibility of the woman**

This frame implies that only the victim can end the violence, and can only do this by ending the relationship; the “causer of the danger” will neither leave nor change, at least not of his own accord. It also constructs violence in a partner relationship as potential child endangerment.

The frame implies that the help system depends on the woman actively seeking help. She is expected to need information and perhaps a little push, but in the end „the one who experiences violence is responsible for their own (and their children's) protection“. Women are believed to often bear the violence as long as they are the victims, but take action more likely if their children are in danger. Therefore some of the professionals see their “entrance card” in child protection as they can push the woman to take action when she has been told that even witnessing the violence can be harmful for the children. Often women are criticized for not taking action, especially when withdrawing a complaint.

*Family Court Judge: Interestingly this [intervention] fails due to the woman again and again, or at least gets difficult due to her. SHE refused testimony. SHE does not seek counselling. SHE refuses information sharing between agencies. SHE does not want to let in the youth welfare officers. It is always this // it is always at that point. Everybody is at the ready so to speak. We DO have a great intervention system, but nevertheless it fails. They have exhaustingly counselled her and then she walks out and takes back the complaint.*

*Beratungsstelle: In the end Anna has to get active. She will only arrive in the institutions, if she takes action by herself. The unlucky situation that made her go to the hospital surely has opened access to her, but in the end it is her responsibility to decide to take this path.*

### **(2a) Subframe: Separations take (much) time**

With this frame support workers in particular describe women as entrapped in a violent relationship, faced with numerous barriers making separation difficult. As a frame, it creates space for a wide range of explanations for entrapment: emotional, practical (even existential), legal, cultural, etc. As a solution it suggests a highly individual approach that requires sustained support and patience.

Policy document: „*Their tale of woe often unfolds over years... But without trained and qualified counselling and assistance from the community they often cannot leave a violent relationship.*“<sup>3</sup>

*Beratungsstelle: I'd like to add to „why doesn't she leave“? What women say very often is, we don't want him to leave; we want the violence to end. Mostly he may be a great father or spouse and there's love and whatever and on top of this there is violence. The heart is important and then there are financial reasons added and the smaller her self-esteem and independency gets. It's a long process and we know from the experience in shelters that women leave and return seven to fifteen times until they finally made it. [...] The ones who try to help have to be clear that it needs time; and we should not add additionally to their shame, because it is very embarrassing for them.*

## **(3) For some men and women violence is normal**

This is an old frame, explaining partner violence as a consequence of violence experienced in the family of origin, and implying that little can be done to end the violence except by long-term prevention. It is now marginal in the mainstream of intervention, but shared by some actors,

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<sup>3</sup> BMFSFJ (2010): *Mehr Schutz bei häuslicher Gewalt. Informationen zum neuen Gewaltschutzgesetz*, Online: <http://www.bmfsfj.de/blaetterkatalog/164870/blaetterkatalog/index.html>, 17.10.2014



especially in the police and justice system, and revived in the discussion of other cultures migrating to Germany.

*Police: A lot of women have experienced this at home as well (as children). What we expect to be normal – not to be battered – is not normal status for them. [...] If you have learned that your mother has experienced beating as well, then you don't develop the idea this was not normal. That's just how it is.*

*Intervention Centre: And also the cultural background, not just only the language, but also the Russian community, where beating is an accepted instrument for education, or where women say this is how it is. Friday until noon my husband works and from Friday afternoon until Sunday evening he drinks. Vodka. I have to look after the children. I am used to getting beaten up.*

#### **(4) Need for pressure on the perpetrator**

Violence is framed here as a problem of the (male) perpetrator who should be called to account. Solutions include confrontative intervention as well as offers of support to learn non-violent behaviour. Perpetrators are framed as neither able nor willing to change (without being pressured). They would not be capable of changing on their own (“take their toolbox with them”) and would not seek perpetrator trainings voluntarily. Possible solutions were discussed in judges making the perpetrators attending training in order to get permission to see their children, and in police informing Täterberatungsstellen (perpetrator counselling) the same way they do for the victims.

*Women's Shelter: Isn't it interesting. Everybody is asking themselves how we reach Anna. And often nobody has the idea to ask how do we reach the causer of the situation. It could be a strategy to ask how to we get him into a perpetrator program. How do we get him into a therapy? How to get access to this person to end the violence. The actual help offers concentrate on the “victims of domestic violence” and are also often decided a bit over their heads. Everything concentrates on the woman.*

*Youth Welfare Officer: We need pressure on the perpetrators. They don't attend voluntarily. There are several different courses of access with which the state can build pressure, which the woman cannot. The state has to build up pressure to call the perpetrator to account.*

#### **(5) Witnessing domestic violence can be a child endangerment**

*„Children also suffer from domestic violence, even if the bodily harmful actions are not committed directly against them. Witnessing violence between the parents is not without consequences for their development.“<sup>4</sup>*

This is a frame that seems to be „in flux“. Witnessing violence is framed as traumatic, but not necessarily resulting in serious harm, child protection must assess each child. Removing the child from the mother can also be traumatic; thus, the ideal solution is for the mother to find safety with her children. While it is useful for professionals to rate the situation as a danger for the child, because that way they gain access to the family (child protection law gives them more freedom of action and they are allowed to act without the consent of the parents if there is severe child endangerment), it can also mean further action has to be taken and the self-determination for the woman can be restricted. These frames together lead to an important ethical dilemma (self-determination of women can be set aside in the interest of child protection) discussed below.

*Youth welfare office: ... I believe that every adult person has the freedom to choose to live in violent relationship and stay there. But when there are children involved, she does not. But there is// to draw a line there is hard. It's the question when does it count as possible child*

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<sup>4</sup> BMFSFJ (2010): Mehr Schutz bei häuslicher Gewalt. Informationen zum neuen Gewaltschutzgesetz, Online: <http://www.bmfsfj.de/blaetterkatalog/164870/blaetterkatalog/index.html>, 17.10.2014

*endangerment? At the beginning we like to call it possible child endangerment, because it gives us access. But if we follow this logic... If domestic violence always is a child endangerment then we also have to take the next step. Then we might also have to bring it to court.*

### **(5a) Subframe: Women who experience violence are unable to consider the welfare of the child**

With this frame, expressed with ambivalence, the advice and support workers construct women as unable to consider the welfare of the child in their decisions about violence in a relationship. In consequence they may need to define a limit to supporting self-determination and involve other institutions.

*Intervention Centre: If her man threatened me this would be the point where I decide the wellbeing of the child is the highest priority and now he also threatened me; if she is not able to protect her children, maybe due to her own situation, I would call the youth welfare agency as well as the police.*

*Youth welfare officer: But it's all about protecting the children. That's our job, to protect the children and we have to take into consideration what it means to separate mother and child. [...] Of course it is by force. She is in the shelter forcibly until it is clear how the protection can be secured longtime. But I wouldn't know how to avoid this.*

### **(6) Advocacy for the woman**

The umbrella organisation for women's counselling and women's helplines "bff" spells out ethical guidelines for counselling. Advocacy as a guiding principle of the women's support services explains violence against women as due to unequal gender power relations. The solution is to strengthen women by supporting self-determination and empowerment, helping women to discover their own resources and expand their scope of action, while respecting that each must find her own way. Counselling aids the woman on her way, has to bear difficult situations, gives her encouragement so one day she can leave the situation, but should not pressure her. Pressure is needed, but should originate somewhere else. A dilemma develops here, when women are at the same time framed as not able to decide for themselves and not able to protect their children.

*Beratungsstelle: For me this is connected because I as a counsellor have advocacy for the woman. When I accompany her on her way for a while, that means I am at her side and I bear difficult situations together with her and encourage her, so she can leave one day. On her own, if possible. And then I cannot // I cannot say as soon as this situation unfolds I break this off.*

### **(7) Self-determination of the woman**

This frame has similar roots to the advocacy frame. Since violence against women is explained as due to unequal gender power relations and the solution is to strengthen women by supporting self-determination and empowerment, professionals stress that nothing will happen against the woman's will or without her knowledge. This is additionally justified by the strict confidentiality duty.

*Intervention Centre: We do not share information we get in counselling. But we make clear in advance, if in the counselling process we get information that we have to suspect a child endangerment, we definitely forward that information. [...] It is important, that self-determination is preserved, because otherwise there is no Beratung possible for the woman.*

*Beratungsstelle: I can say that I as a counsellor have no means to initiate protection against further violence against Anna's will. I don't have them from my point of view. As good as that would be.*

*Prosecutor: After this incident you would have to call the police and inform them.*

*Beratungsstelle: Yes but//*

*Prosecutor: Well I see, if// this counsellor on the telephone, I think she knows that the man violates the police ban. He threatens her. There is a higher risk potential, he was aggressive in that moment too. The consequence would be to inform the police immediately and //*

*Beratungsstelle: In response to this situation yes. But imagine Anna would come to the Beratungsstelle the next day and tell me her husband was not in the flat. And maybe I see her in great danger. I tell her how I assess the situation and she doesn't want to do anything more. She doesn't want a stay-away order and no assignment of the apartment but she just sits the ten days out. I tell her I see great danger. If she and I would assess this situation differently I could not initiate any measures to protect her against her will.*

### **(8) Women who experience violence have little self-determination**

These considerations are based on the framing of Domestic Violence as power and domination, meaning that women entrapped in a violent relationship (or possibly a lifetime of subordination to male authority) may be unable to make choices or decisions. It suggests that, in some cases, decisions should be made without asking her to agree. This frame seemed to apply to women without migration background as well as for migrants, but became more powerful when the professionals were talking about women with migration background. Those were framed as often not able to know their rights and therefore be even less able to decide on their own.

*Shelter: From what I read here I absolutely do not believe that she is with this man voluntarily. She is with him, because she is afraid of him, and still does not know how to get away. I think she is shouting in every direction: How can I get rid of him? [...] I do really not believe she wants to stay deliberately. She does not want this relationship, but she has no clue how to escape.*

*Intervention Centre: I often experience that it is very important that women do not have to do anything when they come to us the first time. They need to be listened to – what should they even do with self-determination? They have been dominated for years. They look surprised and overwhelmed when I ask them „What do YOU want? How are you?“ They often don't know. Maybe it never was there, it also may have been destroyed over the years.*

## **4 Framing culture and difference**

Germany has, of course, an extensive discourse on regional differences in mentality and traditions, but this is never referred to as an issue in intervention. That, apparently, is not culture.

Aside from “migration” the different professions do not have a shared concept for ethnic-cultural minorities. Some use the concept „community“ (in English), some refer to „parallel societies“ (introduced into political discourse for the Turkish community), some refer to the larger family networks as “clans”.

Although this could, in theory, be independent of migration background, all examples refer to groups that, in addition to the migration history, belong to a community or a family network that has its own customs, rules of behaviour, etc. While some workshop participants reflect on aspects of the dominant German culture, reference to minorities is always based on migration. Only those who come from another country and have not fully integrated with language and citizenship seem to be perceived as having a specific or different culture or ethnicity.

Overall professionals face a wider variety of problems when working with migrants, several of which are connected directly to language. For some professions, such as the police on call or lawyers in

their practices, translators may not be at hand, which can lead to people in personal relationships translating (members of family or community) who come along with the woman and may have other loyalties. Even if the translator is a certified translator, they are sometimes felt to be unreliable or not trustworthy or to have little to no understanding of domestic violence. As a possible solution several professionals try to get native speakers in the staff and from time to time take the woman to a different shelter or Beratungsstelle, where they know a native speaker of the language in question works, if they do not have one in their own team. In the end even if there is a translator and even if it is a trustworthy one, professionals need to build a personal relationship with the victim and build trust which can be disturbed if another person is in the room and constantly talking.

*Women's shelter: Well if we have women [who don't speak German] it's usually nearly a one-on-one coaching, because we have to accompany her to every agency, every lawyer, every court hearing to quasi speak for her. And the dramatic thing is, the women often are not masters of the situation any more, they live with the feeling „I have no clue what just happened“.*

On top of this it is more difficult when the woman came to Germany through family reunion and her residence permit is tied to the marriage, or if as a refugee she is not allowed to go and live in another town or Land than the one where she was placed on arrival.

### **(1) Other cultures have different values and norms.**

The legal definition for migration background includes everyone who has come to Germany from another country after 1949, or is born in Germany but does not have German citizenship, or has at least one parent to whom one of these apply.

When talking about migration background in the workshops the professionals used a much narrower definition and tied migration background to different culture including language barriers and poor integration.

This frame generally refers to other cultures as having different values and norms, not recognizing women's fundamental rights; women and men from these cultures tolerate and expect conflict and interaction patterns that "we Germans" understand to be violence. Intervention has to take account of their values and norms but also has to explain to them that in Germany, women have equal rights and violence is not allowed, and that they have to accept these norms.

*School Social Worker: But it is in a vast majority I think // sometimes we look into these families having our values and norms in mind. And then naturally encounter things where we think, that's a no-go using our self-concept.*

*Family Court Judge: We just discussed this against the background of different ethnicities. And we talked about the fact that in other cultures it is more accepted than in ours that domestic violence against women is used. That in some cultures // that in some cultures men feel entitled to beat women, and I find it would be very easy and handy, to say to someone that's not the case here at our place.*

*Youth welfare Officer: As youth welfare officer I try to converge a bit. Signal them I understand that you have a different culture. It starts where I enter a flat. That I may take off my shoes, when I visit, when I see it's an Arabic family, who does so. And by doing that you open a whole different door than if you trample in with your boots on, in the most literal sense.*

### **(2) Other cultures maintain much larger family networks**

Extended family networks can be either a resource for solving problems or a heightened danger to women seeking to escape a violent husband – or both. Intervention professionals need to explore risks and resources in the wider family network with each woman; cultural background knowledge is important for this.

*Youth welfare Officer: And there surely are families where I think I feel potential for threat. There is an incredible energy, when we have taken the child out of the family, not only do the parents call, but also the cousin, the uncle, the mother of the father, and all want to talk to me, where I get the feeling oh gosh, be very very careful now.*

*Intervention Centre: What I repeatedly realize, where I am up against limits so soon is, aside from the translation issues these // there is not only the man, or maybe the parents, but some acquaintances or the like. Also the question where can the woman go if she wants to leave? And that not only in our Land but the whole country: Where can they go? No, there I cannot go, because an aunt and an uncle live there. And when I stay there, they will find out and they will let him know. There I also cannot go, because there also are some acquaintances. Or the women don't know these people in person, but everywhere there are // well sometimes you get the impression there are informants everywhere.*

*Family Court Judge: From what I experienced I can say there often are possibilities within the family in such families with migration background. The social network or the familial network is stronger and can support the parents. Whereas I often have German families or parents, where there is no social network at all.*

### **(3) Some communities have established forms of self-government**

Asking about minorities provoked a discussion about some cultures and minorities having established forms of self-government with no legal basis. The most resistant forms of self-government are founded in both religion and ethnicity together. Institutions of German society, even the courts, are avoided or rejected and can even be directly defied. Intervention in such communities is very difficult. Resistance to outside intervention in the family is also described for (some) German families, but takes on a new quality in migration context, referring to an extended family with traditional culture.

*Family Court Judge: In this respect even worse are Sinti and Roma of which we have many. They sit there and// well then there is sometimes one person who wants to step out of the lane and who says I don't want to bow to this system there any more. I don't want to accept this self-justice that happens there any longer. And then they encounter a monolithic block. There the, well the patriarch sits there, you cannot even throw him out of court. He says "you know, if you don't let me stay, then my daughter also can // then she also is not allowed to be in the hearing, then I take her with me instantly." Then he sits there and I say something and then he replies "nah, we do it differently at our place." Then I say okay, nice we talked about it.*

*Family Court Judge: Well the Yezides for example, they have // it is // I don't even know if this is a religion at all. It's more kind of an ethnic group or so. They have their very own rules, their very own rules. For example for the question where do the children stay after the separation? Clearly with the father. And of course it means that the grandmother raises them. <Smiling from some participants> Yes that's how it is! <Agreement and laughter from others> Yes and when there are quarrels, you really have to take this background into account. And know about it.*

### **(4) Families with a migration background experience and interpret violence differently than Germans**

Within this frame participants struggled to interpret difference. The framing of difference helps them to explain why they encounter more difficulties in intervention and why sometimes the established methods of intervention are not successful. Families with a migration background (see introduction of this chapter) are believed to experience and interpret violence differently than Germans, sometimes leading to them not seeking help because they do not know they are victims or that there could be a life without violence possible.

*Youth welfare Officer: I know when people have their origins in war zones, I rate the violence differently. That I know of myself. When I realize// they are used to violence and war. [...] We*

*don't just need to know is the woman afraid? But what does this fear mean and what possibilities of protection do we have and in the family and so on and so on.*

*Women's shelter: I experience, that women with a certain migration background have a different limit of // Well I experience that women with a certain migration background have a different limit of tolerance as // well it isn't quite about limit of tolerance, they define violence differently; for example they don't experience this economic violence which men sometimes carry out as displeasing.*

#### **(4a) Subframe: Immigrants are different from Germans, but also different from each other**

When talking about people with migration background, professionals stressed that characteristics of migrants cannot be generalized:

*Women's shelter: From my experience I'd say for me it would be important to know what is this? From what country does the woman come, because „the one migrant“ or „the one migration background“ does not exist. Rather, well// I know for example if I have a woman from Thailand or from the Philippines, then I have // need to call upon a completely different intercultural competence than when I receive an African woman. There's worlds between them. Or important is, is this a culture where family is a high value. Where the individual counts relatively little, but the clan is rated very high. Or is it a culture like here, where the individual is considered important.*

*Intervention Centre: Well where I work there are the Turkish, but there also are the other Turkish. I have experienced it the one way, I have experienced it the other.*

Therefore professionals need to be sensitive to difference, they need to acquire knowledge about the relevant cultures in the countries of origin, but they must also avoid generalizing about groups based on their origin. This takes effort, and additional training, and in addition, time must be taken to explore the personal background of the individual woman or family.

*Youth welfare Officer: Yes, we need more time and we need to ask differently. That means ask things we would simply assume for German families, because we are one culture.*

#### **(5) People with a migration background find it difficult to understand or accept German laws and methods of intervention**

In this frame migrant women are considered to have less autonomy and intervention is difficult because they do not know their rights and do not claim them as confidently as non-migrant women would. Women as well as men from some cultures are often used to violence and consider it normal; men were believed to feel entitled to discipline their wives and/or have a lack of understanding violence as unlawful.

*Youth welfare Officer: When we get access to these families through risk assessment, they seldom want help, because in many cultures there is the perception: this is our family and word mustn't get out. It's often about family honour. And someone from the youth welfare agency going into the family would offend the family honour severely and lower their status in their cultural environment.*

*Prosecutor: Yes often, there are cases where the men lack an understanding of what they are doing as wrong, they don't // for them what they do is not wrong. They just execute their right. They have // they feel entitled to beat their wife, to correct her. She is to be at home. She is to do groceries. She shall just be at home, with the kids, cook, and maybe she even is allowed to do groceries. Maybe it was that way at home in Egypt, in Iraq, in Syria and now here in Germany of course it is a completely different life.*

*Lawyer: The difference in counselling [is], that the German woman knows her rights better and claims them more naturally even despite her possible limitations through the perpetrator. While a woman with migration background, who is already exposed to very much pressure in various forms, pressure from the outside, from the government, is more likely accepts it and has to be supported to make use of her right to self-determination, to recognize it. There is much more to transport; you have rights here, you don't have to do this and that.*

In consequence, professionals need special knowledge and skills to intervene successfully. Including professionals or cultural mediators in the intervention staff can be helpful, even if they do not come from the same background, because they share the migration experience.

*Lawyer: Overall I would find important, I think this is important for every advice and support service, when there is much contact with migrants, that people with a migration background of their own join the team. And if it is possible, that services are offered in the mother tongue.*

*Intervention Centre: And this helps, in terms of access, because the argument we don't understand this, because for us it is like this and you don't know this, doesn't count any more. That makes it easier to discuss several things more openly.*

### **(6) Professionals all have some prejudices and preconceptions about social groups**

Not only about migration background, but also about those who are poor, unemployed, heavy users of alcohol, etc.): The participants mentioned loyalty conflicts and custody issues specifically for German families, gambling addiction for Yezides, alcohol for Russians, children under enormous pressure to achieve good grades for Asians and overall – applicable to all those with migration background – problems to integrate into the society. Preconceptions can be based on experience and can alert us to possible problems, but can also be harmful generalizations. These preconceptions can lead to assumptions about the level of risk or danger as being higher or lower.

*Intervention Centre: We pigeon-hole people if we want to or not. It switches on automatically; ah yes, the Russians. The Turkish. We don't speak it out loud, but at first we also have it. That we judge the risk to be higher or lower. Because they're more emotional. What we do with this, that is // that we have these categories, is not the problem, but how we deal with them.*

*Family Court Judge: when I am really honest to myself, I do believe that I tend to assess the risk higher.*

*Prosecutor: I try to find out, what feels different. And when I had a Russian or an Italian couple, there's temperament at play. If there is noise in the hut, that does not necessarily mean they hit each other. Important would be to note in the police report these are Italian citizens or Russian. Vietnamese are relatively quiet, when there is noise that points to violence more likely. But when I have a cultural family full of passion then I think "wonderful, they are alive". I don't know if intervention here helps people across the street who did not intend to cross it.*

*Intervention Centre: I believe I rather expect the police drives to the family, sees okay, there's no reasons for intervention yet and leaves. Because there rather is an expectation this belongs here in this culture. <Interjection by Youth Welfare Officer: Yes, that they talk loudly> Yes, that they talk loudly. So a different assessment, when I look at the first part here [of the case story]. And therefore not just yet an inquiry on unofficial channels; what could we do. But wait a little longer, see how this develops in the family.*

## Part 3: Ethical Issues and Dilemmas from the perspective of practitioners

### 5 Ethical issues in the workshops

#### 5.1 Practical and professional dilemmas

##### 5.1.1 How to decide when it is domestic violence? Tightrope walk: Call the police or wait?

Professionals express respect for the self-determination and the will of each individual as a central value as well as a mandate to protect women from violence. On the one hand early intervention can prevent more severe harm from happening, on the other maybe there is no need for intervention and they fear to disturb the family unnecessarily. This dilemma is more important if the family has a different cultural background, as was discussed earlier in the frames section.

*Prosecutor: When we would act against the explicit will of the woman, I believe that this would be counterproductive in many cases. That it would be a lasting disruption of the family peace (Judge: What family peace, if there is beating?) and also lower the incentive to call the police when there is need. It isn't even an element of a crime in all cases. Often the police are called for just an argument. It can be over the top.*

*Police1: When the police are called twice, by the neighbour, then I will define it as DV for sure. It doesn't have to be a crime. I once banned a man who just yelled at her. It was a no-go. It wasn't a crime, but I sent him away anyway, and anyway it was DV. For me this was a case of DV.*

*Police2: Exactly when I am unsure I have to report it. Who am I to decide that it was nothing? Especially in such a case I assume domestic violence. I don't want to take a chance that something happens.*

*Beratungsstelle: That's where the dilemma begins again. Do we invade with the apparatus of the state and hope that this ends the violence? There's also the risk that the threats get more severe, that he says// here, a lot more will happen. And from there on the violence doesn't surface any more. If the police aren't called again, that doesn't mean that the intervention worked. That may be true for a lot of cases and that's wonderful. But as long as the perpetrator doesn't change, it is possible that the woman and the children are under even more severe pressure and it doesn't catch one's eye any more. When there is no noise in the flat any more maybe the woman has a pillow on her face. And this we consider, that's why we try to encourage and enable the women. And we know that we cannot escape this dilemma, this tight-rope walk, that we sometimes should call the police earlier, but maybe should wait just a little bit longer.*

##### 5.1.2 How to boost moral courage?

Since women are framed as entrapped and nobody in the help system has access until they get knowledge of some kind, a possible solution discussed for early access is moral courage of bystanders.

*FRH: I wouldn't be in the picture yet. Pregnancy, Moving house, all are risk factors for DV, but the question is, how do we get neighbours, school and doctor sensitive to referral. In my professional position I would not do anything yet because I wouldn't know about it.*

*Beratungsstelle: This is a question about moral courage. To bring this topic into public and enable the neighbour, who is there from the beginning on, to say okay I don't know her, but I see the bruises and I have to ask if everything is okay.*

*Police: She is dependant. She is far away from her family, has children. We have to boost moral courage. It is important that the neighbour who sees it // nothing points against her to report it*



*to someone. It's always called for agencies, they should do something. And many people have a level of inhibition towards state agencies.*

### **5.1.3 Intervention is dependent on the woman**

The frame „the woman has to take action“ together with the fact, that women often don't, form this practical dilemma. Self-determination is important, the intervention system is ready to go and the victim often does not make use of (all of) it. If her life is in danger or her children are seriously endangered, professionals can act without her consent, but that is not always the case. Thus her failure to engage with intervention frustrates professionals and keeps them from doing what they think they could and should do.

*Judge: In fifty per cent of the criminal complaints that are initiated, they withdraw the claim. That means there is a great deal lost on the way and that is // it should // I think it should be policy, to say the help system that's pretty good already. The question is, what has to happen, that it is called upon more?*

*Youth welfare officer: I think for domestic violence there is a special dynamic in the relationship. Women who are not in this dynamic, who are not dependent, leave very early. There are many women who break off the relationship after the first incident and that's it. Those who stay are in a violent spiral and there's a personal background, emotional dependency, neediness. I assume there are a lot of those. And as long as the woman doesn't tackle this, we as state agencies can have as much instruments as we like. We can protect the children and offer help and issue pressure, but in the end we cannot end it. We know it isn't over if the woman finally leaves. Then there are separation conflicts and they go on forever and the children still suffer. And then there's proceedings which last forever and even if it has come to an end finally – you just mentioned it – the women end up in a similar relationship and story repeats itself all over again. We as institutions we cannot clear this for the women. And neither for the men.*

### **5.1.4 Protection of the woman vs. institutional routines**

Protecting the woman often involves getting her into a shelter and various agencies might have to deal with her at the same time, involving several professionals. If the woman has to be moved to another city the question of responsibilities among agencies is even more complicated. In such a situation institutional routines (e.g. a letter of confirmation of change of address, or other letter from a responsible agency that is sent to the old address) can jeopardize the protection.

*Lawyer: The whole system of fleeing from violence constructed through shelters is counteracted by claims regarding the right of access or the right of custody. There are very spectacular cases. I just need to mention Yezides and the pursuit that happens. We have to fulfil acrobatic performances at the borders of legality to manage this somehow. To keep the location of the woman and children secret. Because the whole clan makes claims for access. Maybe that has not been considered carefully enough by the legislator when it comes to rules of responsibilities. That there is no exception in those cases.*

*Lawyer: We have a registration system that is problematic. Many agencies don't think about this when the woman has to be protected. For example if she makes an application for financial support, the confirmation ends up at his place. And he gets informed nicely where the woman is at the moment. There has to be cooperation between agencies, so that it's not all for nothing.*

### **5.1.5 Language barrier in migration background cases**

If the woman does not speak German, professionals need much more time and/or more staff, which they often do not have. They might need to accompany her to agencies and often they have to involve translators. Those may not be at hand, and even if they are, there might be loyalty issues, and building a trustful relationship between the professional and the woman is much harder if there is

always someone else in the room. Developing a help plan poses additional problems and takes additional time when the words needed to describe the situation are not existent in the other language or the tone of the translation changes the meaning. A seemingly inconsistent testimony of a victim can originate in language and lead to professionals doubting her credibility, and established help strategies can get dangerous or even fail.

*Youth welfare officer: That is not even about the language barrier yet. The language barrier adds to this. But a translator cannot even solve this. I remember a classic Beratung where I had a Russian translator who suddenly, when I said it is getting really dangerous now, started laughing while she translated. She translated it word by word and then said to me "well, we would never say something like this in Russian. We don't have this expression. And it sounds so funny when you say it." What I want to express here is that it suddenly became very clear to me, that language transports much more.*

*Social worker: Language is something I can use to reveal a situation with. I already have the problem with German families that I always have to ask what I said, what they heard and what they got. If I now imagine I would counsel a family where there is language // I already have misunderstandings in German. When I cannot even understand the situation, than maybe I destroy more that I can heal, maybe that's one fear.*

*Prosecutor: The judge asks a question, a closed question that can be answered with „yes“ or „no“. The defendant talks for hours. The translator says „yes“. <Laughing> Well there: But that wasn't everything? Sure, sure. Well that sometimes is incredible! And sworn translators too. Lawyer: On top of this problems in investigation and procedures arise. Even trained translator can only translate as much as the language yields. Russian for example only knows one word for foot and leg. It's the same word that describes foot and leg. The first translator said foot, the other translated leg where she suffered the injury. And then "we" say she is being inconsistent, her credibility suffers.*

## 5.2 Ethical dilemmas

### 5.2.1 Self-determination of the woman vs. Responsibility for the children

For professionals in support and care (such as Beratungsstellen, public health, lawyers representing victims) a central value is respect for the self-determination and the will of each individual woman. They also frame witnessing violence as traumatic for children, thus a possible child endangerment and, expressed with ambivalence, some advice and support workers construct women as unable to consider the welfare of the child in their decisions about violence in a relationship. Various problems such as the women returning to their relationships, defining a limit to supporting self-determination in case of a child endangerment and advocacy for the woman are discussed in frames and dilemmas above. Together they lead to a very central dilemma that was key to large parts of the discussion.

*Judge: I have no influence on what adults do at home and I think it is right that the state also has no influence on personal relationships. But as family judge I have to see the children. Sure in this case the family court would have the power to order protection, issue a ban against the perpetrator etc. So it would equal a violence protection order packed up as a child custody enactment, so protect the children. And then you ask the woman to choose. What do you want? Do you want the guy or the children? And I know two mothers who chose the guy.*

*Shelter: Well sometimes they don't want either-or, but rather their guy without violence and the children without violence.*

*Judge: At my end the alternative is, because I only have the children in // well yes my assignment is to look after the children. And thus I say, well the children have to be safe. Either you // the children are at a safe place together with or without you. But surely not with this hitting, beating partner.*

### 5.2.2 Endangerment of a child: Obligation to inform vs. Professional secrecy

The above frames and practical dilemmas unfold another central ethical dilemma. If a child could be in danger some professionals have the obligation to inform, others may feel obligated when the danger seems grave, but have a duty of professional secrecy. Both obligation to inform and professional secrecy are high values and in place for good reasons, which makes the decision for professionals especially hard. In the following police and shelter discuss this very vividly:

*Police: That there is a possibility to discuss a case anonymously [with a special professional] is appealing. And when they come to the conclusion, you have to report this; this would be the situation where I think you have to report this. Then to decide „I don't“...*

*Shelter: I didn't say that, I said//*

*Police: Yes you did. Shelter: I said I have the decision to make, that's in my hands or in my colleague's or the management, that depends. It doesn't mean we don't report. Mostly, when we have the advice from the youth welfare office, we do. That is// well. But the youth welfare officer does not decide if we have to tell her name and address. She doesn't decide. So. She can't. Because I// we get into a situation where we have very different structures. You are in administration and we are in associations and similar structures. I commit to professional secrecy; I am not allowed to say anything. Under special, very special circumstances am I at all able to share information about our clients. I am not allowed to. You are in a different position.*

*Police: That's what I said earlier, thank god! I ask myself now //*

*Shelter: It's simple. You are permitted to. And then there is no moral issue any more.*

### 5.2.3 Protection for the woman vs Father's right to access

The woman needs time to develop a new perspective without being afraid of the man. He on the other hand has a right of access to his children and often uses it to get access to the woman. If the children were assessed to be at risk, the youth welfare office might push the woman into moving to a shelter in order to prove she is able to protect them; otherwise they would be taken into custody by the agency. The very same agency might push the woman to make contact between father and children possible (too early); otherwise she would prove herself not to be in control of the situation.

*Shelter: I'm being honest: We usually wait. Experience shows, if women come to us after severe domestic violence, most of the time without the police being involved, the problem is, the very second we file an application, youth welfare officers from our city and the city where she comes from get in contact. And then a claim for access to the child follows pretty soon. At a point in time where this is not advisable. And this is why we have learned to, well, sit it out. We wait and see if he goes to court or to the youth welfare office on his own and react afterwards. We have the experience that this gains time that is most often needed.*

*Shelter: We have a practical problem when the women are in our shelter. There is a proximity ban and parallel there is a decree for visitation rights that the father should see his children every other week. Then there is the problem of the handover. That is a very concrete problem here in practice, how does the woman, respectively the man come to his children?*

There are practical problems in organizing how where and when the child can get from the mother to father without them having to meet or breaking rules like a refraining order, but it also carries an ethical dilemma between women victim's and men's rights.

*Judge: In this situation I could issue a violence protection order right away. As a provisional order, when she applies fast enough, I would do it without hearing, right away, as soon as it lands on my desk. That needs about 25 minutes from submittal in my office, until the decree is in the court registry and it is submitted right away. It's faxed to the police.*

*HW: Then the man would want access, because he is the father.*

*Family court judge: Exactly. That's the dilemma that can arise then. Which in many cases does not, because it is left at this protection order, as RI describes it.*

*Family court judge: And then it can, and does in fact in reality, very often lead to the man saying „I didn't do anything at all“. She exaggerates or anyhow in some way he denies that it happened. And says while we're at it, I want to see the children. She// now here is // It is so, you issue the decree and then a week passes, or two, until he files the request for a hearing. Then maybe another four weeks pass until the appointment. That's not urgent for the court, because the decree is active. Then six weeks have passed since she got the decree. Now he hasn't seen his children for six weeks. And then he says I haven't seen my kids in six weeks because of this violence protection order. I am not allowed to get near them and I don't. Maybe after someone reminded him politely two times he really doesn't. <Laughs> and now he says I haven't seen my children for six weeks, I have never been violent at any time. That's all out of whole cloth and I want contact. And while we're at it, while we sit together so nicely, he applies for contact. And then the dilemma unfolds.*

#### **5.2.4 When and how should one ask about the violence directly?**

The above frames describe women as entrapped and facing numerous barriers on the one hand and responsible to find her way to the help system on the other. On the whole, professionals found it helpful and important to ask the presumed victim directly if there is violence. At the same time sometimes professionals fear to scare the woman off, not to have enough time for her if she really opens up, or that asking directly could make her situation worse.

*Prosecutor: If I see she has withdrawn the complaint, she is not willing to testify, then // When there are no other witnesses then I have little // can I do. You have to consider when you pressure more, the state interferes more and initiates penalties, and the risk is that next time she doesn't call the police at all. Because she fears a report or a sanction or something.*

*Beratungsstelle: Well until now the colleagues don't follow up and that's not because we don't want to know what happens with the woman, but for this reason: Protection of the woman. A call from a counsellor can break loose hell in such a family system exactly in the moment where the man answers the telephone.*

*Gynaecologist: It is very important. And I'd say I know those injuries and how they happen and that's why I ask. I would ask openly. In any case open up space for her to talk if she can. That's my job.*

*Gynaecologist: I think for many of my colleagues it is their own fear. Help, I will kick off something, I have the waiting room full of patients and what to do then.*

*Lawyer: I can rattle off implications of the separation, but I also can ask "what's the reason"? I always justify this question with my personal curiosity, that I often ask for a reason, although seen from the outside I seem to have no motivation for it and I learn very much. And then I can guide her to other help offers. I think you can ask very unglossed what reasons were there, was there violence, because I think it is relieving for the affected ones. I can simply ask „was there violence?“ After all she can say no. No harm done. In the sense of yes well it happens. At your place too. No big deal. The more I shilly-shally around, the more // I would introduce a shame that originates in me and that I attach to the affected person.*

## 5.3 Tensions and contradictions in the intervention system that can have ethical implications:

### 5.3.1 The state should not interfere with family vs. It is a state obligation to end violence

Adults should be self-determined and are free to live their lives the way they like since the family is a private sphere where the state should not interfere<sup>5</sup>. On the other hand the state has an obligation to end violence. At the same time the frame „need for pressure“ frames the perpetrators as neither willing nor able to change on their own and end the violence without intervention.

*Police: This is the governmental dilemma, is it not? It's a bit// Marriage and Family are protected by the constitution. It's the „germ cell“ of our society. [...] I believe, exactly there is the dilemma, when the state says I don't want to interfere, because it [constitution] protects family and marriage. On the other hand the state has to [intervene], because some persons are not capable of managing this on their own. I think exactly in this dilemma we are somewhere. Because it is //if I make it public I open a can of worms. If I don't, I just counsel them. Exactly this dilemma pops up, but we don't only have it in domestic violence, it applies to many other areas as well.*

### 5.3.2 Criminal prosecution is in the public interest but rarely possible, rarely effective, does not provide protection and is not sustainable

Framing the criminal offences involved in DV as public interest crimes<sup>6</sup> implies that prosecution of DV is in the interest of society as a whole. Nevertheless prosecution is rarely independent from the victim but tends to depend on her willingness to testify.

*Judge: We can basically not do anything, when we don't have a complaint. Fundamentally. Yes, there are exceptions. When we have evidence that the children are endangered, we can act over official channels. That yes. But in principle, when we deal with domestic violence, we cannot help Anna as family judges, if Anna does not come to us and press charges. That's one step you have to do, involving the police is another, filing a complaint is yet another. But to turn up at court and set off the avalanche is a completely different one.*

*Beratungsstelle: Who is interested in criminal prosecution? We as a society have an interest in prosecution. There we release the woman from her responsibility at that point.*

*Prosecutor: When a complaint is filed, even if these are private suit offenses, we can approve the public, that is, the special public interest and in the case of domestic violence according to protocol that should happen.*

Prosecutors can start proceedings without the woman's complaint, but they need secured evidence, which usually requires a statement from the victim. Most of the women are not willing to testify, may the reasons be fear, loyalty or both. Even if they make a statement to the police at the time of intervention, the standard forms for police reports have little space to describe the situation; evidence can also be weak because the situation is poorly documented by untrained professionals. The most important obstacle, however, is that, legally, if the woman declares in court that she will make use of her right not to testify against her husband or partner, no previous statements that she may have made can be used in the proceedings.

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<sup>5</sup> German Constitution: Article 6 [Marriage – Family – Children] (1) Marriage and the family shall enjoy the special protection of the state.

<sup>6</sup> Generally the Criminal Code only stipulates that “minor offences” such as simple assault require a victim's complaint or are even a matter for private prosecution unless there is a special public interest in their being prosecuted. The regulations for public prosecutors now say that the special public interest should be confirmed if the victim, due to the relationship to the perpetrator, cannot reasonably be expected to press charges.

The woman's testimony is crucial and due to the long duration of proceedings there is plenty of time for perpetrators to threaten, pressure or persuade the woman until she changes her mind.

There are seldom other witnesses around; in consequence prosecution is often impossible.

*Prosecutor: The dilemma that we have is: At first grasp we have a range of help offers to calm down the situation short term, but then when we have exhausted them, we hit the limits due to code of criminal procedure. Evidence etc. The crux is: Can we prove what happened. The possibilities hit their procedural limits.*

*Lawyer: In many hospitals that's the problem. For many practicing doctors that's the problem. Poor preservation of evidence in // especially in the case of domestic violence.*

When criminal proceedings are started, they are often neither effective nor does follow that there is a deterrent effect.

*Prosecutor: We have to prove something. And there's a good chance we can forget it. If he has no previous criminal record the question is how many deeds we can prove. Presumably we can by no means convict him in a way that he gets locked up without probation.*

*Police: I emphasize this all the time; please don't get your hopes up that he will be put into jail. That most likely will not happen. Often the men use this as a threat, but it is not likely at all.*

*Judge1: It happens often that I asked what came out in the end in this procedure when I have a violence protection act procedure and I know in parallel a criminal procedure was running. Then I ask how did it turn out?*

*Judge2: Dismissed.*

*Police: Dismissed, yes.*

*Judge2: Dismissed.*

*Judge1: §153a, the magic word for everything somehow.*

*Lawyer: We can solve this. We jurists always panic we would have to bend the law. The woman herself is evidence.*

*Prosecutor: We have to get there first. Back to the evidence: The victim doesn't want to testify. We don't have photos, we have no access to medical records, than we have nothing. Often called the police, filed a complaint, withdrawn. Then the only witness collapses.*

*Intervention Centre: How do you prosecute at all?*

*Prosecutor: We don't, procedure dismissed. We don't have any witnesses.*

*Intervention Centre: Yes but even if she testifies, when it is prosecuted, it happens again and again. The police are called over and over.*

*Prosecutor: Then we had a witness, she is a witness and then we enter the trial if there will be one and then we hear her of course. Then we have to rate the credibility of the testimony, the credibility of the witness, and if there were several incidents with police then it is likely that it happened how she says.*

*Intervention Centre: Yes but again the question: What happens then?*

*Prosecutor: Then there'd be a sentence.*

*Intervention Centre: And then?*

*HW: A fine.*

*Intervention Centre: Either a fine, or it takes so long //*

*Prosecutor: Wait. Maybe he has a criminal record. Maybe she is severely injured, we don't know. But most likely, the police will not hold him until the trial and afterwards he goes to jail for two years. And we lock the door and throw away the key. [TN: That I would wish for] That won't happen.*

*Intervention Centre: That would be my wish, but that's not the point. The point is that women say they don't even talk to him. Not even the police who are there the 5th time. The possibilities are there, but when does it happen? And she says okay he is banned, he is in front of the door again, police arrives, he is gone, police is gone, and he is back again. And until the trial, if there is one, a good deal of time goes by. That's a problem too even if she is willing to testify. And to be witness, to be „evidence“. I very rarely hear that a perpetrators is taken to task.*

Given that prosecution almost never results in confinement but rather monetary penalties, it does not work as protection for the woman. More likely she ends up paying for the violence, because she is back together with the perpetrator and also suffers from the loss to the family budget, or the violence increases.

*Prosecutor: We as prosecutors we are// and as harsh as it may sound, he are not the victim protection agency, we are criminal prosecution first and foremost. And people always say something has to happen first. That's right; it really has to have happened first for us to react. Normally we hope it wasn't bad. But we are the last ones in the food chain, well the judges actually are, who convict.*

Legal framework for immediate help in the acute averting of danger is felt to be good, but after that help stops too early. Women have not enough time to build new perspectives and feel left alone. Often good practice depends on single professionals who are well-trained or highly motivated. A change in management in an institution can result in professionals investing a good deal of time to renew and rebuild contacts – even in staff less trained after a committed co-worker has left.

*Lawyer: I have the impression that these things that were built up years ago, especially in the police work, in many places measures were taken and police were trained and sensitised, and then it fades. That might be connected to change of staff, that sensitivity decreases.*

*FamR: It may be a good idea to develop standards for medical personell but then we have a wide variety of doctors. There is the dedicated one and the other who is tired of it after 15 or 16 hours of work. That's a // the human constituent, that lies behind.*

*FamRI: It depends on single persons and that is what I // what my biggest criticism is in terms of judiciary, that it depends on the commitment of single persons.*

## 6 Summary

Most of the frames that surfaced in the workshops we expected to find, but the frame “for some men and women violence is normal” is an old frame we did not expect to be very strong for the kind of especially trained and motivated professionals who attended our workshops. It seems to be however a frame that is mainly shared by the criminal prosecution branch. It was not very obvious how “need for pressure” was framed and took a closer look to untangle it from “the woman has to take action”. Frames regarding migration background in a way seem to reassemble frames that professionals had about German families years back. The great majority of ethical and practical dilemmas seem to originate in contradicting rights of women victims and men respectively concerning self-determination and child endangerment, which was not too surprising. We nudged the participants towards the question what the intervention would look like if Anna had no children. They were willing to reflect this, but practical problems and ethical dilemmas seem to be mostly

arising if there are children, which also meets their everyday experience. However, the dilemma between a professional assessment of danger to the woman (that is, believing that the woman herself is at risk) and woman's right to self-determination (linked to the confidentiality duty) was also very present in the discussions, expressed in the predominant rejection by the support system and by health care professionals of any notion that they might take action for the woman's own good, unless her life were in imminent danger.

The themes and issues around ethnic-cultural-religious minorities are very complex and interwoven. Migration background is the dominant category of difference. The statistical definition of "migration background" includes 1) anyone who came to Germany after 1949; 2) anyone of foreign nationality; and 3) any German national who has at least one parent who immigrated to Germany or was born as a citizen of another country. The professionals have, however, a different definition of "migration background" and only rarely mention that significant groups such as immigrants from Western Europe do not present any different challenges to intervention than do Germans. While some workshops participants reflect on aspects of the dominant German culture, reference to minorities is always based on migration. Only those who come from another country and have not fully integrated with language and citizenship can be perceived as having a specific or different culture or ethnicity.



## APPENDIX

### German Constitution Article 2 & 6

#### “Article 2

##### [Personal freedoms]

- (1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.
- (2) Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.” (German Constitution: I Basic Rights, Article 2)

#### “Article 6

##### [Marriage – Family – Children]

- (1) Marriage and the family shall enjoy the special protection of the state.
- (2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.
- (3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.
- (4) Every mother shall be entitled to the protection and care of the community.
- (5) Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.” (German Constitution: I Basic Rights, Article 6)

### Ethical Guidelines bff

„Der parteiliche Beratungsansatz erfordert, die Klientinnen in ihrem Anliegen und Erleben wahrzunehmen, ohne eine solidarisch-kritische Distanz zu verlieren. Ziel der parteilichen Unterstützung ist es, statt einer möglichen Opferidentität die Handlungsfähigkeit und Selbstbestimmung der Betroffenen zu stärken. Dabei werden die Klientinnen als Expertinnen für sich und ihre Lebensgestaltung gesehen. Sie werden zur Entdeckung und selbstbestimmten Nutzung eigener Ressourcen angeregt, dabei unterstützt und begleitet. Die Beraterinnen orientieren sich in ihrem Handeln daran, die Möglichkeitsräume der Klientinnen zu erweitern und deren Selbstorganisation zu fördern.“

(Ethical guidelines bff, [https://www.frauen-gegen-gewalt.de/tl\\_files/downloads/rechtliche\\_dokumente/2014-05.Ethikrichtlinien.pdf](https://www.frauen-gegen-gewalt.de/tl_files/downloads/rechtliche_dokumente/2014-05.Ethikrichtlinien.pdf), 26.08.2014)