



Carol Hagemann-White  
Liz Kelly  
Thomas Meysen (eds.)

# Interventions Against Child Abuse and Violence Against Women

Ethics and culture in practice and policy

Cultural Encounters in  
Intervention Against Violence, Vol I

Verlag Barbara Budrich



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# Chapter 1

## Preface

Carol Hagemann-White<sup>1</sup>, Thomas Meysen<sup>2</sup> & Liz Kelly<sup>3</sup>

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<sup>2</sup> SOCLEs International Centre for Socio-Legal Studies, Heidelberg, Germany

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The research project “Cultural Encounters in Intervention Against Violence (CEINAV)”<sup>1</sup> listened to the voices of professionals and of victim-survivors in four countries – England & Wales, Germany, Portugal and Slovenia. Collaborating across disciplines and in cooperation with practitioners for three years, from September 2013 until November 2016, we sought a deeper understanding of how and why different professionals intervene and how intervention is experienced when women are confronting intimate partner violence, trafficking for sexual exploitation or physical child abuse and neglect. Within the frame of Humanities in the European Research Area (HERA) and the overarching programme of Cultural Encounters, CEINAV took a dual approach. We aimed for a deeper understanding how the diverse legal-organisational frameworks as well as the socio-cultural backgrounds affect practices of intervention, and we reflected how belonging to a majority or minority group or being seen as such plays out on the level of intervention practice. The research crafted an empirical methodology as well as a theoretical foundation that would make comparative analysis possible. We built on previous collaborative research which explored the legal and philosophical foundations for interventions in Europe. Some of the findings were published during the course of the project as working papers (<http://tinyurl.com/ceinavproject>). A multilingual anthology of stories taken from the interviews with women and young people about their experiences with intervention appeared as Volume 2 of this series in 2017. The book was given an artistic design by the Porto team and is also available open access online<sup>2</sup>.

This volume brings together some of the findings from, and reflections on, the project as a whole. The sections are organised to reflect the overlapping and multiply linked streams of work and thinking within the project. In the first section, “Approaching the arena”, Chapter 2 describes the methodology of the project and how it was developed to an-

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<sup>1</sup> This project has received funding from the European Union’s Seventh Framework Programme for research, technological development and demonstration under grant agreement no 291827. The project CEINAV is financially supported by the HERA Joint Research Programme ([www.heranet.info](http://www.heranet.info)) which is co-funded by AHRC, AKA, BMBF via PT-DLR, DASTI, ETAG, FCT, FNR, FNRS, FWF, FWO, HAZU, IRC, LMT, MHEST, NWO, NCN, RANNÍS, RCN, VR and The European Community FP7 2007–2013, under the Socio-economic Sciences and Humanities programme.

<sup>2</sup> Hagemann-White, Carol & Bianca Grafe, eds. (2016): *Experiences of Intervention Against Violence. An Anthology of Stories*. Cultural Encounters in Intervention Against Violence, Vol. II. Opladen: Barbara Budrich Publishers.



swer the research questions. Particular attention was given to the challenge of in-depth qualitative methods that could uncover significant nuances of difference and their rationale, on the one hand, while devising an approach to data analysis that permitted comparative analysis on the other. Chapters 3 and 4 introduce the theoretical foundations for our lively debates and the multi-perspectivity of our discourses. Intersectional approaches, cultural differences, positional inequalities, and postcolonial foundations are discussed and linked to their relevance for understanding the challenges of intervention (chapter 3). A key premise of CEINAV was that, given the different legal and institutional systems, histories and cultural traditions in the four countries, the ethical issues emerging from narratives and the ethical dilemmas experienced by professionals would be at the core of a comparative analysis. Thus, Chapter 4 reviews ethical theories, seeking to identify which approaches have the potential to offer guidance for intervention against violence.

In section two: “Understanding the frameworks that shape intervention” three chapters describe the legal-organisational frameworks for intervention against child physical abuse and neglect (Chapter 5), domestic (or intimate partner) violence (Chapter 6), and trafficking for sexual exploitation (Chapter 7). These analyses are based on knowledge from country context papers written for each of the four countries as well as published research and documents, enriched by the picture of intervention pathways that emerged from focus groups in which different professionals identified their role and the conditions for their involvement in intervention.

Section three “Key issues in intervention” focuses on challenging issues that emerged from the empirical work in CEINAV. The research in the four countries was carried out in the four different languages, as was the initial data analysis. Both for the multi-professional focus groups and for the interviews with victim-survivors, analytical papers on each form of violence in each country were written and quotes were translated to English. The chapters in this section build on this foundation, linking the empirical results with national and international research and recent policy developments. Language and framings play a crucial role in debates about “culture” or “cultural backgrounds”. The different understandings and positions as emerged and discussed in the project team are reflected in light of the discussions in the 24 interdisciplinary focus groups with professionals in Chapter 8. Chapter 9 explores the tensions and complexities arising from the obligation to intervene in cases of interpersonal violence, and how protection can be balanced with the fundamental right to self-determination. Here the transnational comparison based on the CEINAV data reveals unexpected commonalities within and between the work in fields of the three forms of violence, as well as in the different countries. A range of diverging viewpoints on the ethical dilemmas that confront professionals when the bodily and social integrity of women, children, or parents is revealed.

A deeper ethical concern comes into view in Chapter 10, that takes a critical look at the concept of “reponsibilisation” and its implications for practice. The recognition of a state responsibility to end violence against women has recently, in particular in England and Wales, encountered policy shifts which move responsibility for safety back onto victim-survivors, often without ensuring the protection or external support that was previously understood as necessary. Chapter 11 can be read as a response to these and other challenges of intervention as it focuses on the concept of empowerment, generally regarded as the key orientation for intervention systems that aims to overcome gender- and generationally based violence. Drawing on both the views and practical strategies of professionals and the intervention experiences recounted by women and young people, this chapter seeks to describe with concrete examples how empowerment can be implemented or can fail.

Section four “Reflections” comprises three chapters that engage in different ways with what we learned from this multidisciplinary and multi-country research. Chapter 12 dis-

cusses approaches to understanding different institutional cultures in Europe and how these influence intervention practices. Chapter 13 unfolds with the quotes of professionals and of victim-survivors how their voices contributed to understanding the dilemmas of intervention. Chapter 14 describes how creative art was integrated into the empirical research process, reflects on what was achieved by this, and considers to what extent art and art creation can be fruitful resources for empirical research.

The book concludes with a synthesis of the understanding gained across four countries and three forms of violence: ethical foundations for respectful and responsible intervention. Chapter 15 introduces the reader to the process by which the CEINAV group arrived at transnational foundations for ethical practice. Developing such an empirically and theoretically grounded shared framework for ethical practice in interventions against violence against women and child abuse was a major goal of CEINAV (Chapter 16). It aims to offer an understanding of violence and of intervention growing from the knowledge gained in CEINAV, while respecting the diversity of contexts within which professionals in each country have to frame their decisions and actions.

The CEINAV project was collaborative from the planning stage up into the final report. It was enabled and enriched by the sustained engagement of the 12 associate partners, who met repeatedly with the researchers at key stages of the project, from the development of the methodology to interpretation of the data and reflective discussion of theoretical and ethical issues. All of the topics in this book were discussed in virtual and in person meetings of the research teams. The empirical research (including the creative art workshops) was carried out according to methodological guidelines agreed by all five partners, and both the in-country working papers and draft comparative analyses were circulated and revised after receiving comments. With the widely differing backgrounds of the five partners, this continuing and often very intense interchange was a highly productive form of peer review.

Through all stages of the project and in all five teams, there were younger researchers and research assistants who could not take on the responsibility for co-writing a book chapter after the funding of the project ended, but who nonetheless contributed significantly to the ideas, the analyses and the reflections in this book. The research teams are listed below.

- *England and Wales*: Madeleine Coy, Liz Kelly, Alya Khan, Iona Roisin, Nicola Sharp & Jackie Turner
- *Germany*: Janna Beckmann, Bianca Grafe, Carol Hagemann-White, Barbara Kavemann, Thomas Meysen & Ninette Rothmüller
- *Portugal*: Vera Inês Costa Silva, Rita de Oliveira Braga Lopez, Angelica Lima Cruz, Raquel Helena Louro Felgueiras, Maria José Magalhães & Clara Sottomayor
- *Slovenia*: Veronika Bajt, Vlasta Jalušič, Katarina Vucko & Lana Zdravkovic

The associate partners were:

*England & Wales:*

Imkaan, Sumanta Roy: [www.imkaan.org.uk](http://www.imkaan.org.uk)

Black Association of Women Step Out Ltd. (BAWSO), Mwenya Chimba: [www.bawso.org.uk](http://www.bawso.org.uk)

Childrens' Services, London Borough of Hounslow, Janet Johnson and Emma Worthington; [www.hounslow.gov.uk/info/20059/children\\_and\\_families%20](http://www.hounslow.gov.uk/info/20059/children_and_families%20)

*Germany:*

Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess – KOK e. V., Eva Kueblbeck and Naile Tanis: [www.kok-buero.de](http://www.kok-buero.de)

Bundesverband Frauenberatungsstellen und Frauennotrufe, Frauen gegen Gewalt e. V., Dr. Ute Zillig, [www.frauen-gegen-gewalt.de/](http://www.frauen-gegen-gewalt.de/)

German section of the Fédération Internationale des Communautés éducatives (FICE) e. V, Dr. Monika Weber, [www.ighf.de](http://www.ighf.de)

*Portugal*

União de Mulheres Alternativa e Resposta – Umar, Ilda Afonso: [www.umarfeminismos.org](http://www.umarfeminismos.org)

Associação Projecto Criar (APC), Leonor Valente Monteiro, <https://apcriar.org.pt/en/>  
Association for Family Planning /Associação para o Planeamento e a Família (APF),  
Fernanda Pinto: [www.apf.pt](http://www.apf.pt)

*Slovenia;*

Association against sexual abuse, Erica Kovač: [www.spolna-zloraba.si](http://www.spolna-zloraba.si)

“Society Kljuc – Centre for Fight Against Trafficking in Human Beings”, Polona Kovač:  
[www.drustvo-kljuc.si](http://www.drustvo-kljuc.si)

Association for Non-violent Communication, Katarina Zabukovec Kerin: [www.drustvo-dnk.si/en](http://www.drustvo-dnk.si/en)

Many professionals and victim-survivors in each country gave generously of their time, knowledge and reflections. Now it is up to you as readers to add to that discourse. We hope the book provides you with new insights and thought provoking ideas.

SECTION ONE  
**APPROACHING INTERVENTION: THE ARENA**



## Chapter 2

### Crafting methodology for an innovative project

*Liz Kelly<sup>1</sup> & Carol Hagemann-White<sup>2</sup>*

<sup>1</sup> *Child and Woman Abuse Studies Unit, London Metropolitan University, UK*

<sup>2</sup> *University of Osnabrück, Germany*

#### 1 The research context

Cultural Encounters in Interventions Against Violence (CEINAV) was both a cross-disciplinary and multi-country project, demanding attention to methodology at multiple levels. Since members of the research teams had worked together on a number of previous projects we already knew the critical importance of allocating sufficient time and attention to building a shared approach to research methods: without this the data would not be comparable and, moreover, taken for granted similarities would turn out to be unexamined differences. As a team we were, therefore, committed to a process in which we worked to produce agreed overall approaches and detailed guidelines for both data creation and analysis. Our experiential knowledge meant the project application provided time and spaces (virtual and in person) through which we built shared starting points and understandings of what we were going to do and how we were going to do it. Too often multi-country projects take a series of basic steps for granted, we were anxious to avoid this: Our intellectual and practical collaboration involved each step being explored and carefully considered in order to create a flexible qualitative methodology which included focus groups with professionals, interviews with victim-survivors and art based workshops.

While there is a growing body of transnational studies on responses to gender-based violence (most centred on domestic violence), it is primarily concerned with comparing or assessing national policies and the processes that shape them. Some studies use pre-defined standards of good practice and seek to discover patterns in what policies states install; others take a discursive sociological approach to identify what institutions, agencies and voices influence policy outcomes in each country. Even when country case studies are written, the comparative goal is typically pursued through normative standards set by the researchers, such as asking whether policies are feminist or gender-neutral (Krizsan et al. 2007), whether they are transformational (Krizsan & Lombardo 2013), or whether they further feminist goals (Stetson & Mazur 1995). However, from previous research and monitoring for the Council of Europe we had learned that policies and standards on paper can take on very different meanings when implemented “on the ground”, and we sought to understand why this is the case. Thus, we could not make use of methods to analyse documents in the policy discourse. Research focused on policy-making and policy outcomes seldom reaches the level of the practice of intervention.

A second body of comparative research concerning intervention against violence is more closely tied to social work, collecting and comparing data on issues surrounding decision-making in child protection work or procedures when intimate partner violence has the potential to harm children. This work is more likely to study professionals rather than the policy-making process. After 20 years of European networks on gender violence (ENGV) and on interpersonal violence as a human rights violation (CAHRV<sup>1</sup>) and ten years of monitoring implementation of Council of Europe standards (Hagemann-White 2006 and 2014b) the limits of measuring and comparing national policies and legal provisions on intervention had become visible. Our previous research has taught us that often it is not only *what* intervention comprises but *how* it is done which determines whether it brings about real change and makes a child or a woman safer from the threat of further or future harm and more able to take control of their lives. It was time to explore the cultural underpinnings that shaped the diversity of practices in Europe.

### 1.1 Our research questions

HERA funding required a thoughtfully designed (and fully costed) research project which addressed cultural encounters. Application was a two-stage process, each stage demanding three months of collaborative work, and the team meeting several times to ensure we were travelling in the same directions; from the first draft to funding approval the process stretched over more than a year. The application distilled our thinking at that point. We sought to explore why on the one hand, despite an explicit European consensus on stopping violence against women and protecting children from harm, the practices of intervention and the rationales behind them differ between countries. On the other hand, we saw a need to study how policies and institutional practices intended to ensure the “best interests of the child” and the freedom and safety of women from violence may be deployed differently and potentially have quite different effects for disadvantaged minorities within each country.

The wider context for our project was the growing formation and influence of European-level normative instruments, including standard setting and models of “good practice”, with the implication that not only the obligations of the state and its agencies, but also their practices, become more uniform. Yet the adoption of such norms in the national context often follows implicit and unreflected assumptions of what is presumed to be self-evident – in legal cultures, institutional cultures, dominant national cultures – incorporating ideas about what it means to be a child or a woman or a man, or what families can and should do. But they are also shaped by beliefs about the nature and purpose of social institutions, and about how and when they may justifiably intervene into personal life. These underlying premises are rarely examined in comparative studies. By including different forms of violence as well as countries whose history, traditions and institutions differ, we hoped to discover overall patterns of intervention – from legislation to practical responses such as law enforcement and social work and cooperation – that differ between countries, despite two decades of overarching European perspectives and policies. To explore these tensions we thus chose to focus on three forms of violence for which state responsibility is well established: intimate partner violence/domestic violence, physical child abuse and neglect, and trafficking for sexual exploitation.

It was not our intention to assess whether the four states in our study had implemented the provisions and fulfilled their obligations from transnational Conventions, nor to eval-

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<sup>1</sup> The Coordination Action on Human Rights Violations (CAHRV) was funded 2004–2007 in the 6<sup>th</sup> EU framework program, linking 22 partners in 14 countries

uate whether practitioners met the standards that these agreements set. We expected rather that the assumptions, values and beliefs that are normally taken for granted would become most salient in difficult situations and dilemmas of practice as well as in the dissonances between offers of professional protection and support and the perceptions that victims of violence have of the intervention they experience. Such dissonances call into question the widespread but simplistic belief that ending violence against women and abuse of children can be overcome by standard setting and monitoring compliance. Instead, we aimed to contribute to an ethical approach to intervention that could adapt to and integrate the diversity of legal-institutional and cultural contexts (see chapters 4 and 15).

From the outset a double comparative approach (within and between countries) was envisaged, through the double lens of professionals understanding and procedures of intervention on the one hand and the experience of intervention by minority groups on the other. This second lens was understood as a paradigmatic test through which the normative frameworks of ethics, legal philosophy, culture, and human rights theory could be examined (see Rehman et al. 2013). Within this overarching framework our specific research questions were:

- What do key theoretical framings on complex inequalities illuminate in seeking to establish ethics for state intervention in private life?
- How do the multicultural history, institutions and beliefs in each country shape current perceptions of and responses to interpersonal violence? How do institutional norms and regulations define the threshold and procedures of intervention, and how do representations of European, national and local culture affect their implementation?
- To what extent do practices and models of dealing with violence recognise and respond to complex inequalities? How can the voices of the recipients of intervention enrich perceptions of how violence should be dealt with?
- What means and methods, including narrative and visual arts, can enable the public and professionals to hear more readily the diverse voices of women and children subjected to violence?
- Against the backdrop of diverse gender and generational regimes, are there ethical principles and orientations in interventions on violence and abuse which can traverse cultural contexts and recognise the different positions of various minority communities?

In this chapter we describe how we established the groundwork from which to proceed, the approach to our two sets of original data and how the creative/art based work was integrated into the project. All of these layers of knowledge creation are addressed in later chapters: here we explore what we did, why and how. We conclude by reflecting on what we learnt about methodology in the process.

## 1.2 Establishing the ground

Our starting point was not to presume either shared intellectual frameworks or approaches to interventions on violence. To ensure input from all team members and our linked associate partners<sup>2</sup> a system for sharing drafts of research tools and papers was an initial task, with a series of differently enabled folders. Draft and final papers were available to all team members and associate partners and the first two meetings (the “kick-off” in the

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<sup>2</sup> Each country team had three associate partners with expertise in one of the three forms of violence.



second month and a five-day meeting after one year) brought together all five teams<sup>3</sup>, including the linked artists researchers and associate partners.

The socio-cultural histories and state formations of Germany, Portugal, Slovenia and the UK (England and Wales<sup>4</sup>) are very different, despite sharing membership of the European Union. Since we were part of a research programme on cultural encounters it mattered that we encounter the variations between the four countries and understand how these might affect interventions on violence, especially for women and children from minority communities.

CEINAV, therefore, began with two ground setting activities requiring country-specific background papers. The first covered the sociocultural context of diversity (colonial experience, cultural diversity, and migration), economic inequality, and data on prevalence of the three forms of violence. The second described the legal-institutional context of intervention across the three forms of violence. These papers gave us the foundations for grasping and understanding differences and commonalities among the four countries with respect to majority/minority communities in the context of histories of colonialism and migration and the infrastructure of laws, institutions and practices which underpinned interventions on violence (see chapters 5 to 7). Without these we were not in a position to develop research methods which were context sensitive.

An early challenge encountered here was how to define “minorities” in a way that worked across the four countries. We had at the outset considered that this would cover groups whose position was subordinate, but the historical, colonial and migration histories of the four countries differed too much to allow a common definition: even the concept “minority” did not transfer with a core shared meaning (see chapter 8). This was an important methodological insight, presenting complex issues for the empirical work. A methodological adaption took place whereby no specific minorities would be referred to in the focus group stories, rather the participants would be invited to describe when and how they encounter minority groups in their work. A linked challenge emerged in the selection of victim-survivors for the interviews, since the criteria of “belonging” to a “minority” in each of the four countries proved to create a further set of cultural encounters.

Since the country context papers were for internal use only, teams were asked to compile what was known from existing sources and link it to CEINAV questions. The legal-institutional background papers enabled us to understand the different structural conditions and potential pathways of intervention in the four countries, while the socio-cultural background assisted us as a team in clarifying what in our application we described as ‘the implications of European norms, national legislation and practices of protection and prevention for cultural encounters’. Other chapters in this volume draw on this background while interpreting our empirical findings.

Parallel to this, and extending over the data collection periods a set of theoretical working papers were produced, discussed in the course of our work and revised in the final stages of the project. They explored the potential usefulness for CEINAV of postcolonial theory, intersectionality, and multiculturalism. Here we were seeking to sharpen the analytical tools through which we explored difference, inequality and culture. Two further papers undertook to map ethical theories and their engagement (or in most cases non-engagement) with interpersonal violence. Whilst the abstract theories did not connect easily with our empirical data, they were important reference points in analysis, systematis-

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<sup>3</sup> There were two teams in Germany, one tasked with integrating the whole as well as expertise on violence against women, the other integrated expertise on law and on child protection.

<sup>4</sup> The UK consists of four countries – England, Northern Ireland, Scotland and Wales – England and Wales had a shared legal system and were thus chosen as the location for this study.

ing where and how ethical theories can decipher the conflicting demands and the normative and practical dimensions of intervening against violence.

Our goal in the theory strand was to develop a cross-disciplinary web of shared concepts and frames that could be translated between and within the languages and cultures of the four countries. In the course of the project, this work made it possible to identify promising theoretical approaches that could add deeper meaning to the empirically observed dilemmas and dissonances of practice and thus provide a basis for transnational comparative interpretation (see chapters 3 and 4).

## 2 Empirical methodology

There were three strands of empirical knowledge creation and knowledge exchange in CEINAV: focus group discussions with professionals; interviews with victim-survivors from minorities; and art workshops/art creation. The methodological challenge was to craft a format that worked across three forms of violence, could adapt to context and would enable us to tease out the underlying cultural assumptions. With regard to both theory and methodology, the project was itself a series of cultural encounters among the researchers from the four countries as well. To achieve consistent procedures, for each step of the work a detailed methodological guideline was written drawing on the different theoretical traditions, taking account of the growing literature on feminist methodology (Buchen et al. 2004; Hesse-Biber 2012) and research with children and young people (Mayring 2014) as well as the very large body of work that explores the potentials and challenges in qualitative research and of specific methods.

### 2.1 Exploring the intervention experience of professionals

The first stream of empirical work comprised workshops at which a wide range of professionals were invited to explore thresholds for intervention and to think about who should do what, in what circumstances it was legitimate to act without the consent of the person or, in the case of child abuse, of the family, and where they faced difficult decisions or encountered practical or ethical dilemmas. Two workshops for each form of violence per country were undertaken, a total of 24. While no workshop was reconvened with the same participants, those interested were invited to attend later meetings to enter into dialogue with the researchers and with some survivors as well as a closing conference.

A list of potential invitees across each form of violence was drawn up, with some categories common across all three (police, social workers, health, prosecutors/lawyers, NGOs) and others more particular to forms of violence (for example, teachers and nursery workers for child abuse and intimate partner violence; border/immigration for trafficking). In a number of cases the equivalents in different systems were identified or at least approximated. Participants were invited through the research teams and associate partners. The inclusion criteria were that participants would have practice-based knowledge about the form of violence in question and were commended for their openness to reflection. The selection process endeavoured to ensure that they would not be working together on the same cases, so that the workshop could be a space to share thoughts openly.

Textbooks define a focus group as typically consisting of six to eight people who meet once for a period of an hour to an hour and a half (see for example Finch & Lewis 2003). For the research aims of CEINAV, more participants (11 to 14 participants were foreseen

in order to have all important intervention actors included) and more time was needed. As a result, it can be said that focus group discussion periods were embedded in a workshop format that covered two half-days<sup>5</sup> with informal interaction such as meals in the breaks. This also permitted a shift in focus after breaks. While finding the range of participants available on the set dates was sometimes challenging, those who agreed found the idea and aims of the workshops convincing, suggesting the projects aims and core questions resonated with concerns from practice. In all 234 professionals took part: 91 from the field of domestic violence, 68 from trafficking and 75 from child protection. Our concern that professionals would regard the time investment as prohibitive did not prove to be the case: rather in all countries some commented on how much they appreciated the opportunity to reflect on practice in a multi-agency context.

Participants were told that we were interested in difficult decisions and ethical dilemmas. A phased vignette approach provided the impulse for discussion, with a series of core questions to explore at each point<sup>6</sup>. The vignettes were developed in dialogue with associate partners and after translation checked with the practitioners in each country to ensure that there was a realistic intervention pathway which could be explored at each stage. The process of translation and back translation of the story and the questions was itself a process of cultural encounters in which the “self-evident” was questioned and further clarifications were required. Details were adapted to country context in light of the partners’ feedback.

Each vignette began with fragmented indications of possible violence, such that no one professional would have seen multiple signs. Participants were asked to imagine when and how this might become a case for intervention, and what might lead someone to try and discover whether violence was involved. The story then proceeded in two subsequent phases to present increasing evidence of harm, and participants discussed when a professional or organisation might see a need for intervention, how each would, could, or should act to prevent further violence, and what dilemmas might arise in this process. The first half-day moved through the three phases of the story, the second was devoted to exploration of whether anything would be different if the victim-survivor came from a minority.

While the guidance for country context papers provided a fairly straightforward outline with questions, the guidelines for empirical work recognised diverging intellectual traditions and sought a creative merging that would be fruitful in all four countries and across the forms of violence.

The workshop methodology also exemplifies how the project was itself a series of cultural encounters. In a simplified sketch: While the English language literature points to focus group methods as first established in marketing research and spreading to political sociology and public health studies, the German literature locates the entrance of group discussion methodology into social research with the major study of political attitudes in postwar Germany by the Frankfurt Institute of Social Research. While advice to researchers in English tends to emphasise the diversity of voices that should be heard<sup>7</sup> and closing each discussion with a consensual summing up, the methodological guidance in German aims at uncovering existing collective orientations and commonality of experience. Underneath this difference are theoretical traditions: one refers to the co-construction of re-

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<sup>5</sup> Differences in country context, such as time constraints, pressure under funding cutbacks, cultural patterns of professional further education made it necessary to adapt how the workshops were organised.

<sup>6</sup> On the construction and use of vignettes see for example Hughes and Huby 2004. The phased stories can be found in the background paper: Methodology and impulses, Part 2 on the project website (Hagemann-White 2014a)

<sup>7</sup> Finch & Lewis (2003, p. 188): “The group context provides a key opportunity to explore difference and diversity”.

ality in social interaction (Morgan 2012), the other sees group discussions as uncovering “a more fundamental type of sociality” based on “what is shared in their action practice, in their biographical experience”. In the latter view, the group interaction does not construct reality but gives the researcher “access to the articulation of collective meaning-contexts” that already exist, stemming from the experience of shared sense of belonging (Bohnsack 2004, p. 218). In the Portuguese discussion, the tradition of the “pedagogy of the oppressed” (Freire 1970; Kamberelis & Dimitriadis 2011) has more to say to the purpose of group discussions. Wilkinson discusses this approach in feminist research as seeking to empower participants through collective awareness-raising (Wilkinson 1998).

Our methodological guidance, therefore, gave space to the different academic traditions whilst clarifying our shared purpose. The purpose was threefold. First, we were looking for the underlying cultural premises in each country, and thus for a common ground on which difficult situations were debated. Constructing groups with members of the different professions, all experienced in responding to the form of violence to be discussed and in practicing inter-agency cooperation, made it possible for the group process around a case to reveal shared meanings. In responding to the question of how intervention might differ if the violence occurred in a minority context the participants gave the researchers access to understandings of own and other cultures. Second, we were seeking to uncover the different approaches taken by each profession, and the expectations they have of the others. We surmised that not working with each other directly would create more space for discussion and debate, about the case itself and how professionals could or should act. Together the professionals constructed the pathways for intervention and framings which revealed obstacles and opportunities. Thirdly, our invitation to reflect on ethical dilemmas had potential for empowerment, offering them a context for considering how intervention might better be able to reach the goals that had emerged as a shared perspective in the course of the discussion. In this sense the focus groups could raise awareness and infuse participants with a renewed sense of purpose. This dimension of the groups was enhanced by the facilitator’s invitation to make a videotaped statement.

The case vignette method was successful in stimulating discussion among experienced practitioners directly involved in casework: it captured how situations of violence enter into the intervention system, as well as the subsequent pathways that may (or may not) ensue. Tensions emerged between the expectations with which professionals were confronted and their perceptions of what would be in the best interests of woman or the child. After each workshop, participants were invited to make a videotaped statement of an issue from the discussion that they found significant, or a message they wished to convey, for later use in the project documentary film, intended for education and awareness-raising.

## **2.2 Working with focus group data**

Our purpose was not to generalise about how professionals think or what they do, nor to create a typology of countries or systems, but rather to understand cultural encounters within Europe, and how institutions meet the expectations of (trans)national norms. Attuned to the cultural premises underlying (sometimes quite subtly) differing practices of intervention, we expected connections between the approaches to the three forms of violence to emerge; these are questions that have received little or no research attention, and thus we were entering largely uncharted territory. This meant that the analysis of both the content and the dynamics of the focus group discussions could not be undertaken using a common overarching coding frame. For each form of violence in each country, after transcription the two workshops were analysed as a pair in the original language to capture nuances of meaning and thereby better identify how violence, the tasks and dilemmas of

intervention, and the situation of minorities were understood and negotiated. Three different methods of content analysis were then used, each designed to produce results that could be comparable while remaining as close as possible to the orientations and constructions of reality that emerged in each group. These comprised (1) a process analysis of what practitioners saw as possible or probable pathways through intervention, (2) an inductive frame analysis of the organising concepts in which intervention was discussed, and (3) an analysis of ethical issues which were identified. These three steps do not reflect different theoretical and methodological traditions, but rather cut across them, allowing each team to explore the data inductively from within the country context, grounded in the realities of intervention for each form of violence.

(1) The expected pathway that intervention would traverse was extracted by content analysis and supplemented, as needed, by the research team's background knowledge for clarity and to enable cross-national comparison. The account was organised chronologically as the case developed, including alternative contingencies.

(2) Frame analysis was used to explore how practitioners think about violence and its victims, appropriate interventions, the tasks of different agencies, and whether this changed in relation to minority groups. We examined how the participants framed the situation, the issues it raised, and the actions that might be taken. "Frames" were understood as conceptual tools that define the nature of a problem with implications for how it could be solved or dealt with (Verloo & Lombardo 2007; Ferree & Merrill 2000; Ferree 2012). Frames could be a group consensus or contested. An extended discussion among the researchers was needed to reach an understanding of what should be considered a "frame": in CEINAV it referred to a cognitive ordering of experiences and ideas that defined the nature of a problem and (perhaps implicitly) the nature of the actions (and responsibilities to act) that could appropriately respond to it. Thus, framing trafficking as sexual exploitation of vulnerable women has different implications in the priority of intervention and even on decisions about prosecution or invoking immigration law than does framing it first and foremost as a crime against the state. Making frames visible was crucial to understanding the differences in conceptual frameworks and practices across the four countries.

Frame analysis is commonly used in political science for discerning how social movements gain traction and in policy analysis drawing on public documents such as laws, parliamentary debates or newspapers (see Lombardo et al. 2009). In focus group discussions, both personal experience and socialisation into the professional role can also be presumed to shape the frames. Participants in a group always position themselves with regard to others and to the researchers (Helfferich 2004); in a multi-professional group framing can also serve to define disciplinary positions. In CEINAV frames were a means of uncovering (unspoken) structural and/or cultural premises, but also gave access to articulation of diverse positions and what these meant.

(3) The third step drew out the practical and ethical dilemmas experienced by practitioners. The point was not to capture how the participating individuals might resolve such a dilemma, nor to generalise from such a small group about how practice is implemented in each country. Rather our interest was uncovering the cultural premises shaping intervention, including what would be considered a significant dilemma or a difficult decision, whether practitioners from different professional groups agreed that this did, in fact, present a challenge, and what alternatives were considered. This third analytic approach was directed at understanding how professionals in this field perceive their ability to act in accordance with their mandate and/or their personal beliefs or ideals, and within the structural conditions in which they work. This meant identifying what they implicitly or explicitly perceive as a dilemma or a practical difficulty with ethical implications.

Points of conflict, tension, or disagreement were noted alongside descriptions of difficulties and problems, such as being at a loss to find the right course of action, or feeling

some anxiety over the actions “properly” taken. Some of the core questions were designed to elicit such difficulties. This methodological step involved analysis of the interactions within the group, giving close attention to passages in which the participants become more emotional, engaged in debate about what could or should be done, or adopted a reflective mode in which they were actively “organising and consolidating” shared meaning (Morgan 2012, pp. 170ff.)<sup>8</sup>.

For each form of violence in each country, a working paper in English identified the discursive constructions and normative representations, with translated citations from the transcripts. These papers describe: the process structure of intervention (within which some things require decisions and some are pre-determined); the way in which the form of violence and the duties, rights and norms of intervention were framed in the workshops; how culture, cultural difference, and minority situations were explored and understood; and the ethical issues and dilemmas that the professionals raised. After discussion with the associate partners (within country) and in a five-day joint working seminar (across countries) the frames and dilemmas were clustered with a view to suggesting similar or shared dimensions across all countries and possible commonalities between forms of violence. After this clustering and the discussion on how best to define frames, the working papers were revised and published online. (<http://ceinav-jrp.blogspot.de/p/working-paper.html> and <http://tinyurl.com/ceinavproject>).

Comparative analysis followed, enriched through further discussions with the associate partners and through meetings with participating professionals. A detailed and theoretically underpinned guidance paper on “Hermeneutic and comparative interpretation” was prepared by the Porto partner. Comparative papers based on the focus groups across the four countries were then drafted for each of the three forms of violence by a designated “task leader”, with feedback from the rest of the team. Each paper thus represents a joint effort of the five teams. By proceeding in this way, the analysis could uncover both great similarities and important differences in how professionals think and act across countries and across forms of violence. While striking similarities appear in their reflection on ethical issues, the constraints and resources of practice differ considerably. These papers were not offered online, since the authors planned to revise and submit them to suitable journals; one has since been published (Meysen & Kelly 2018) and a second is available on the project website (Magalhães et al. 2015)

Further papers, including chapters in this book have been written through the material and the analyses; together with the interview material described below it formed the foundations on which the transnational ethical framework (see chapter 16 this book) was written.

### 2.3 Hearing the experiences of victim-survivors

One of the key aims of this project was to gather the perspectives on their experiences of intervention of women who had been trafficked for sexual exploitation or had lived in an abusive relationship of domestic violence, and from young people who had been taken into care during childhood due to physical abuse or neglect. These interviews were different from those in much research to date in a number of ways.

- We searched for women and young people from a migration or a minority background, since we thought they were more likely to encounter additional obstacles to finding ap-

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<sup>8</sup> For more detail on the methodology see the “Background paper: Methodology and impulses” (Hagemann-White 2014a).

propriate help, in this way their stories could cast light on how intervention models might not meet the needs of disempowered groups.

- The focus would not be on telling the story of the violence, but on the story of intervention as they had experienced it.
- Whilst we made contact to interviewees, for ethical reasons, through specialised support services, the interview was not focused on an evaluation of that service, but rather focused on their contacts in the intervention process and over time with (among others) social welfare agencies, police, lawyers and courts, health care professionals, immigration authorities, youth welfare agencies, specialised support and refuge services, and often important informal contacts.

All partners were experienced in interviewing women or young people<sup>9</sup>, and methodological approaches to these have been developed in the international feminist discourse. There were, therefore, no divergent theoretical traditions with respect to interview methods: the gap that had to be bridged concerned the differing traditions of approaching violence against women and violence against children. CEINAV had to find a creative answer to the question of whether interview guidelines could work across all three forms of violence, and in particular, with the young people. The basic format was semi-structured beginning with an invitation for participants to tell their story of intervention, what people said and did, how helpful they found this at the time and what their views are now. An account might begin with thinking about asking for help, or the first contact they had with a support agency, and each interviewee was encouraged to tell their story without interruption. Only after this account were specific questions introduced about some of the ethical issues that had already been identified through the focus groups with professionals.

Templates were drawn up for the inclusion criteria, the preparatory and consent protocols and the interview guides – all were discussed, modified and agreed across the research teams. Core questions were translated and back translated, in order to ensure that they were cross-culturally meaningful. The final documentation included some general reminders of standards for good interviewing, including confidentiality, safety, and transparency. Each form of violence was dealt with separately, adapting the initial impulse and the core questions to the specific form of violence.

We set targets of seven interviewees for each form of violence, although this was not possible in Slovenia, or for trafficking in Portugal. Overall 78 women and young people were interviewed: 32 women who had experienced intervention due to domestic violence, 21 due to trafficking, and 25 young people who had been taken into care by child protection authorities.

Locating participants and completing the interviews (some of which were undertaken significant distances away from where the research team was based) was considerably more complex than the focus groups. In some instances the associate partners were not able to facilitate access to interviewees due to understaffing and a high workload; in others, teams saw this as outside their mandate and potentially risky for the victim-survivor, so additional support agencies had to be approached. Furthermore, meeting the criteria depended strongly on the associate partners, the context of their work, and their perceptions of what constitutes a minority in each country. England and Wales had associate partners dedicated to helping black, ethnic and minority women; in Germany, a variety of support services each offered contact to one or at most two women identified as having a migration background. Due to differences in the migration regimes, trafficked or abused women in Germany were likely to have been in the country considerably longer than those in

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<sup>9</sup> Or, for one partner, drew on the experience of an external interviewer for interviews with children/youth.

the UK. In Slovenia and in Portugal, only a few trafficked women could be contacted for interviews. In Germany, two young people had no memory of the event because they were so young at the time. Especially (but not only) with adolescents, interview appointments were more frequently cancelled, meaning that new contacts had to be sought. Since many of the interviewees told stories of intervention that went back quite a long time, the interview material could not be counterpoised to the workshop discussions, in which current procedures were discussed.

## 2.4 Working with interview data

Whilst methodologically the experiences of survivors cannot be placed in direct comparison either to the discussions among professionals or transnationally, they nonetheless offer a wealth of insights into the meaning that intervention action or inaction can have and the possible impact that how they were treated had on their lives subsequently. The interview data was highly personal, experiential and the goal of listening to voices that are often not heard precluded imposing a common structured way of working with the material such as uniform coding and comparing coded segments directly. In view of the project's commitment to a culturally sensitive comparative approach working towards ethical intervention, the guidance for interview analysis centred on distilling ethical issues out of the stories and thinking how we might use this material in creative ways.

A cluster of ethical dilemmas had been identified from the focus groups and informed our core questions in the victim-survivor interviews. A project working paper on "Salient ethical issues for intervention against violence" sought to link the ethical issues and dilemmas that had emerged so far with relevant aspects of ethical theory. These prior projects informed how we worked with the interview transcripts – seeking to identify and explore (possibly implicit) ethical issues that echoed or added to those already identified. The connection between theory and interview material was not easy to make, since women and young people rarely described their experiences as a dilemma. Rather, their accounts of intervention circled around whether it did or did not meet their needs, whether it was fair or unjust, caring or disrespectful or perhaps racist, whether it went too slowly or too fast, made them feel stronger or weaker. As with the professional workshops, in each country for each form of violence a working paper was written. These papers summarised for each interview the intervention experience in one paragraph, then presented ethical issues, illustrating them with excerpts from the transcripts. Although all names were changed, concern that a woman or young person might be identifiable through her story and thus the promise of confidentiality breached led to a decision not to publish these papers online, but to work with them for publishable outcomes.

Alongside close study of the interview transcripts for insights into analytical research questions, they were also approached from the viewpoint of the art of storytelling. The partners discussed how best to construct and shape short "stories" from the interviews that were both authentic with regard to the "voices" of interview partners and the key messages that they wanted to convey, whilst ensuring that the person who told the story is not identifiable. These accounts were intended for publication, for use in education and awareness-raising, so they needed to be focused, and coherent, and to be told in a way that makes a point; thus, they differ from the classical summary of a case in research. All five partners compiled stories and the interviewees were invited to review the narratives. In three countries, the stories also had to be translated into English for comparative study; it was quite challenging both to maintain the expressive style of the women and young people while transposing this into "natural" spoken English. In the areas where few interviews had been possible (trafficking in Portugal and Slovenia, child abuse in Slovenia) selected



stories were also translated from English or German into Slovenian or Portuguese, so that the eventual publication offered at least 7 stories in each of the languages for each form of violence.

Deriving brief and coherent stories from the interviews posed a range of questions: how to preserve an authentic voice when both language barriers of migrants and emotional barriers disrupted any simple “telling”? This was a different task to the usual format in research reports where summaries are interspersed with quotes. The resulting stories are thus the product of both the voice of the woman or young person experiencing intervention, and of the selective and creative contribution of the research teams. Without the solid empirical and theoretical work done before, it would not have been possible to craft stories that convey key elements of the intervention experience in all their diversity, but with an underlying consistency of focus. The stories, together with the videotaped statements by professionals, formed the basis for creating a video documentary and have been compiled in a publication in which all four languages of the countries are used; it is also available open access online (Hagemann-White & Grafe 2016).

## 2.5 Creative/art based work

To explore how the experiences of marginalised victims of violence could touch and influence those who design or deliver interventions, the potential of art was part of our project. In each country an artist-researcher was engaged to design and carry out two creative art workshops with those interviewees who were willing (and could arrange) to participate. This was understood in the project as offering an additional way of “telling” their stories: it was innovative in social research on violence, and there were many debates about how art could be integrated into the project. The artists who joined the teams in the four countries each had a different repertoire of media and creative methods, meaning that no unified approach was possible. After meeting for two days whilst the survivor interviews were in process they exchanged ideas in a dedicated “artists’ blog”.

This aspect of CEINAV must be seen as an experiment in its use of diverse approaches, both in the manner of enabling women and young people to express their experiences through art, and with regard to how the subsequent reflection and dialogue was organised. All artists as well as the researchers who were participant observers at the art workshops wrote reflective papers on the experience of integrating art into research. In addition the artists in our teams worked creatively with the stories and the art work from the workshops (see chapter 14).

The creative process for each country was documented in an “art process logbook”, and the art work produced was shared through photo documentation. Some presentations of the art work (with the participation of the artists, but without showing their faces) were videotaped. Collecting stories and working in a creative art process aimed to uncover the potential both of narrative and of visual art to stimulate the imagination needed to hear different voices and to recognise the agency of victims.

In each of the four countries, creative art and aesthetic education have been explored as potential resources that can be used in change processes; to this end, the art work was presented at “creative dialogue meetings” with associate partners and stakeholders in each country. This step, in which the interviewees could converse with professionals as equals, was a challenge, requiring skilled facilitation. Strategies were also needed to encourage and enable the women and young people to take part, and each team chose to do it in different ways. In England and Wales, for example, the art work on trafficking and domestic violence was shared with the interviewees, associate partners and a few local stakeholders. The art work by the young people was shared with them and the local child protection

team. In Germany both were combined, and a number of professionals working in the different fields of intervention as well as all five women and one of the young people who had created art in a workshop took part in a two-day seminar. In Portugal, two meetings were held, one with professionals and stakeholders to introduce them to the art work, and a second one with both professionals and participants in the art workshops.

In a final stage of CEINAV, three video films were created that are now available on the project website. *Everything I told them* sought to present key ethical issues through reflections by lead researchers, videotaped statements by professionals on issues from the workshops, and excerpts from survivor stories. It was shown at the closing event of the HERA Cultural Encounters research programme. A second film is a short documentary of one of the creative dialogue meetings showing some of the art by victim-survivors and professionals interacting with it. A third film called “Sendas / Paths” is an animation which represents the emotional healing journeys of a woman and two siblings. All three films can be accessed through the CEINAV website <http://tinyurl.com/ceinavproject>.

### 3 What we learnt

Our experience of carefully building a common methodology confirmed our expectation that emerging differences would point to cultural differences among the countries and within intervention systems. It heightened our awareness of the need for great caution in assuming, even within the community of activists or of researchers engaged with such important overarching issues as reducing violence, that words and concepts mean the same. Fluency in English does not preclude serious misunderstandings: these should not be thought of as something to be avoided, for example by setting up a project glossary (which we tried, but found not to be useful). Rather, such misunderstandings are valuable opportunities to access and understand diverse contexts, from which we could learn that the process of such cultural encounters is a permanent and productive feature of European life.

Whilst we worked to synthesise the different datasets and forms of knowledge produced during the project, we did not engage in direct comparison between the types of data, but drew on the insights from different methods to develop a broader understanding of how and why intervention systems differ (see chapter 12). Our methodology was aimed at uncovering cultural premises, unreflected assumptions. The focus group participants were not representatives, but selective – those who were attracted to the idea of giving deeper reflection to their practice. By asking them to think about difficult decisions, for example when conflicting rights or needs appear, or when the general rules laid down in laws or guidelines do not seem to fit well with reality, we hoped to find “lines of fracture” in their routines which would require that assumptions, which they are rarely required to identify or think about, were articulated.

We did not draw on the survivor interviews to assess the quality and sensitivity of intervention practice; the experiences of the women and young people referred to a variety of different times, places and agencies. The significance of their narratives lay in showing what it can be like and what effect on further action it can have to feel oneself treated in a particular way. Thus, while the focus group method yielded insight into professional discourses, the interviews offered experiential accounts of what being the subject (or in some cases object) of intervention felt like and meant at the time and subsequently.

Embedding participatory creative art in research was conceptualised as experimental in the proposal, and the four artists had all worked in different media and differed in their experience with regard to participatory art. While all teams successfully implemented art

workshops with survivors, the timing, the way the workshops were led, the kind of art produced and the follow-up all differed. The rich and varied outcomes represent an interesting range of possibilities rather than a set of comparable results. Across these differences, however, it can be said that the participants in the art workshops found this experience empowering and meaningful for their own process of overcoming victimisation. Many of the practitioners also saw the art work as a way to reach emotional dimensions that would not be verbalised easily, while questions on how art by survivors of violence can be used in intervention practice remained open.

Our original contribution methodologically was to create a context-sensitive, three-fold comparative approach (four countries, three forms of violence, majority and minority positions), which involved listening to the voices of victims as well as those of professionals and integrating creative art into the research process. In this process of “bridging” across and between three different forms of violence that are rarely studied together, CEINAV was able to identify and articulate commonalities as well as differences, allowing us to reach overarching conclusions on the ethics of intervention (see chapter 16) while learning more about the connections by which the structural and cultural conditions underlying professional responses and normative expectations of “good practice” interact with the realities as perceived by the victim-survivors of violence.

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## Chapter 3

# Theorising complex inequalities to meet the challenges of intervention against violence

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## 1 Introduction

The experiences of both researchers and activists in various fields of the struggle against inequalities have uncovered the multidimensionality of unequal positions, not only that different sources of inequality might be interconnected and complementary, but also that inequalities stem from various realms of power relations simultaneously. Thus, gender inequality can have its sources in the economic, political, family and ethno-cultural realms at the same time, while not all of them necessarily influence it to the same extent. Speaking of complex inequalities therefore means not only to speak of multiple and multi-layered inequalities, as this can still imply several dimensions added on to one that is presumed to be basic (for example class, race or nationality added on to gender), or are of the same importance (gender and age, for example). If we speak of complex inequalities this means that we do not automatically, in advance, assume which dimension is decisive for the (un)equal position of an individual or a group and which combination of different dimensions in concrete situations creates new circumstances or situations that have to be taken into consideration (cf. Hancock 2007).

Scholars describe these phenomena either in terms of different power relations (as a matrix of domination or oppression, see Collins 1990) or use more neutral terms like inequality strands (Walby 2007 and 2009; Squires 2008); strands connect themselves with various dimensions and their sources. Complexity of inequality also means that the institutional elements (of structure and power) and individual elements (called „personal“ circumstances) supplement each other and mix among themselves in the processes of inequality construction whereby in some cases it is possible and in others it is impossible to separate their influence and results.

In spite of the quite well researched diversity of encounters with inequalities, there is still an insufficiently comprehensive elaboration of these in social and political theory (Walby 2009, p. 19). Nor are they an integral part of policy formation and intervention models. In consequence, laws and policies often do not take diverse inequalities into account, and there is no adequate guidance for intervention practice in this regard. Yet the corpus of studies and practices dealing with complex inequalities is growing fast and does not only encompass gender and ethnic studies circles but also children's and elderly studies and reaches into the sphere of social work and practice of intervention against violence (Murphy et al. 2009; Ravnbøl 2009; Sherwin & Uçar 2012; Sosa 2017).

As European countries become internally more diverse, due both to global streams of migration and semimigration (“nomadic” workers) and to mobility within the EU, “cultural encounters” on the level of social interaction also become more salient in the practices of protection against violence, as do uncertainties about the legitimacy of regulation and intervention. This calls for a theoretical framework incorporating concepts that can define the nexus of gender, generation, race, and minority status in order to analyse the differential experiences of women and children with violence, social support, access to rights, legislative and agency interventions and to develop a more coherent discourse on rights and responsibilities.

This chapter attempts to outline a framework for thinking about and contextualising the discourses on cultural hegemony, cultural differences and positional inequalities. It examines some of the key theories and debates that can help us to understand how rights can be interpreted as multicultural or intersectional claims and how complex inequalities challenge intervention strategies against violence in contemporary settings. Four potentially relevant theoretical frameworks in international discourses will be discussed that can be used to analyse and address the complexity of gender, generation, race/ethnicity, and minority status while addressing interventions against violence: intersectionality, matrix of domination, feminist critiques of culture and (multi)culturalism, and colonial difference with the concept of subalternity. They mainly originate in feminist scholarly and emancipatory traditions, including African American, marxist-socialist and post-colonial feminism. While they partly overlap, each of these approaches is contested and is not necessarily applicable to the diverse situations of various countries, or regions. They find different degrees of acceptance within national discourses on gender- and generationally based violence. Moreover, they might not translate equally well everywhere nor do they necessarily resonate in the same way with the language of daily life and professional practice “on the ground”.

## 2 Intersectionality and matrix of domination

Feminist studies about power have examined intersecting axes of injustice, what impact they have on the construction of personal circumstances and identity in the processes of inequality construction, and how they particularly affect those individuals and minority groups that are (constructed) at the crossroads of inequality and discrimination. While coming from the same epistemological tradition, these analyses have substantially challenged and changed not only the feminist views on the category of women as underlying element of oppression, but also on other forms of discrimination and inequality. They condensed into two concepts, intersectionality and matrix of domination, which are presented and discussed together in the next section of the chapter.

### 2.1 Intersectionality

Intersectionality represents one of the major influential theoretical approaches to debating gender, diversity, and the construction of inequality. The concept was introduced by Kimberlé Crenshaw (1989 and 1991) and was originally developed in the US to challenge the former feminist perspectives on power and to make the specific experience of Black women with discrimination visible and actionable in law, so that they could make a legal claim on the basis of both gender and race, rather than just one or the other. It was first used as

a metaphor to “denote the various ways in which race and gender interact to shape the multiple dimensions of African American women’s employment experiences” (Crenshaw 1991, p. 1244). Situated within a Black feminist epistemology it aimed to better understand and theorise the experience of African American women who are subject to “interlocking structures of oppression” (see Collins 1990 and 2009). The objective was to find a mechanism for social change and justice, and a policy tool which would not rely on additive frameworks of race, class and gender but would rather search for their intersections. Intersectionality postulates that socially constructed categories of oppression and inequality such as gender, race and class interact simultaneously to shape a unique life experience (Crenshaw 1991; Collins 1990; McCall 2005; Murphy et al. 2009). The original discussion by Crenshaw was focused on the court cases against discrimination (Crenshaw 1989) and on the issue of violence against Black women, and asserted that we cannot understand violence against women if we don’t take into consideration race/ethnicity, class, and immigrant status of women who are targets of violence (Crenshaw 1991). Also, knowledge and hierarchical power were considered as mutually constituted: the forms of knowledge influence both violence itself as well as social and institutional responses to it. Responses to violence without taking intersectionality into consideration thus remain limited (Collins 2009, p. viii).

The concept has since travelled to Europe and elsewhere as a new orientation in sociology, philosophy, and political science. It was further developed and redesigned to explain relationships of gender and other social, cultural, and political relations of inequality (McCall 2005; Yuval-Davis 2006), and to analyse discursive politics (Ferree 2009). With the emphasis on interaction of inequality systems, identities, and power relations, which do not necessarily share territorial or temporal boundaries, intersectionality has been used to address globalised phenomena that can be linked across borders, and to connect minorities with the colonial past (Walby 2009).

The core of the intersectional approach suggests not only to move from examining and explaining a single category of socio-political difference (i.e. gender *or* class) to examining multiple categories of socio-political difference (gender *and* race, for instance). The intersected categories of socio-political difference are seen to be *simultaneously co-constructed* and not only interrelated or equally important for the analysis: Gender, for example, is considered to intersect *with* race (Hancock 2007, p. 67) which reveals new, complex relationships or phenomena. While these phenomena can be analysed through an intra- and/or inter-categorical perspective (as proposed by Leslie McCall<sup>1</sup> 2005), intersectionality implies that we have to deal with a complex cross-system emergence that challenges the usual ways of looking at and thinking about events, processes, social and political structures and discursive realities (as proposed by Sylvia Walby 2009 and Myra Marx Ferree 2009). This means that problematic ethnicised or racialised “identities” are not only to be explored in the process of their own construction, but also to be explained as containing complex sets of “relations” at several levels. As Black feminists argue (see below on matrix of domination), the role and importance of singular dimensions such as race and/or gender depends on the context: different dimensions can be more or less in play at one time or another.

If we presuppose that there exists a dynamic and changing character of mutual relations of gender, ethnicity/race and age (as researched dimensions) and handle their relations as an irreducible complexity – then our own abstractions of each of the dimensions (such as ethnicity, race, or culture, for example) can be seen as a “useful simplification”, a working concept, rather than the “inherent property of the world” (Ferree 2009, p. 85). Analy-

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<sup>1</sup> The differentiation within one category or the relationships between two or among more categories.

sis and comparison are then made under assumption of always concrete establishment of meaning/s of each of the constitutive relations – and these include the mutual relationships and changes of categories within the concrete historical, institutional and discursive – contexts. What dimension will become particularly important in the process (and is then fixed into a certain meaning) depends on whether, how and by whom certain relationships (race-gender, or gender-class, for example) become relevant for certain uses: whether it will frame “sexuality, reproduction, political authority, employment or housing” (Ferree *ibid*).

Crenshaw (1991) pointed to the difference between structural, political and representational intersectionality. While structural intersectionality represents the combination of inequality dimensions that are socially relevant for a certain position at the point of intersections, the political intersectionality that emerges in the political or policy making process might not include (all) these dimensions as relevant. This is essential in understanding how the categories are created or reinforced by various actors, state policies or policy driven interventions. Whether certain dimensions of inequality will be visible or not, whether the institutional actors perceive specific individuals and groups as vulnerable and thus needing protection or particular attention, and whether specific mechanisms, rules or procedures are introduced, depends on how these relations will be politically framed. Representational intersectionality involves the process of cultural, discursive construction of inequality. The intersectional process frames the categories into understandings of the “who” of someone, or the “what” of a group, and how are they presumed to be placed within a concrete web of institutions, power relations or policies including intervention (see Lombardo et al. 2009; Jalušič 2009).

There has been much discussion among scholars and practitioners about how the concept of intersectionality could apply to different groups, processes, or social conditions. This included the debate over the relationship between the academic concept (quite complex and often not too clear) and its use and understanding in everyday life. The metaphor of intersection has been questioned, and some authors argue that “intersectionality” neither encompasses any specific subject area or discipline nor a specific approach to the problem or analysis (Davis 2008; Carastathis 2013). Gudrun Axeli Knapp (2013) (like Ferree) maintains that intersectionality represents no particular theoretical perspective and does not stand for itself. It rather has a character of “boundary pushing” and should thus be used as a sensitising concept or “heuristic device” along and within theoretical contexts (Knapp 2013, p. 254). In order to understand what the “intersections” are about one needs to understand the mechanisms of power and the directions into which the power relations are oriented, and to make them visible, otherwise the metaphor could serve to minimise the relations of power. Cornelia Klinger and Gudrun Axeli Knapp (2005; see also Knapp 2005) questioned intersectionality as a “travelling concept” and questioned its direct transfer from the US context and its interpretation, particularly due to the different use of “race” in the European post WW2 circumstances, for example. They plead for understanding intersections as being constituted among several “axes of oppression”, thus connecting intersectionality with the theory of power, similar to Collins (see below). Also, they underline (like Ferree) that different “intersectional frameworks” appear in specific historic contexts and that axes of race, gender and class always form a different matrix in different circumstances.

Intersectionality represents neither a unified nor a consistent analytical approach, and the feminist academic world is rather divided as regards to its importance and usefulness. While many influential authors see it as a vital new concept and analytical framework which has entered both theory and policy field, others think of it as of a “travelling concept” or even as “buzzword” (Davis 2008) which has to be used with caution. With the traveling and growing importance the concept has lost its original focus on Black wom-



en's experience with inequality and also its original link with the struggle of women against violence (Kelly 2013, p. 2) and was, in the context of post-modern and deconstructive theory, considered to be more and more depoliticised (see Collins 2009, p. xiii; Carastathis 2013; Hancock 2016).<sup>2</sup>

## 2.2 Matrix of domination

Patricia Hill Collins described race, class and gender as “interlocking systems of oppression”, introducing the concept of a “matrix of domination”. Connected to this and still widely in use, for example in Portugal, is the conceptual approach of “multiple axes of oppression”. The concept of a matrix of domination is closely related to and compatible with the concept of intersectionality. Both emerged at the same time in the US driven by the same incentives, namely to explain the complex experiences of discrimination of African American women. The concept of a “matrix of domination” was developed in the influential book *Black Feminist Thought* (1990), in which Collins examined the voices, intellectual traditions, both individual and collective, of Afro-American women, placing them at the center of her analysis: “By portraying Afro-American women as self-defined, self-reliant individuals confronting race, gender, and class oppression, Afrocentric feminist thought speaks to the importance that knowledge plays in empowering oppressed people” (Collins 1990, p. 221). Black women's thinking is seen as interwoven with fostering the development of the Black community, not only because this was perceived as essential to survival, but also as a fundamental conceptual approach to the meaning of overcoming oppression.

By exploring in depth the experience, the activism and the ethical and political thinking of Afro-American women in a specific historical context, Collins introduced a paradigm that overcomes additive approaches. From the perspective of Black women, relations of domination for any given sociohistorical context are structured by a system of interlocking race, class, and gender oppression (1990, p. 222)<sup>3</sup>. Additive models are “rooted in the either/or dichotomous thinking of Eurocentric, masculinist thought” (p. 225). She offers the concept of a “matrix of domination”. “Race, class, and gender constitute axes of oppression that characterize Black women's experiences within a more generalized matrix of domination. Other groups may encounter different dimensions of the matrix, such as sexual orientation, religion, and age, but the overarching relationship is one of domination and the types of activism it generates” (p. 226). “Race, class, and gender may not be the most fundamental or important systems of oppression, but they have most profoundly affected Afro-American women” (p. 227).

In addition to being structured along “axes of oppression”, the matrix of domination also functions on different levels: personal biography, the group or community level of the cultural context, and the systemic level of social institutions (later described as micro, mezo and macro levels of oppression). This inclusive larger model of the matrix of domination “provides the conceptual space needed for each individual to see that she or he is *both* a member of multiple dominant groups *and* a member of multiple subordinate groups” (ibid).

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<sup>2</sup> Some recent overviews and comprehensive elaborations of intersectionality theories and their practical use represent for example Sosa 2017 and Hankivsky & Jordan-Zachery 2019. For a discussion of its intellectual itinerary and its political implications see Hancock 2016 and Yuval-Davis 2015.

<sup>3</sup> Collins – writing at the same time as Crenshaw – explicitly pointed to the exclusion of Black women from legal recourse from discrimination by the additive model that defines distinct protected categories (1990, p. 224).

Collins positions herself in standpoint theory which in her view “has provided an important source of analytical guidance and intellectual legitimation for African-American women. Standpoint theory argues that group location in hierarchical power relations produces shared challenges for individuals in these groups.” (1998, p. 201). Thus, “the notion of a Black women’s standpoint gains meaning in the context of a shared Black consciousness dedicated to sustaining racial solidarity.” (p. 202). At the same time, she describes how US society has changed, with Black neighbourhoods, communities and public space no longer the recognisable sites of exclusion, control and resistance. As relations of domination are less and less organised through visible segregation, the links between a common position in power relations, the shared experiences that accompanied this commonality, and the construction and significance of group standpoints have become less clear. While critiquing the post-modern and deconstruction discourses as disempowering to the oppressed, Collins asks whether group-based identities and the politics they generate are still empowering for African-American women (p. 203). It is at this point in her argument that she introduces the concept of intersectionality, as a concept that introduces added complexity and can be used in thinking about how groups occupy distinctive social locations within societal power relations.

As to its limitations she argues that intersectionality was much oriented towards individual agency and subjectivity, and that this “can foster the consequence of elevating individualism above group analyses” (p. 207). Therefore, the concept needs to remain sensitive to hierarchical power relations. Within the matrix of domination, it seems easier to recognise how different axes of oppression function in different ways. Race, class, nation, and ethnicity, she remarks, “all rely heavily on segregation and other exclusionary practices to maintain hierarchy”. Gender, in contrast, “relies more heavily on surveillance and other inclusionary strategies of control targeted towards the proximate other” (p. 223). The idea of family permeates both types of group organisation, so that for Black women, there are two overlapping and important uses of family in constructing groups. This points to the “need to develop a more sophisticated language for discussing social groups that takes power relations into account” (225). “Rather than abandoning situated standpoints, becoming situated in new understandings of social complexity is vital” (p. 228).

Thus, while Collins, in her 1998 book and later (Collins 2009), adopts and integrates the concept of Intersectionality as an important “conceptual framework or heuristic device” (p. 208), rather than replacing it with the concept of a matrix of domination, the approach within the “matrix”-concept seems to be central to her thinking, as it allows her to distinguish between different axes of power and subordination that operate along different principles as well as distinguishing different levels on which power relations operate.

With her challenge to analyse the matrix of domination, Patricia Hill Collins raised many of the same issues and even the same dilemmas in US discrimination law as did Crenshaw, but the intersectionality concept “caught on” more widely. An important difference emerges from the historical and sociological depth with which Collins explored how Black women’s experiences and knowledge have been articulated in different types of writings over more than 100 years: A key element of her theory is the imperative to see empowerment for individual women and empowerment for the community as interwoven and mutually dependent (“Lifting as we climb”). While she certainly describes the price that Black women have paid for their loyalty to the heritage of race solidarity in the face of political, economic, and legal subordination enforced by open practices of violence, Collins herself places her work in this context, for example challenging trends in postmodern and deconstructive theory by asking whether they are intelligible to, and empowering for Black women. Caring for the development of the community developed as a necessity for survival, but was turned into a central value that for Collins, is not only historical, but also a key to understanding how the levels of oppression are interrelated and to a more comprehensive political activism.

### 3 Discussing asymmetrical conceptions of culture and “cultural” violence

“Beyond sisterhood there are still racism, colonialism and imperialism!” wrote Chandra Mohanty (2003, p. 68), pointing out that behind the liberal feminist credo of universal women’s subjugation in all circumstances and generalised criticism of oppressive traditional cultural habits there often lurks the belief that Western norms and values are substantially more equal, less patriarchal, and more progressive. In these accounts, so Leti Volpp, culture was regularly “invoked to explain forms of violence against Third World or immigrant women”, while it was not correspondingly used “to explain forms of violence that affect mainstream Western women” (Volpp 2001, p. 1187). Such an attitude resonated with post-colonial imaginations of the Oriental other and the so called “Third World Women” as perpetually subordinated to the patriarchal culture and left without agency, power and influence over their own lives (see below). While the practices of the “others” were discussed in the forefront of the critique of “cultural” violence, a “deeply disingenuous” contrast “with majority cultural practice” emerged (Phillips 2007, p. 8): the contrast between the “suffering immigrant or Third World woman” and “liberated Western one”. In this sense, the presumption of Western women’s liberation was made reliant on “the notion that immigrant in the Third World communities are sites of aberrant violence” (Volpp 2001, p. 1186).

Critics such as Uma Narayan (1997, pp. 81ff) have underlined that most violence against women in the West, for example domestic violence murders, is not considered as a cultural thing at all. Meanwhile other forms of violence which might even be less frequent than wife murders (dowry murders or *sati* in India, for example), figure as a cultural marker: “They burn their women there” (Volpp 2001, p. 1187). The suggestion that the non-Western “cultures” are much more tolerant towards violence and that they include violent practices as a normal part of life not only carries obviously racist features. As pointed out by Leti Volpp, such way of linking the sources of gender inequality and violence in minority “cultures” and their country of origin thwart recognition of state responsibility for existing gender discrimination (p. 1186). The perspective of women in these communities is completely ignored (p. 1193).

Western majority culture is thus rendered invisible and unquestionable while the minority cultures figure as obvious, fixed, problematic and unchangeable: “Those with power appear to have no culture: those without power are culturally endowed. Western subjects are defined by their abilities to make choices, in contrast to Third World subjects, who are defined by their group based determinism” (p. 1192). The Other is dominated by culture and patriarchy. Immigrant and “Third World” women are considered to be its victims, incapable of emancipatory action (p. 1211). A whole set of binaries that are a substantial part of colonial difference production (see below) thus comes to appear. Majority culture is perceived and presented as normality, an unquestionable norm, while the minority culture appears as a deviation. Agency belongs to the one side and passivity to the other, reasoning is opposed to “cultural dictates”, there is resistance and fight for rights versus acceptance and surrender to tradition, freedom versus oppression.

In the face of such contrasting framing of culture and related debates, certain ways of “external”, Western critique of minority women’s discrimination became more and more problematic. Not only cultural relativists saw such critiques as inappropriate and questionable, an imperialist enterprise, depriving the minorities of autonomy. Seen from the post-colonial feminist perspective, it represented a violation of the autonomy of the minority women as well. Moreover feminist “focus on an ‘exotic’ culture as the culprit misses the ways in which they themselves are implicated in the production of gender inequalities in the non-Western world” (Knop et al. 2012, p. 624) and therefore in the production of colonial difference.

### 3.1 Deconstructing culture

In her book *Multiculturalism Without Culture* Ann Phillips maintained that due to the homogeneous notion of culture multiculturalism came to figure not as a “cultural liberator but as a cultural straitjacket”, and that the notion of culture in this context forces the alleged members of cultural groups “into a regime of authenticity” (Phillips 2007, p. 14). Such group categorising gave the dimension of culture much more importance than it has in real life and bracketed other inequality dimensions, like economy, social (class) status or impact of particular policies, for example. Iris Marion Young (2005, p. 25) claimed that the prevailing political theorist’s occupation with “politics of cultural difference” rather than “politics of positional difference”, based on structural inequalities, has enhanced the perception that “cultural differences” exist independently of other differences and inequalities.

Leti Volpp (2001 and 2003) and Ann Phillips (2007) make efforts to relativise strong boundaries between “cultures” as they are constructed and much more influenced by various dimensions than multicultural theories allow for. Volpp suggests that culture be comprehended in “constant transformation and reshaping”, as negotiated, hybrid and contested (Volpp 2003, p. 394 and 2001, p. 1192ff.). Phillips (2007) grasps “culture” not as a stable conglomerate but representing the way individuals define themselves while being influenced by other dimensions that are co-dependent in relation to culture (sex, gender, ethnicity, nationality). Yet culture goes beyond the self-identification of the individuals. If ascribed to a person it becomes a dangerous “marker” reproducing hierarchies among individuals or groups. We can therefore not just escape culture (p. 15). Phillips suggests that we treat it in the same way as for example the concepts of “race” or “women”: as problematic construct which will not disappear. The main question is how such a concept is going to be employed (p. 16). The notion of culture should accordingly be used with an emphasis on the concrete contexts and not understood as fixed and unchangeable “tradition” (see also chapter 8). This is the precondition for paying less attention to the narrow issues of real or assumed “minority culture” practices such as veiling, female genital cutting, honor killings, polygyny, forced marriage (p. 25).

Volpp too warns against essentialised depictions of “culture” as “unchanged rituals that cement the subordinate location of women in a fixed system of social practices” (Volpp 2003, p. 399). Culture should not distract our attention from the issues of power that might be common and inherent in culturally diverse individual’s positions, such as limited access to services or problems with policies of the state (Volpp 2003, p. 398). Ann Phillips (2007) and Karen Knop, Ralf Michaels & Annelise Riles (2012) propose to focus on other issues rather than “culture” such as differences in legal traditions which minimise the explanatory power of cultural explanations.

Iris Marion Young claimed that politics of cultural difference narrows the debates and tends to underplay important axes of inequality such as gender, class, so-called disability, and particularly race and racialisation. The particular problem with politics of cultural difference is that it does not have a conceptual place for racial difference and the racialised social processes (Young 2005, pp. 17–18). If the meaning of culture is taken for granted the issue of race is framed by the issue of culture and toleration, and the debates and politics on racism are collapsed into this.

Phillips additionally questions the “tradition versus modernity” binary and points to the fact that the contemporary co-existing gender inequalities and the practices of discrimination of women (even if they involve arguments about tradition) resonate with modernity and have to be understood as a result of contemporary cultural encounters (i.e. produced by them) and not of the allegedly deeply rooted cultural traditions (Phillips 2001, p. 10). The conceptualisation of culture as something constructed, invented and reinvented, and

thus changeable, is an important repositioning which indicates culture's compatibility with equality. Rights too cannot be simply deducted "from supposedly universal principles" (p. 13): Even if one starts with basic principles such as equality, one should be aware that the policy implementations will differ from case to case and will reflect local circumstances, will thus be "translated" and depend on local knowledge (pp. 13–14).

### 3.2 Personal autonomy vs. belonging to family and community?

Phillips points to several other dilemmas of values like the conflict between personal autonomy and family or community ties. The liberal position defines freedom above all as "freedom from" the tradition while the sense of belonging to a certain community is seen as oppressive (*ibid.*, p. 9). The main question is what conditions and increases the capability for genuine self-determination of the individual women to choose their own ways of living and solutions ("liberal" or "traditional"). The critiques of liberal feminism questioned the notion that the allegedly universal autonomous individual who is detached from family and community is necessarily in a better and more empowered position. Women might (also) find the support in their communities to free themselves from violence, and in neighbourhoods where women take care of each other this may even be their first resource.

Monica Mookherjee (2011) attempts to make a step forward to overcome the often acrimonious debates between feminism and (multi)culturalism. She too criticises liberal conceptions of rights and tries to articulate women's rights "as multicultural claims". Mookherjee builds on the idea of possible women's common interests and not on a homogenised notion of women and argues for an "interest theory of rights" as a basis for agency which could accommodate and mediate between seemingly incompatible sets of rights and also "recognise the special rights of minority cultures as well as those of internal minorities" (*ibid.*, p. 4). In order to counter the universalist liberal feminist claims which see all women as the same, she invokes a notion of gender "as a seriality" created by Iris Marion Young (1995) and standpoint theory to be able to think of women as a group with potentially (but not necessarily) common interests. She underlines their plurality: "Women conceive goals according to their different cultural, religious and economic standpoints, whilst being related to one another in terms of the relation that their actions have to pervasive structures of gender subordination" (Mookherjee 2011, p. 21). On this basis she emphasises the value of the particular as a critical perspective on the universal through which women's interests could be theorised, as it is "likely to be impossible to distinguish the 'gender part' of women (...) from the 'religion', 'class' or 'race' part" which means that "women cannot be abstracted from their cultural particularity" (p. 9).

Mookherjee wants the rights to "be interpreted in the light of actual human being's experiences, emphasising the complexities" (p. 155). In the world of unequal power the understanding of women's rights as multicultural claims could be a "critical corrective to the tendency of liberal feminists to respond to the issues confronting women of different cultural contexts simply by redoubling efforts to apply uniform or similar laws" (p. 156). This kind of communitarian, women's interest based multiculturalism has the underlying belief that no one can liberate others from oppression, and that the state intervention should be cautious. Each person needs to formulate the human capabilities by herself while the state has the duty to provide the framework for such an endeavour, especially through educational system and deliberative political decision making.

## 4 Colonial difference and subalternity

The multiculturalist framework reveals how much the term “minority” represents an open signifier, and that it can be defined in a number of ways for different individuals, according to existing hierarchies. If we focus on those minorities which are in a disadvantaged position on the basis of cultural markers, ethnicity and/or race, or due to the circumstances of their involuntary migration and/or statelessness, then the clarification of the category of minority (women and children) needs to include the broader historically informed understanding of the sources of domination, exploitation and subordination. Of particular interest are those that have crystallised into specific notions of “race”, or “otherness” and shape the contemporary EU and the EU state’s policies: this includes both differential/discriminatory immigration policy and framings for combating discrimination, e.g. “xenophobia” and racism. While the black/white binary and the construct of race in U.S. feminist debates has opened up important insights regarding patterns of discrimination, inequality and exclusion, they cannot serve directly for understanding European circumstances. It is thus necessary to think about broader historical circumstances and theories of racism. The concepts of colonial difference and of the subaltern problematise the European overall project of global colonial conquest and exploitation, with its foundational construct of superior occidental “Europe”, inferior “Orient” or “black Africa” and with corresponding definitions of the “oriental” and other populations. To understand complexities that produce contemporary inequalities and to grasp often invisible, subterranean streams that frame “cultural encounters” the horizon of (post)coloniality, colonial difference and subalternity must be taken into consideration.

### 4.1 Colonial difference

Most contemporary post-colonial studies maintain that colonial history has a more complex meaning and scope in terms of inequality than just immediate influences and consequences of colonisation. In fact, they challenge the traditional historicist gaze, connected with the idea of modernisation, and question the idea of Europe as an origin of the world history and of progress followed by the development of other regions, which have been framed as following the path of modernisation (Barnett 2006, pp. 164–165). As Robert J. C. Young has put it, the post-colonial approach is “united by a common political and moral consensus towards the history and legacy of Western colonialism” in claiming that “the history of European expansion and the occupation of most of the global land [...] between 1492 and 1945 mark a process that was both specific and problematic” (Young 2001, p. 5). While there exist the “continuing cultural and political ramifications of colonialism in both colonising & colonised societies” the influence is much wider, so that “the values of colonialism seeped [...] into the general culture, including academic culture [...]”. Within this framework, postcolonial theory analyses the cultural history of colonialism and its contemporary global effects while “making connections between that past and the politics of present” (p. 6).

Colonial difference is a concept that was coined by the Indian historian Pharta Chatterjee to describe the type of relations between colonised India and the metropole and the subsequent legacies of British colonialism (see Mignolo & Shiwiy 2003, p. 23). Chatterjee (1993, pp. 16ff.) described the colonial state as a “modern regime of power” which does not practice universality but difference and therefore cannot implement democratic principles in India. The main feature of colonial difference is an absolute racial difference, “representing the ‘other’ as inferior and radically different, and hence incorrigibly inferior” (p. 33), which is the basis of the creation of all other divisions. Chatterjee maintains

that the colonial difference significantly extends to the post-colonial times and other spaces: not only in relations between countries or nations, but also within populations of citizens endowed with equal and nonarbitrary rights.

The concept was further elaborated by several authors including Mignolo who applied it on the modern world system (Mignolo 2000, pp. 49–90; see also Mignolo & Schiwy 2003). Walter Mignolo extended Emmanuel Wallerstein's concept of the modern world system to speak about a modern world/colonial system. The invention of "Western" (occidental) culture is seen as a prerequisite of Orientalism (Mignolo 2000), and as an epistemologic perspective that enabled the discursive processes of othering on a global scale. Within this perspective, Western traditions and culture functioned as a model and a vehicle of historic progress while other cultures were considered backward and/or outside of history (see Barnett 2006, p. 166). As a consequence, the mental geographical Eurocentric map emerged classifying regions and populations according to the extent of modernisation/"Westernisation". The colonial (racialised) difference substantially brought about different concepts of which humans are fully entitled to human rights – and thus about different forms of citizenship entitlements both in the colonies and in the metropolises (see Mamdani 1996).

Seen from this perspective, colonial difference is "not a question related only to colonial 'periods', here and there, but (...) to the entire modern/colonial world-system from its inception to its current form of global and transnational coloniality" (Mignolo 2000, p. 17). Most contemporary political power structures in the world are therefore marked by coloniality. This offers a tool to think not only the origin of colonialism, its justification languages etc. but also the discursive practices of creating colonial (racialised) hierarchies in contemporary European countries ("long waves of inequality", see Boatcă 2009).

Mignolo also suggests to renew the notion of "internal colonialism" (Hechter 1975 and 1999) in order to understand "how the coloniality of power and the colonial difference worked in the nation-building process" and to explain that these are not "independent of the colonial system" (Mignolo & Schiwy 2003, p. 23). The notion of internal colonialism can also help explain the inner European race/ethnic relations as a problem of colonial domination (producing the Other through race and ethnicity) on the European continent itself. The handling of Europe's native minorities, their recognition, non-recognition, and their rights, even if not directly derived from the trans-continental colonial difference, can be addressed in this framework as well.

In postcolonial studies, culture has been understood both as a means of domination, and othering, but also as a possible framework of emancipation. While the collective self-definition represented an important step in the anticolonial struggle, a more nuanced elaboration of the strategy of emancipation was introduced after decolonisation: Following Franz Fanon, the next step involved the "de-colonisation of mind", rethinking the modes of colonial reasoning about systems of privilege, normality and superiority which are perpetuating the established hierarchies (Barnett 2006, p. 164). Postcolonial writers have suggested that a mental and epistemological encounter with the whole model of linear historic progress and with the the images of geographically self-contained societies is needed to understand the challenges of the post-colonial world. This requires concentration on cultural and epistemological practices such as language and translation, and on the question of who is speaking/can speak on behalf of whom, i.e. who is representing the so called "Other". The discursive framework of human rights problems is displaced and instead of an unsurmountable "cultural" barrier, difference as a place of mixing and hybrid encounters becomes the place of understanding. Post-colonial theory can therefore "open up questions about the ways in which cross-cultural understanding depends not on the mastery of meaning but on openness to difference, to developing an ear for the other and on relations of translation" (p. 176).

## 4.2 Post-colonial feminism

Post-colonial feminist theory challenged the focus on racism as the primary form of exclusion and the neglect of the patriarchal roots of colonial power in mainstream post-colonial theory. Gender is considered an integral part of the process of construction of colonial difference, representing an important explanatory dimension. Moreover Walter Mignolo & Freya Schiwy speak about translation/transculturation processes which take place within the “overall frame of the colonial difference and the context of the modern/colonial world-system” and are “grounded in an ethnoracial, gendered, and epistemological foundation” (Mignolo & Schiwy 2003, p. 16). They take place as intertwined discursive practices with language as a vehicle of culture playing the most important role. Definitions of colonial difference always employ both race and gender imagery while projecting European binaries of masculinity/femininity and generational differences on colonial divisions. These historically imposed dichotomies, like the framing of colonial land in the time of conquest as the feminine that can be penetrated by the masculine rule, of the indigenous peoples as uncivilised barbarians, representing a threat but simultaneously feminised and seen as irresponsible children, lacking civilised, masculine modernity, were fixed in the course of time. The 19<sup>th</sup> century used gendered metaphors to describe progress, development, and science as originating in Europe (the West) and representing masculine virtues against the allegedly static Other of the rest of the world, lacking particular dynamic and history (Mignolo & Schiwy 2003, p. 10).

Moreover, one of the foci of the feminist postcolonial critique was the undifferentiated and reductionist feminist approach to women from former colonies. Authors such as Chandra Talpade Mohanty (2005/1986) and Gayatri Spivak (2010/1988) critiqued feminist scholarship’s notion of “third world women”, who neither represent a unified subject, nor they can profit from the feminist objectification as unified corpus (Narayan 1997; Kerner 2009, pp. 250–253) While Mochanty situated herself in the epistemological framework of a special kind of feminist “standpoint theory” and post-positivist identity theory, Spivak developed her own version of Marxist-deconstructivist feminism (Kerner 2009, p. 254). Both authors concentrated on poor women in the global South while revising the Eurocentric perspective within feminist theory and in a wider context. This has also inspired both US and European feminist authors to rethink their perspective, giving attention to intersectionality and complex inequalities, involving race/ethnicity, gender, class, age etc.

## 4.3 Subalternity

Gayatri Chakravorty Spivak, both author and inner critic of post-colonial studies, questioned the epistemological basis/bias of the Western intellectual elite in their global human rights advocacy. She developed her concept of the (reinterpreted Gramscian) term “subaltern” (“subaltern classes”, see Gramsci 1999/1971, p. 202ff.) to describe the completely excluded humans. Spivak identified the indigenous populations as those who are the subaltern “subjects” who “cannot speak” in the global postcolonial situation and proposed a particular understanding of the concept: the gendered, female subaltern.

Subalternity is defined as a nexus “where social lines of mobility, being elsewhere, do not permit the formation of a recognisable basis of action” (Spivak 2012a, p. 431). In other words, missing condition for action is the main characteristic of those who are entirely excluded, who “cannot speak” in “such a way as to be heard and acknowledged” (Harindranath 2007, p. 3). This absence is marked by different structural axes of exclusion and discursive and epistemological practices that are not visible to those in privileged position – including different ways of “helping” or representing the other (or speaking for them



from the position of those who know) which can further destroy his/her basis of action. Such axes of exclusion can also be seen as those points of intersection where gender, race, and extreme poverty meet.

Spivak (2002 and 2010) opposed connections of “subaltern” to other forms of domination or marginalisation and defined as subaltern only those humans who are completely outside the (capitalist) system, and do not have any representation whatsoever. While there exist several approaches that consider the postmodern hybrid migrants as today’s possible embodiment of the subaltern (see Dhawan 2007), Spivak too started to identify “subaltern spaces” in the developed North, especially after the collapse of the welfare state. Romani minorities in Europe were thus described as possibly subaltern (see Spivak 2012; Sardelić 2013). Considering Spivak’s own ambivalence in formulations and also the fact that she adopted a Gramscian term which referred to subaltern classes in a broader meaning, it is probably justifiable to use it in the contemporary European context as well. In addition, the suggestion that the subaltern represents the “more practical idea of not having access” (see Dhawan 2007; Spivak 2002), which leans on a more general Gramscian idea of the subaltern, also makes possible to consider the concept in a wider post-colonial context.

In claiming that the subaltern “cannot speak” Spivak addressed relational dimensions of speech and representation in the global context of domination. In these constellations, speaking “for”, on behalf of, and thus representing the subaltern, can be profoundly problematic, as it assumes that the one (the progressive liberal Western advocate of human rights) can adequately represent the subaltern and work for its emancipation.<sup>4</sup>

On this basis Drucilla Cornell concludes that there exists no “representational space in which the gendered subaltern can make itself heard” yet, as a result, “the nothing of the failure of representation itself becomes a form of listening” (Cornell 2010, p. 101). The question is returned to those who are asking it: to those who are speaking on behalf of “the other” and the “rights of others” from the Western perspective and who may carry out an “ethically dangerous representation of those others for whom they seek to do the right thing” (p. 105). In this connection, the term “epistemic violence” is introduced. Speaking on behalf of the subaltern and defending human rights of someone in such a representational framework, might bring about the dangerous categorisations which remain fixed and thus unchallenged: Victims always remain victims, and through “doing them the right thing” they may be additionally victimised and exposed to structural domination. Instead, Cornell underlines Spivak’s proposal for an ethics of responsibility which would – instead of speaking “on behalf” of – emerge in “working with” (and not for) the gendered subaltern (p. 108). Cornell concludes that after Spivak “(...) we can only speak to, and with, the subaltern if we dare the education to which Spivak calls us, and if we do so by the beginning with the difficult work of reenvisioning ourselves as other than those entitled to help” (pp. 112–113).

According to Joe Maggio (2007, p. 420) Spivak draws upon the “limits of the availability of the Western discourse, even post-colonial discourse, to interact with disparate cultures”. The problem is not in the subaltern not speaking but in the listener’s capacity to hear and understand her. Yet in spite of the limits of understanding, one can “translate” the non-Western – if one (the Western citizen) opens up to the ways s/he listens and understands. In such a framework, all actions, not only language, have a “communicative” role. Understanding is therefore about translating not only the language but various actions of one’s cultures – this could facilitate understanding across cultures. The question is “whether we listen to people in all other forms of communication” (p. 437), and not only to their

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<sup>4</sup> Spivak points to the limits of both speech for and (feminist) theory as well, in the sense that “more theory” in Anglo-American academic institutions does not necessarily serve the subaltern to be seen and heard – rather the contrary (see Maggio 2007, p. 420).

“language”. This represents a new challenge in approaching the issue/s of subalternity. Not only are new “languages” to be invented, but the very concept of language to be re-considered. Research, aesthetic and scientific practices should play an important role in finding the ways of listening, understanding and responsiveness, while being aware of the networks of privileges and power.<sup>5</sup>

## 5 Complex inequalities and the challenges of intervention – some highlights

What do the outlined theoretical framings on complex inequalities illuminate when thinking of interventions against violence in the diverse EU contexts? In which ways do they address the emerging challenges in guaranteeing the right to be free from violence?

An intersectional approach to complex inequalities which pays attention to the existing power structures can explain concrete contexts in which individuals find themselves as “captives” of violent situations. Natalie J. Sokoloff & Ida Dupont (2005, p. 39–43) underlined that both intersectional perspectives, including race, class, and gender, *and* the social structural perspective, touching different axes of oppression behind these dimensions (as developed by Patricia Collins), are needed for understanding and confronting intimate partnership violence. An intersectional perspective contributes important insights and lessons both for feminist methodology and for practical approaches to different forms of violence. Such lessons include: Bring minority women into centre and give them voice, encourage activism that places marginalised women at the centre, call for culturally competent intervention, expose stereotypical images of survivors of violence related both to gender and race/ethnicity, provide new comprehensible theoretical frameworks and alternative visions of dealing with VAW (p. 49ff.). “Demarginalizing” (Crenshaw), along with the acknowledgement and visibility of survivor’s victimisation, also means to highlight and support the agency of those affected by violence. Minority survivors are situated in complex contexts along different dimensions in matrixes of power, and as underlined by Patricia Hill Collins, while they are determined by them, these positions can also be the starting point for their agency.

Interpersonal violence by individual perpetrators is only one layer of marginalisation and inequality that women and children might be exposed to. Other layers of disempowerment, control and oppression dwell in the established structural and institutional framework: the lack of institutional support (such as legal information and support, or social service and housing) or additional victimisation through the intrusion, coercive controls, and expectations by state agencies (Sokoloff & Dupont 2005, p. 44). How the right to protection from violence will be pursued when and if violence is reported thus depends to a large extent on how complex contexts of structural power and consequent locations that individuals occupy in relation to them can be balanced for the empowerment of survivors.

Complex inequalities therefore not only increase individual vulnerability to violence, but also create different intersected locations for seeking and receiving help for those who are potential recipients of intervention, in spite of the same right to be protected against violence. These intersections influence not only the way help is given and received, but can also make those whose rights should be protected invisible or place them outside the reach of human rights. This can be the case, for example, with undocumented migrant women or refugees seeking asylum. For minority children, intervention might be delayed

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<sup>5</sup> About listening see Bickford 1996 and Dreher & de Souza 2018. About aesthetic communication see more in detail in the Chapter 14.

or not take place at all if different standards apply to the racialised/culturalised members of minority group who may live in poverty. In the case of trafficking for sexual exploitation, oppressive police methods and a dominant criminal justice approach to trafficking (and prostitution) can prevent the victims from entering the intervention system and thus from receiving protection. Such institutional structures reframe gender equality and human rights as security and immigration issue (cf. Kelly 2013, p. 8; Turner 2013).

An intersectional approach suggests that intervention needs to respect and respond to the way in which different dimensions of inequality are linked in each concrete situation. Those who intervene need to think about how belonging to a minority can be significant for the violence and for the intervention, and also to understand why some women, families and children feel that interventions or non-interventions fail to acknowledge or respect their life realities. One of the most important things is therefore to formulate a notion of intersectionality that remains sensitive to hierarchical power relations. This can also support thinking about how to develop intervention strategies that really protect from violence and at the same time increase agency and self-determination of those who are in need of intervention.

The feminist debates about culture and multiculturalism have brought to the fore a number of issues that tackle the challenges in intervention practice. Violence is a central theme of these debates, as are the invisibility of majority culture and the dangers of culturalisation of minorities. The essentialist notion of culture as unitary and unchanging is questioned, while (structural) differences and inequalities, and other mechanisms of discrimination and inequality production are addressed (including state failure to protect, or culturally marked policy interventions, the question of personal autonomy and community influence on minority member's decisions).

Several dilemmas that are important for interventions are openly addressed in these discussions. Among other issues they tackle the question of which violence or harm (how "grave") will "qualify" for (external, state, NGO) intervention and action. The debates involve the issue of responsibility for protection against violence (the state and its institutions and other actors) and the agency of victims, the necessary conditions for their autonomy and choice. The question is addressed: How informed and independent can the choice be for the survivors of violence of various backgrounds (not only formally defined minorities) and how should such informed choice be supported (Mookherjee 2011)?

The issues that were raised in the feminist encounters with the issue of culture often emerge in both theoretical debates and at a practical level, and they frame interventions against violence, and how these may differ with majority or minority victims. While approaching intervention with women, children or families from a minority, "cultural difference" in terms of stereotypes might influence the focus of professionals' attitudes for a variety of reasons. How the notion of "culture" is dealt with is therefore of crucial importance. Culture can be used as excuse/justification for violence as well as the reason for non-visibility of violations. Problems arising during the intervention process can be explained through the lens of a narrow perception of culture/s. Less informed practitioners might see discriminatory practices as natural and invisible in the framework of "their", namely the minority culture, while majority culture is blurred. The division between the supposed universal/standard (how "we" do things here) and the particular/deviation (how "they" understand violence) might come to the fore and therefore block the confrontation with violence.

The fieldwork with practitioners has shown that culture was often framed as essential difference, although minorities that need or are given special attention in the researched countries in practical work varied considerably. Sometimes culture appeared as the main signifier for defining the threshold above which acts are seen violence or neglect. Typical cases of minority members that are seen as defined by culture across the EU and therefore

challenge the intervention patterns are for example Romani. While professionals might not be aware of differences in approaching a (cultural) majority or minority, and in principle give no consideration to any notion of differentiated citizenship in terms of different laws or different justice for minorities (claiming that the law should be the same for all), perceptions of culture often frame the understanding of how much harm was done, and what the responses should be. The challenges of intervention can thus originate from cultural “othering” of certain minorities (assuming that “they” would not respect “our” laws, that “they” tolerate more violence or think it is normal). It is therefore important to keep the issue of culture visible both as part of factual reality of intervention as well as a source of stereotyping (see also chapter 8).

On the other hand, additional (cultural) knowledge is important in dealing with members of minorities or migrants who are exposed to partnership violence, child abuse and neglect, or trafficking in diverse circumstances. If such knowledge is missing, a culturalising frame to explain barriers or limits to intervention can emerge, especially in intervention cases where professionals do not find a way to understand the victims and their circumstances or to respond appropriately. Broader cultural knowledge might help to reduce stereotypes and one could start to consider some aspects of minority cultures not only as constraint but also as supportive for victim’s agency and ability to overcome violence. Being embedded in a wider family and community network, for example, could be either a barrier or a resource.

Awareness of a plurality of ethnic and cultural backgrounds and the institutions and beliefs by which this plurality framed in particular surrounding do matter for responses to interpersonal violence. Alongside institutional norms and regulations, the discursive representations (representational intersectionality) of minority and majority culture define the threshold of intervention and the procedures as well.

The concept of colonial difference, by taking on board the categories of race, ethnicity, and gender, introduces a critical historico-geographical perspective into thinking about structural sources of domination and oppression of diverse groups, and therefore makes us understand much better how race and gender together enter into essential cultural-racial difference and othering. Colonial difference can apply to countries and minorities that are not directly connected with the colonial rule: “... one may safely consider certain cultures to have been colonised and to have then undergone a process of decolonisation without technically have ever been colonies in the restrictive traditional sense of the term” (Stefanescu 2012, p. 19). Binary oppositions stemming from the colonial power structure therefore turn out to be the part of the inner (discursive) structure of global power regimes and may have nothing in common with “old traditions” or with the direct colonisation or colony status.

While the intersectional approach explains complex inequality by de-essentialising gender and linking this with other inequality dimensions and perspectives, emphasis on gender and understanding the processes of gendering in post-colonial studies represents one of the most important dimensions of “subalterning”: the racialised Other acquires the features of femininity, passivity, irrationality, childishness, being without history and underdeveloped. The intersection of gender, race, and ethnicity creates the specific ideological nexus of colonialism and colonial power, and discursively frames (cultural) discrimination, production of inequalities, and Otherness. Racialisation takes hold of those without visible race in terms of colour as well. Especially the feminist post-colonial approach underlines and incorporates the ongoing processes among ethnicity, race, gender and culture, as the origins of colonial differentiation and understands them as intertwined discursive practices, crucial for understanding the often patronising approach to the so constructed other, who “do not know” what is good for them, which is crucial feature of their re-victimisation.

The subaltern as conceptualised by Spivak and Mignolo relates to some additional challenges in thinking about minorities and how to make visible the existing hierarchies, how to address the question of voice and of speaking on behalf/or representing/ the “Other” which is almost unavoidable in state-driven interventions against gender and generational violence. If the subaltern cannot speak and her notions of autonomy and action are not taken into consideration then additional victimisation and othering take place. This particularly affects those who are, due to their »invisibility« excluded from formal support structures, who are at the margins or at the bottom of hierarchies of society.

## 6 Conclusion

The concepts and debates presented in this chapter address complexity by engaging with inequalities from different angles. Although sometimes contested they are interconnected and complementary, and represent a starting point for thinking of different structural, historical and geographical dimensions of inequalities. Intersectional analyses of violence show that minority or migrant women and children are differently vulnerable to domestic violence and may need different support than the majority members. By integrating the matrix of domination and including the perspective of colonial difference the intersectional approach can disclose the mechanisms of power behind these vulnerabilities and provide insights into deeper structural dimensions of power and agency which need to be addressed if protection and prevention are to succeed. The question of how universal rights, including the right to be free from violence, can be implemented in diverse contexts, which is directly addressed in feminist debates about culture and multiculturalism, is important in variety of contexts where culture (and with it also religion) represents a weighty discursive framework.

Both postcolonial feminism and feminist challenging of (multi)culturalism have dealt with the issue of culture as one of the main categories representing both an explanatory concept and the contested object of critique. Though it can be understood in the broadest sense of practices and discourses which frame human action in a certain community or across communities, culture is most often conceptualised through the definition of the difference itself, which includes a set of assumptions about the other. Today’s diverse Europe is full of contested (majority or minority) claims to recognise or deny the rights of various groups and minorities, and at the same time ideologically divided over the contemporary role of the state, democracy and the protection of rights. At the intersection of anti-gender and anti-equality movements, sexist, nationalist-racist, anti-migrant, neoliberal and anti-gender discourses merge to disrupt equality as a principle, and blame the feminist project for various failures (see Kuhar & Paternotte 2017; Verloo & Paternotte 2018), including the “decline of the West”. In the absence of comprehensive political strategies on how to overcome complex inequalities, as well as in the face of some leftist complaints that the commitment to the rights of “identity” groups, including women, represents a threat to universality, many uncertainties come up as to how to address diverse inequalities. It is thus extremely important to approach the theme of violence and intervention through profound approaches to complex inequalities while pointing to their factual origins, and not leaving them to the ideologies of culture, ethnicity and race. While feminist theories have proposed a number of conceptual and practical ways to tackle the challenges created by diversity, for politics and intervention the challenge remains how to ensure respect for equality and the human right to be protected from violence in conditions where the principle itself is put under threat.

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## Chapter 4

# Foundations in ethical theory to guide intervention against gender-based and intergenerational violence

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### 1 Introduction: Why ethical theory?

This chapter will discuss how ethical theory can serve to clarify and provide guidance to intervention in specific domains of interpersonal violence: those forms of violence which take place within the family and close relationships or in the context of sexual exploitation, and that have a basis in gender or generational relations. These were traditionally considered private matters solely of concern to the persons intimately involved, but in the course of a changing discourse on human rights, they have become the topic of binding conventions and commitments in international law, laying obligations on states and, in consequence, on state agencies and professionals, to take action. This re-framing of human rights issues also led to establishing victims' rights within the duty of the state to intervene.

While public debate over physical child abuse and neglect, domestic violence against women and trafficking of women for sexual exploitation can be traced back to the 19<sup>th</sup> century in Europe, they were framed as a matter of public morals, and did not enter into ethical theory. Neither the structural inequalities of power and voice based on gender, nor the vulnerability of children to harm by those entrusted with their care and upbringing have been significant concerns in the main streams of ethical philosophy or in theories of the just society. But with the re-framing, brought about by strong and sustained social movements to change norms, values, and perceptions of children and of gender relations, highlighting the rights and agency of victims, new approaches have been emerging.

Ethical thinking is needed on multiple levels. States that are party to the relevant conventions have a duty to set up legal and institutional frameworks and ensure structures and resources for their adequate functioning, and in doing so to consider their impact on different and sometimes diverging or even competing rights. Institutions, both agencies of the state and non-governmental organisations, have to balance the legal and policy frameworks set by the state against their understanding of moral obligations towards victims, perpetrators and third parties, and translate the result into procedural standards or other guidance for professionals. Professionals are challenged to act morally in view of wrongful and harmful actions, while being bound to observe regulatory obligations and restrictions on their actions as well as taking account of any professional code of ethics that may apply. And third parties, such as bystanders, are faced with decisions on whether and when to intervene or set intervention in motion.

Although a broad and many-faceted range of theories exists, “textbook ethics” since the 1950s has associated the moral assessment of social institutions with the term “justice”, while the term “ethics” has been applied to the moral assessment of the conduct and character of individual (and sometimes collective) agents. Ethics in this sense has too narrow a scope for guiding intervention against violence, which is located at the intersection of social institutions and individual (especially professional) agents. The state and social institutions are, in this arena of their actions, responsible both for defining when actions in the “private” sphere are morally wrong (to apply the term “violence” carries that meaning) and for ensuring the possibility of “moral repair” that is, “restoring or creating trust and hope in a shared sense of value and responsibility” (Walker 2006, p. 28).

Thus, we follow Selma Sevenhuisen in defining ethics as “the systematic and critical reflection on human action in the light of good and bad, right and wrong.” She proposes to use morality “to refer to the totality of rules, codes, values and norms which are used to justify behaviour by labelling it ‘right’ or ‘wrong’”, while ethics “provides theoretical reflection on dominant values, moral codes and moral convictions. It studies ‘how morality works’ and makes claims about the bases and sources of moral judgement as well as discussing values and concepts which can guide complex judgements” (Sevenhuisen 1998, p. 36).

## 1.1 How ethical theories are relevant to intervention

During its three years of work (2013–2016) the CEINAV project explored the cultural premises underlying different approaches to intervention against violence in four European countries (Germany, Portugal, Slovenia and England and Wales), and sought to illuminate ethical issues in the context of cultural encounters within and between these countries. Parallel to the empirical research (focus group discussions in multi-professional workshops in 2014, interviews with women and with young people who have experienced intervention in 2015; see chapter 2), one theoretical task was to survey the ethical theories as they relate to intervention, and to compile ethical dilemmas that arise in practice. The overall goal of CEINAV was to develop guidance towards respectful and responsible intervention, highlighting dilemmas and challenges to the “moral sense of practice” and proposing transnationally meaningful ethical foundations for intervention.

Despite a broad international consensus on the need to overcome forms of interpersonal violence that are structurally entwined with social relations, the responses in law and policy, in institutions and professional practices are shaped by varying elements of tradition and sociocultural context. Indeed, prior work of the five partners in CEINAV has contributed to the growing body of knowledge about diversity within Europe. The research permitted us to understand in more depth how and why these responses differ. As this understanding progressed, it became clear that it would be unrealistic and unproductive to try and level these differences in some standard model of best practice. It is on the level of ethical principles that transnational guidance can be articulated and made useful.

A key product of CEINAV, the paper describing transnational foundations for ethical practice, thus focuses on the conduct of individual and collective professional actors in the intervention arena (see chapter 16). The present discussion aims to be a companion paper, dealing both with the theoretical underpinning of those ethical principles, and with how social institutions must be constructed or developed in order to make such ethical practice of professionals possible.

A prefatory note is needed. Ethical theory focuses largely on clarifying *what* should be done, either institutionally or by individual or collective actors. The central concern around intervention is better framed by the question: *How* can the “right thing” be done in such a

way as to create greater safety from victimisation, more freedom and agency for those victimised? How can rightly confronting those who have exercised violence, coercion, abuse or neglect effectively prevent them from continuing to cause fear and distress and resorting to further violence? As will be seen, this question is anything but trivial, since institutional frameworks and measures taken by various actors in the hope of “righting wrongs” (Spivak 2002) can prove ineffective or even harmful precisely in this respect. In order to reflect on how intervention can contribute to ending violence, this paper will focus especially on theories that locate ethics in the social context of relationships and interactions.

An ethical theory for intervention does, however, need a theory of (individual) human rights. Citizens’ rights alone will not suffice, since this would imply that women and children who migrate or are brought into the territory of a state would be given different or lesser protection, although they are often more vulnerable by that circumstance alone. With Seyla Benhabib we can say that the norms of justice that have evolved since 1948, and that are codified in international treaties and conventions, are “constituent elements of a global civil society,” in which “individuals are rights-bearing not only in virtue of their citizenship within states, but in the first place by virtue of their humanity” (Benhabib 2011, p. 13). Any claim to justify universal human rights must confront the ambivalence inherent in the European concept of humanity. It is crucial for ethical thinking to understand how the heritage of power and exploitation that situates some parts of the population as less competent, less credible, and less fully human may come into play in intervention.

## 1.2 Postcolonial theory and Western freedoms

While the concepts of individual rights, liberty, and the rule of law were taking shape within early modern Europe, colonial power was being constituted by unbridled violence and the denial of rights. These two sides of modernity were intertwined, and ethical theory must integrate knowledge of the history in which the recognition of humanity was conditional on establishing and maintaining relations of power. It may be that ethical principles derived from human rights cannot be simply impartially applied to all persons who suffer violence, but need to be expanded to take account of the hidden injuries of past colonial power.

Central to the European colonial enterprise was the pursuit of immense wealth through exploitation of the natural resources (for which gold was the symbol) in other continents and through the slave trade, always an even more lucrative trade than any other. This was nothing new; over the centuries, empires in Asia and the Near East had pursued the same aims, but they had made greater use of dominating and exploiting trade (the “Silk Roads”), thus drawing on and giving some space to capacities within local populations, and decisively, they did not develop the technology of warfare as aggressively as did the European powers.

This chapter will not discuss the impact of the exercise of colonial power on the populations and continents that were subjected to it. There are ongoing debates on how this can best be theoretically framed, and the strategies and rationales of subjugating and ruling colonies differed. As a result, there are considerable differences in the extent and the conditions by which members of autochthonic populations from the colonies migrated to the European states that ruled them, and in consequence, in the size and position of ethnic minorities that are descended from such migrant groups. This variation is evidenced very clearly among the four countries in the CEINAV study.

For the purpose of reflecting on the ethics of intervention, it is crucial to reflect on the “European imaginary” that was assumed to justify colonial power and rule in other parts of the world, since this collective imaginary, that lent credence to a European hegemony,

continues to shape immigration policies and responses to the human rights violations that drive waves of refugees toward Europe hoping for some minimal level of rights, liberty and the rule of law. There is debate on whether the present era can properly be called “post-colonial”, or whether colonialism has re-invented itself and entered a new stage. However the present world situation is defined, the question at hand is how the acquisition and exercise of colonial power have shaped the European self-perception and the related ideas of civilization, culture, democracy and social welfare, and what this means for the ethics of intervention when faced with interpersonal violence exercised on foundations of unequal power.

Centuries of struggle for hegemony within Europe, leading to wars that devastated the populations (such as the 30 years’ War in the 17<sup>th</sup> century, the Continental wars with shifting alliances in the 18<sup>th</sup>, and the “great Wars” of the 20<sup>th</sup> century), seem rather to have solidified than destroyed the imagination of Europe as an entity somehow different from and better than the civilisations and the native populations to be found in other continents, with the USA and Canada more or less qualifying as European. While the explicit definition of this “imagined community” refers to shared fundamental values, the implicit definition is ethnic, emerging from its place in the collective subconscious when the hegemony of what is considered a national ethnic identity is threatened. In the examination of ethical theories that have emerged in the course of close scrutiny of dilemmas of intervention, the implications of colonial history (see chapter 3) will be an important criterion.

## 2 Rights, liberty and justice

For all three forms of violence in the CEINAV study, broad and binding international conventions are in place to which all member states of the Council of Europe have agreed<sup>1</sup>. They qualify abuse as a criminal offence and define the rights of individual victims to protection, redress and support as well as the obligations of states to intervene. The theoretical underpinning of these rights and duties is not self-evident, and how it is understood has an effect on what is seen as appropriate intervention. Since individual rights are a key “trigger” to intervention, a discussion of how these are derived is in order. The challenge for a theoretical framework is to define which are the most fundamental underlying norms and values from which the numerous more detailed provisions can be said to follow. Following the profound arguments of Seyla Benhabib and of Axel Honneth, three key principles stand out: 1) the ethical value of freedom in the sense of the autonomy of the individual; 2) the right to be treated with dignity, and 3) “the right to have rights” (Hannah Arendt).

Much ethical theory refers to one of two theories of the just society: the hypothetical social contract (Rawls 1999) or the deliberative theory (Habermas). In the former, laws are just when it can be shown that everyone who will be ruled by them would agree if they had to decide behind a “veil of ignorance”, that is, not knowing in what position they might find themselves. In the deliberative theory, it is assumed that everyone who will be ruled by laws can participate in the debate on what the law should be, in a discourse situation that is free of threats, intimidation or violence. Both approaches derive the legitimacy of

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<sup>1</sup> All have ratified the UN Convention on the Rights of the Child. Council of Europe recommendations and conventions require unanimous agreement by all member states, but the process of signature and ratification, through which the obligations are specified in each member state, takes several years. At the time of this writing (14.12.2018), 33 member states had ratified the Istanbul Convention.

laws from consent. The idea that norms are valid if all affected persons could agree as participants in rational discourse, assuming them to be free agents, neither coerced nor dependent on others, is far removed from the reality of those who are subjected to violence in close and intimate situations; it also excludes children from consideration. While feminists, including Seyla Benhabib (2002) have added the proviso that all who would be affected by the consequences must be *enabled* to participate in a *real* discourse founded on universal respect, egalitarian reciprocity, and (with regard to culture) voluntary self-ascription, the underlying concept of the autonomous individual presenting rational arguments is maintained. More significantly, as Axel Honneth points out, both approaches presuppose the very moral principles that the consented social order of justice is presumed to bring about. Rather than constructing formal principles, “theory must reach out to social reality” (Honneth 2014, p. 65).

Regrettably, in his normative reconstruction of the key values of modernity Axel Honneth does not reflect on the deep entwinement of modernity with coloniality and its construction of a “hierarchy of human beings” – a connection that not only persists in the discourse of human rights, but is returning to undermine the project of freedoms ensured through transnational EU citizenship. As Julia Suárez-Krabbe writes, “In any examination of human rights, acknowledging the colonial origins of modern subjectivity is crucial” (2014, p. 214). As we follow Honneth’s analysis of the socially embedded values of justice and freedom, we must keep in mind that the construct of “human” in human rights was exclusionary in its origins and today only generates rights through the agency of those who claim them – for themselves, for their community, in social movements or as civil society organisations (Zhang 2014).

Honneth argues that all modern concepts of justice rest on “the ability to question social orders and demand proof of their moral legitimacy” (p. 17), implying the freedom of the individual, that is, the power to arrive at one’s own judgements. The crux for theory is then to describe a concept of freedom that can include the social conditions that enable the real exercise of freedom. Neither a merely negative notion of freedom as the absence of restrictions, nor a reflexive freedom based on some idea of self-realisation will achieve this, since both refer to an abstract individual and are thus empty as regards their content and social conditions. Social freedom, understood as the freedom to reach towards and perhaps achieve goals and purposes in reality, is made possible when individuals “participate in social institutions characterized by practices of mutual recognition” (p. 49), because they enable coordination of our pursuit of aims with those of others.

From an analysis of how social institutions in modernity provide a foundation for such practices, Honneth derives three central dimensions of freedom. Legal freedom, as the right of individuals to be safe from infringements, presupposes institutionalised systems of practice with shared norms and expectations and the skills and attitudes required for participation. Legal rights are thus a necessary but not a sufficient condition for social freedom since “individuals can only exercise their legally guaranteed right to privacy if they can rely on the communicative background of a lifeworld that itself has not come about as a result of legal processes” (p. 86). Moral autonomy emerged in modernity as the ability to recognise and self-legislate norms that can be universalised; this has given individuals the freedom to legitimately depart from the ethical norms of their lifeworlds and overstep the bounds of tradition. Its ethical value lies in gaining distance from established practices; to arrive by reasoning at intersubjectively justifiable alternatives has a transformative potential for society. Again, however, this freedom presupposes the socially directed abilities that it is meant to bring forth. Thus, Honneth concludes, it is social freedom that can create new relational systems of action marked by mutually complementary role obligations.

While Honneth pursues the “idea of a democratic ethical life” in a critical reconstruction of major institutions in modern societies<sup>2</sup>, Seyla Benhabib (2011) explores possible justifications for universal *cosmopolitan* human rights, that is, rights that accrue to persons “not as nationals or members of an ethnic group, but as human beings as such” (p. 9). Her argument rests on “equal respect for the other as being capable of communicative freedom” (p. 11). This can be seen as a fourth sphere of relations and actions, but one that is not, as the three institutionalised spheres that Honneth (following Offe) describes, based on the historical emergence of the nation that enabled citizens to develop the foundation of trust and solidarity necessary for democratic processes.

The sphere of communicative freedom as Benhabib presents it, has emerged from the evolution of a global civil society as the crucial source of human rights. Here, too, the social conditions making this freedom possible belong to the substance of what freedom consists of, in that it depends on mutual recognition of the human capacity for socially embedded agency. This constitutes the fundamental “right to have rights”, and it is an enabling condition of the exercise of communicative freedom, and thus of any possible process of justification. Communicative freedom is “freedom to” and not only “freedom from”. It requires the reciprocal recognition of each individual both as the abstract “generalised other” (applying the norms of equality and reciprocity), and as the “concrete other” who has an affective-emotional and bodily constitution, a concrete history and potentially more than one collective identity (here norms of equity and complementarity apply). This recognition is not a given, it involves political and social struggles. “Universalism is an aspiration, a moral goal to strive for; it is not a fact, a description of how the world is” (p. 70). As the basis for the right to be treated with respect and dignity, it forms a bridge between the universal rights and the concrete embedded person whose dignity depends on recognition of their specific lives and social belonging.

In her ethnographic study of how human rights approaches to violence against women are negotiated in the global context of the UN and on the local NGO level, Sally Merry (2006) described the necessity of translating human rights into the vernacular so that international law can be experienced and practiced as local justice. Similarly, Benhabib underlines the interdependence of the context-transcending validity of human rights and the “historically formed, culturally generated and socially shaped codifications of existing juridico-civil communities” (Benhabib 2011, p. 73). Through a process she calls “democratic iterations” the universal can be “resituated and reiterated in concrete contexts”. The concept of communicative freedom, while derived from participation in a free discourse situation, picks up the perspective of the one things are done to, rather than, as in most ethical theory, focusing on the doer. If our communicative freedom cannot be exercised unless others can also make use of theirs, a central dilemma and frustration of many intervention professionals is cast in a new light: How to intervene, if the victim does not accept an offer of help or does not speak?

This may be of use in framing clearer concepts of violence and of justice. Criminal law provides categories such as assault and bodily harm that can be easily applied, with corresponding requirements of complaint, evidence, and testimony. With these, however, the prolonged harm done by violence in close relationships disappears behind the proof and severity of single incidents. Evan Stark (2007) argues, in his in-depth study of the pattern of coercive control and entrapment in abusive relationships, that it has been a mistake to focus policy on physical injuries, and proposes to re-frame battering as a liberty crime. Deprivation of liberty is deeply harmful und debilitating, and physical violence is just one

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<sup>2</sup> It would overextend the scope of this paper to recapitulate his argument; he discusses in what ways the spheres of personal relationships, the market economy, and democratic will-formation have evolved as sites of the reality of freedom, but also as sites of misdevelopments.

means that can be used. We could put this more clearly in philosophical terms by saying that violence is a course of action that prevents someone from using her or his communicative freedom and thereby claiming the status of a human being with basic rights. Intervention, then, in both what is done and how it is done, must create space for and enable communicative freedom.

For both Honneth and Benhabib, “our individual freedom depends on the responsiveness of the spheres of action in which we are involved to our own aims and intentions” (Honneth 2014, p. 60). This concept of freedom intertwined with justice intersects neatly with what Elise Springer (2013) proposes as an “ethics of critical responsiveness” to locate moral agency in the context of the social worlds in which it is exercised.

### 3 Private wrongdoing and public interest: on the nature of the wrongdoing and the duty to prevent harm

Any ethical theory proposing to reflect on the morality of intervention requires a conceptual framing for the problem to be addressed. Exposure to repeated violations over time while at the mercy of an abuser is not an interchangeable example of danger or harm, to which abstract moral rules can be applied, such as the obligation to help in an emergency. For all three forms of violence under discussion, not only is the harm thus done intimate and particularly deep, coercion and entrapment draw on the ties of close social relationships: even when the trafficker is managing a business for profit, the means of coercion frequently concern threats to the family or making return to the former lifeworld socially impossible. In consequence, intervention actors also become involved in the complexities of lives and relationships within which the violence occurs.

Established categories of types or styles of ethical theory prove inadequate to guide intervention. Both deontological or duty-based ethics, formulating general principles defining the obligations of a moral actor (classic source: Immanuel Kant), and “virtue ethics” (see Besser-Jones & Slote 2015) describing the character of a moral agent, focus entirely on the person who should act rightly in situations that have moral relevance. Consequentialist ethical theories, the third main stream in moral philosophy today, do consider the impact of possible actions on those who are their object, but nonetheless privilege universalist accounts, in which moral judgements are based on assessing the overall utility of decisions or actions. While this is a common strategy of policy arguments, for example in the claim that arrest or prosecution of offenders will act as a general deterrent and thus secure the safety of women and children from violence, it avoids examining the impact on the victims of prosecuting a close family member, or more generally, it allows those who are supposed to benefit from the action no say in what is right for them. The situations and alternative actions are typically framed in the abstract and the principles set forth as universal. Assessment of consequences takes place in the mind of the moral actor, not in a conversation with the ones who will bear the consequences one way or the other.

Dominant moral philosophy has presented moral judgement “as the uniform application of law-like, impersonally action-guiding principles to cases relevantly similar from an impartial point of view” (Walker 2007, p. 22). Against this, Walker sets the “transforming insight of feminist ethics” (p. 21) that these theories have not been either impartial or universal, but in fact represented aspects of the actual positions and relations of some people in a certain kind of social order. From the feminist perspective, it becomes possible to see that “reproducing uncritically one’s specific position as the norm is an *exercise* of one’s privilege that at the same time reinforces it” (p. 60). The feminist critique of gender bias



was rapidly broadened and has raised awareness about the necessity of reflecting on diversity of social positions and power more generally. There is now an emerging body of ethical theory grounded in an understanding of human moral life as fundamentally social. Such ethical theories offer guidance for recognising and responding to the situated perspective of real people, “taking account of subjectivity” (Lorraine Code) or of “the lives that people can actually live” (Amartya Sen). These theoretical approaches share a “relational ontology”, as Fiona Robinson argues, asserting the relational nature of human existence, so that morality exists “only in the context of the self in relation with others”. She concludes that a focus on attention, responsiveness and responsibility to the needs of particular others are the substance of morality (Robinson 2011, p. 29).

Margaret Urban Walker (2007) offers a systematic philosophical position, contrasting her “expressive-collaborative model of practices of responsibilities” against the dominant “theoretical-judicial model” in moral philosophy with its project of “codifying a compact core of unsituated, purely moral knowledge”. She argues that morality is fundamentally interpersonal and embedded in social relations, and consists of practices, not theories, more specifically, practices of assigning responsibilities that “implement commonly shared understandings about who gets to do what to whom and who is supposed to do what for whom” (Walker 2007, p. 16). Rather than attempting to universalise, her model “invites detailed and situated descriptions of the expectations and negotiations surrounding assignments of responsibility” (p. 17). She sees moral life as a continuing negotiation among people, as “a socially embodied medium of understanding and adjustment in which people account to one another” (p. 67). With this approach she has written in depth about the ways to address and redress wrongdoing. Her book *Moral Repair* (Walker 2006) focuses on the victim, “the one who has experienced wrongful harms and losses for which human actors bear responsibility”. Repair does not mean that wrongs can be undone, it is about enabling a victim to find or recover ways of relating to others that include confidence in shared standards, trust that others will be responsive to these standards, and hope that the shared sense of value and responsibility can be sustained. While punishment of the wrongdoer, or willingness to make amends, may be a direct form of moral repair within the context in which the violations occurred, in more severe cases of violence it is equally and often primarily the “community of moral judgement” that can hear the victim, call the wrongdoer to account and reiterate the standards that have been contravened, thus making it possible to trust that failures of moral reliability will be acknowledged and corrected. Failure to attempt moral repair amounts to normative abandonment, in itself an additional wrong.

Taking moral repair as the theoretically founded obligation of the community and the society in cases of wrongful harms and interpersonal violence gives us a broader “take” on the concept of justice, one that includes but is not limited to punishment. Justice as moral repair focuses on the victims as those to whom the sanctions or restorative justice measures are directed, as opposed to a concept of justice in which the victim is only a witness of offences that the state intends to sanction. What might be the criteria for moral repair? In an empirical study Judith Herman (2005) asked women who have experienced sexual or domestic violence what justice would mean to them. She found that victims above all seek acknowledgement of the facts of the crime and of the harms done (validation), and vindication, that is, a clear condemnation of the wrongs that can transfer the burden of shame from victim to offender. Most were not primarily interested in punishment, but would prefer exposure of the perpetrator, to deprive him of undeserved honor and status, and also speak of their need for measures that would ensure safety for themselves and for other potential victims. Justice, in their view writes Judith Lewis Herman, “was neither restorative nor retributive in the conventional sense” (2005, p. 597). With sexual and domestic violence it is not the relationship between victim and offender that needs heal-

ing, but that between the victim and her community. A restorative justice model that relies on traditional community standards “cannot be counted on to do justice to victims because public attitudes towards these crimes are conflicted and ambivalent at best” (p. 598).

Voice – being able to tell the truth about what one has endured and to be heard – validation and vindication are described by Margaret Urban Walker as fundamental needs of victims, and they are “not neatly separable; being willing to hear victims is already validating, and sometimes the ability to tell or to have wrong acknowledged by others is vindicating” (Walker 2006, p. 19).

## 4 Self-determination and participation

If the fundamental right to self-determination reflects the principle of freedom and individual autonomy underlying all modern conceptions of justice, participation reflects the embeddedness of agency in social relations and the lifeworld. As we have seen, freedom to live a meaningful life in a reliable framework of shared moral understandings has to be able to rely on responsiveness of social institutions and of the actors encountered within them. If there has been violence, responses must be oriented towards moral repair. Yet both self-determination and participation present the challenge of deciding how they apply under restrictive circumstances, for example with someone who is subjected to unremittent coercion, or whose ability to make decisions and take action is crippled by the direct impact of violence, or whose development, as with a young child, does not yet enable the exercise of autonomy with regard to key decisions. How can ethical theory address the questions that arise when encountering the “concrete other” person whose self-determination is severely limited by violence? What is the practical and concrete meaning of self-determination for a child or an adult who is dependent on carers or family members when there is a situation of abuse, given that dependency gives carers (such as parents) the responsibility for some decisions, who themselves have values, needs and rights?

The duty of the state to protect children from harm has the longer history. A liberal conception of justice could require that all children should equally have the right to grow up in an environment that protects them from harm, meets their developmental needs, and supports their physical and emotional flourishing. Allowing some children to suffer deprivation or harm in their families could be seen as a form of discrimination. Notably, ethical theories of justice have given little or no attention to children, and the UN Convention on the Rights of the Child (CRC) is not framed primarily in terms of inequality and discrimination. While in some areas an unconditional right of every child to self-determination is stated (for example, freedom of thought, conscience and religion), the right to be heard and to participate in decisions is framed in the context of relationships. Its implicit reference is not a liberty right, but points to the child’s affective, cognitive and developmental “entanglement” in relationships. Zoë Clark (2014) analyses the inner tension and perhaps contradictions within the Convention as it wavers between protection of the family and rights of children as actors with autonomy and dignity. While article 12 gives the child who is capable of forming his or her own views the right to express these and have them given due weight, as well as the right to be heard in any administrative or judicial proceedings that affect the child, article 3(1) lays down that in all actions concerning children, the best interests of the child shall be a primary consideration. As Clark points out, the CRC has no clarifying provision on how decisions on what is best for the child should be balanced with the child’s own views. Moreover, in the following article 3(2), the state is obligated to take the rights and duties of the parents or guardians into account, and in

further articles the state protection of the child's wellbeing is explicitly mediated through the family.

Depending on age and circumstances, children are frequently presumed not to have the autonomous power to make choices in key areas of their lives. Christoph Schickhardt (2012) has examined how liberal democracy theory from Locke to Rawls has dealt with (or failed to deal with) children as rights holders, and undertakes to remedy this lack. He argues convincingly that children have a moral status (as rights holders) fully equal to that of adults, with the same normative weight and the same claim to respect and consideration. At the same time, however, from a developmental perspective they have specific needs and interests giving rise to different rights, such as the right to an education that will further the development of their capacity to judge what will serve their present or future welfare. To the extent that children have not yet developed the capacity to make responsible decisions about their best interests (defined as comprising their present and future happiness and their present and future personal autonomy), it can be necessary and justified to intervene against their express wishes. He argues that "best interests of the child" is an evaluative, not a normative category, and cannot be simply transferred into the language of rights.

This opens the question of when it is justified to intervene in the interest of the present or future welfare of a child (or any other person who might be unable to make a competent decision). To use age as the sole criterion would be simply discriminatory. Such interventions require an evaluation of the degree of autonomy and competencies of the child relative to the concrete situation and issue at hand. While Schickhardt is unable to provide the postulated objective, scientifically founded method of assessing this, and cannot offer an overarching normative principle, he develops a set of fifteen context-sensitive maxims for making justifiable decisions (Schickhardt 2012, pp. 204–213). They begin with the avoidance principle: If there are alternatives available, such as information, enlightenment or dialogue to convince the child why an expressed wish is not in his or her best interest, these should be preferred even if they require time and effort. Further maxims propose that, the more serious the measure in question, the more effort should be expended to understand the child's will as fully as possible, and/or to enable him or her to make a relatively autonomous choice; these "rules of thumb" take account of the fact that autonomy is gradual and not all-or-nothing. Such practical maxims are relationship based and take account of the specific personality and situation of the child, suggest active listening and respect, thus meeting many of the criteria of an ethic of care (for empirical elaborations see Eriksson 2012 and Houghton 2006). They reflect a realisation of the limits of a rights framework while preserving the fundamental concept of rights. They may not, however, reflect sufficiently on the fact that, in more critical cases (for example, when there is any question of abuse or neglect in the home, or when the parents have strong values that stand in the way of accepting the direction the child wishes to take), the actual decisions are made by adults, who will be influenced by their own values, norms, and preferences.

While self-determination in the political and economic spheres tends to be limited to adults, communicative freedom is the capacity of "all human beings who are potential or actual speakers of a natural or symbolic language [to say] 'yes' or 'no' to an utterance whose validity claims they can comprehend and according to which they can act" (Benhabib 2011, pp. 67–68). This clearly includes children of all ages, as well as persons with disabilities or those whose agency is restricted by illness or age. Emma Katz (2013) has analysed how much of the debate (and much related policy) on the harm to children exposed to domestic violence constructs children as passive witnesses, while only mothers' actions are examined, thus failing to recognise significant dimensions of agency, autonomy and dignity in how children deal with such situations.

The relationship between self-determination, freedom from violence and participation is complex for adult victims of violence as well. To join self-determination with participation implies a “moral conversation” with the “concrete other” as Seyla Benhabib pointed out. She writes: “It is only in the course of the moral conversation that we can learn those aspects of the otherness of the other which the other wants us to respect and/or to take into account in our deliberations” (Benhabib 1994, p. 180). A deliberative theory of justice, assuming that there are laws and rules that all those to whom they apply would or could agree, is difficult of application in the context of violence. This is the case especially when laws or procedures that lay obligations on the victims without their consent are proposed in the name of combating violence. A central characteristic of the vast majority of those who suffer violence in the intimate context of the family, close relationships, or sexual exploitation is that it prevents them from having a voice in what happens to them. Even more relevant: It is the person who exercises coercive control and abuse who dominates the discursive situation, even when not present. Thus, obligations and interventions that restrict the rights of the victim to self-determination cannot be justified by an assumption of implicit (or anticipated later retroactive) agreement.

Advocacy ethics have been proposed by Micha Brumlik (2004) for the issues around intervention in the lives of others for their own good, if necessary without their consent and even without their knowledge. Brumlik argues that such intervention is justifiable when the individuals concerned are not competent to make responsible decisions about their own lives – either developmentally not yet able, or temporarily unable, or no longer able to do so. Ethical theory thus needs to delineate very clearly when intervention without consent is permissible; according to Brumlik, this is the case when the intervention is needed to maintain a minimum of physical and mental integrity and human dignity.

Holger Ziegler (2014) also sees an unavoidable need to define legitimate paternalism<sup>3</sup> in social work intervention, and not only there (it is, for example, a major topic in medical ethics). The question is not whether it is ever justified to act for the good of another, but what criteria permit such action. Ziegler argues that a paternalist intervention is justified when it is functional here and now (not in some imaginary later time) for the autonomy and freedom of the person at whom it is directed. Such intervention must be centred on the dignity and self-respect of the recipient, not in terms of any normative construct of how their lives ought to be led, but strictly in terms of enabling them to actually pursue the choices that they value. There is a narrow corridor in which such unsolicited help is legitimate: when it is necessary to preserve or restore personal integrity, so as to make it possible for them to exercise their autonomy.

None of these authors defining legitimate paternalist intervention has defined this “narrow corridor” more specifically. Friederike Wapler (2015), in her profound study of the legal foundations of children’s rights and child welfare, has examined the justification and criteria for paternalist intervention more deeply with an approach that is particularly relevant to our research, since she proceeds from a much broader consideration of all persons whose capacity for autonomous decisions in their own interest is in some way limited. There are, as she points out, multiple limitations of this kind, resulting not only from developmental limits in childhood, but also from illness, old age, dependency on carers, or being subjected to coercion, violence or manipulation. While critiquing liberal theories of justice and ethics for their focus on adults and their assumption that nearly all adults are fully capable of rational consideration of their objective interests, Wapler argues that

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<sup>3</sup> There is a widespread tendency, both in social work and in feminist literature, to use the word paternalism as an unquestioned negative value judgement. The term is, of course, patriarchal in origin, but the challenge it poses has to be taken seriously. Within the framework of a fully developed ethic of care, alternative concepts may emerge.

there is no reason why a hypothetical social contract should not take account of limited autonomy – since adults have all been in that situation in childhood and youth and may easily be so in the future. Liberal theory should consider the agency of individuals with limited autonomy, how principles of rational justice should be applied to them, and how the efforts needed to care for others can be justly allocated. With this in mind, she proposes that there is a common philosophical foundation for an ethics of rights and an ethics of care, and finds this in the claim of every human individual to *respect* and *recognition* (p. 342).

From these principles the general priority of self-determination follows, the personal liberty to decide for oneself is grounded in respect for human individuality. Every individual with the capacity for self-determination must know best, or have the freedom to decide, what is in their own interest. For those whose autonomy is limited, this same respect must be shown in another way, since all persons have an equal ethical status, whatever their capabilities may be. Paternalistic actions may be called for, but they always require participation (or transparency) and should always give scope to the wishes of the person concerned whenever possible (ibid, p. 341).

The concept “interests” is central to this theory, understood to comprise all possible matters that individuals or communities might find important or strive for. It reaches from basic needs that support physical survival to values, goals and wishes. Wapler defines the well-being of an individual as a situation in which that person’s interests are attained or are felt to be attainable (ibid, p. 327). Basic personal autonomy, consisting of both the *ability* to comprehend and weigh alternatives and to make considered choices, and the *possibility* to choose, meaning that external conditions of a person’s life allow them to make their own choices, even within constraints, is the determining condition for unconditional respect for self-determination (pp. 346ff.), and gives the individuals full responsibility for their choices; as many counsellors in practice say, their clients are the ones who will have to live with the consequences.

In order to decide when it is justified or ethically necessary to act for someone else’s good without their consent, or to override their express wishes, criteria are needed for the degree of autonomy and the sphere where it is present, that is, the “narrow corridor” mentioned above needs to be spelled out and given practical orientation. Criteria are also needed for what constitutes the “good” or the well-being of the person concerned. Impersonal laws, regulations, guidelines or checklists, some claiming scientific authority, seem to enter this corridor. If indeed individual freedom and self-determination are fundamental to justice in modernity, the moral legitimacy of such tools is at least questionable. They are at best crutches to make difficult decisions feasible.

Wapler responds to the need for clarification by developing minimal criteria for degrees of personal autonomy, emphasising (as is particularly evident with children and youth) that one person will often have different degrees of autonomy in different spheres (ibid, pp. 416ff.). As they grow up, children capture “islands of autonomy” step by step. For autonomy to develop as children mature, they must have the opportunity to take responsibility for decisions and actions of their own, while still supported by a context that protects them from harm. Wapler calls the principle emerging from this “balancing act”, granting and respecting experimentation, “as if” autonomy, or conditional autonomy (pp. 419ff.).

As adults cannot deny their power to make decisions for a child, the self-determination of the adults in families also plays in. There is no way to legislate what is best for children in general, but on the level of ethical principles, there are necessary minimal conditions: basic needs must be met that allow a child to survive, and conditions for the child to unfold her or his potential, such as reliable social bonding, education, and participation in decisions that affect his or her life, are essential to any of the variety of educational ideals that families may pursue. For children of all ages, respect demands that the will of the

child should be taken into consideration when weighing the grounds for a decision; Wapler calls this “consulting the wishes of the child”, or treating the child’s expressed will as advice that must be taken seriously, but not necessarily followed if the reasons against it have greater weight (ibid, pp. 437ff.).

Are these principles helpful in deciding when to intervene with adult women exposed to violence? Considering spheres of action or “islands” of autonomy may be helpful. A woman living in a violent relationship may well be able to make considered decisions about the welfare of her children while being unable to make any reflected decision about whether or how to end an abusive relationship, or unable to carry out such a decision due to the coercion she is under. Trafficked women may have thought long and hard about how to protect and support their families back home, while being quite unable to even think about how to escape the exploitation they are facing every day. As Wapler points out, we cannot assume that the abused woman has agreed to the abuse just because she does not leave the relationship (ibid, p. 377); but neither can she be presumed to have no capacity for autonomy, especially since closer knowledge of women’s stories often reveals a considerable capacity for reflected decisions (see chapters 11, 13 and 14). An analogous dilemma can arise with abused children who cling to abusive parents (Wapler 2015, p. 377). Intervention practitioners dealing with domestic violence and trafficking thus need to consider how they can establish or enlarge small islands of autonomy without diminishing the ones that a woman has managed to maintain. This suggests moving step by step – “moving in slippers”, as the Portuguese say – rather than demanding rapid action focused on the crime and not on the needs of the victim.

There seem to be no ethically well founded alternatives to the “moral conversation” that Seyla Benhabib calls for, and to “communicating moral concern” in a way that enables the hearer to recognise the problem that animates this response and to focus practical attention on it (Springer 2013, p. 82). In situations of violence this may require measures that suspend the immediate power of coercion and entrapment, without undermining that autonomy by forced decisions. “Reaching a hearer’s attention with a concern means pressing one’s agency *just far enough* in the other’s direction to spark her own engagement with moral concerns without overriding the distinct perceptual and perspectival qualities introduced by her own agency” (p. 83). Some of the maxims that Christoph Schickhardt proposes for enabling children to participate in decisions affecting them, for example postponing measures to give the young person time to reflect more thoroughly, could also be useful with adults living under conditions of domination and the threat of more severe harm.

Whenever forms of violence occurring in the relative privacy of family or intimate relationships come into the focus of public attention and concern, sympathy for the victims drives two tendencies forward: there are calls for harsher and more reliable penalisation of the perpetrators, and with regard to the victims, more intervention without consent is proposed as a solution (including penalties for third parties who fail to report a suspicion to authorities). Both tendencies can place professionals under pressure to act quickly and to follow regulations. Neither approach seems likely to contribute to moral repair, either in the sense of giving voice, validation and vindication to the victims, or as a strategy of empowerment towards autonomy based on an understanding of concrete situations and needs in each individual case.

## 5 Responsiveness, uncertainty and difficult decisions

The most elaborated arguments for a good society that recognise interdependence and relational selves are to be found in the literature on the ethics of care, itself multifaceted. While the early literature developing the concept in a normative framework centred on describing what constitutes good caring, when and how there is a moral obligation to provide care, and substantiated its arguments through the experience of women with practices of caring, this framework encountered a range of critiques from within feminism, particularly the charge that it reiterates the dominant gender division of labour. The increasing delegation of care to migrant and minority women also called into question a discussion predominantly from the caring experiences of white middle-class women. In the more recent literature the concept of care ethics has broadened. Rather than idealising care and promoting the values inherent in women's caring, a more sophisticated theory of care ethics now works from the premise that human life is sustained through relations of responsibility and care, and that morality and moral subjects necessarily exist in relationships. The task of ethical theory is thus "a critical moral ethnography" (Robinson 2011, p. 115, referring to Walker), analysing how care and responsibilities are organised in a specific context, taking a "narrative, not a principled approach to moral judgement" (p. 102).

Walker (2007) sees herself as part of a stream of moral theories that have been moving away from the ideal of a "pure core of moral knowledge separable from the particular features of local social lives" and giving "broader consideration to human needs and the demands of shared life with an emphasis on plural values" (p. 20). While the feminist work on the ethics of care was (perhaps uniquely) positioned to make this connection transparent, it was also inclined to generalise about women. For Walker, it is also too narrow a framing, in that there are many other relations of responsibility or responses to vulnerability, and given that women and men can be in diverse positions with regard to giving or receiving care. "In a society traversed by differences of power within gender, and by other differences (especially differences due to race and class) as deep and pervasive as gender" (p. 25) feminist moral theory, she contends, needs to ask what consequences this has for moral understandings, and how these relate to the actual practices and distributions of responsibility in such a society.

Other authors have also sought to broaden the framework. "The ethics of care starts from the recognition that care is a moral practice, a disposition, a daily need, and a way of living. In opposition to individualism and neo-liberalism it acknowledges vulnerability, interconnectedness, dependency, embodiment and finitude as basic characteristics of human life. It develops a set of values and virtues about how to deal with this in a potentially wide range of practices, from child care and care for the elderly, to psychiatry, economy and international relations" (from 2012 interview with Selma Sevenhuijsen: <http://ethicsofcare.org/interviews/selma-sevenhuijsen/>). Elise Springer (2013) notes that care ethics has given little attention to the moral responsibility to respond *critically* to one another. Her theory emphasises critical engagement as the mode in which we can respond appropriately to others who are finite and imperfect like ourselves, but in different ways. It is a practice of holding people responsible and expecting them to hold us responsible. It is a crucial supplement to care ethics in the context of intervention, since intervention often involves stepping into the lives of others, rather than involvement in a close relationship or one of interdependence. Indeed, the victims of violence may not trust those who care about them and offer help, and may not entrust themselves to the care of professional intervention actors. Communicating moral concern about the violence while holding women and (as age-appropriate) young people responsible for their own lives is a difficult balance.

The additional dimension of critical engagement thus introduces a challenge into the ethics of care. In particular, caring on the direct person-to-person level, as a practice of meeting the needs of those who are unable to care for themselves, comprises the power to decide how to understand those needs and how they should be met. Tradition or professional training can direct these decisions, leaving the recipient of care only the choice between forming an adaptive preference<sup>4</sup> (as women and children in oppressive situations learn to do) or not receiving care at all. Taking a critical stance towards assuming responsibility for action, and seeing the victim of violence as equally responsible and capable of assessing the appropriateness of intervention activities, calls into question unilateral decisions on the part of institutions or professionals claiming to protect or help victims or ensure justice. Thus, decisions on whether, when and how to intervene have a moral complexity that regulations and guidelines, seeking to give a clear orientation, tend not to recognise. If care is understood in the broader sense of giving due attention to the consequences and the possible impacts of whatever one is doing, then to proceed with care can describe a way of dealing with the unavoidable uncertainty attending intervention.

Against the charge that an ethic of care can only deal with interpersonal relations, and that it merely switches from idealising masculinity to idealising femininity, a number of authors have given deeper consideration to developing “the recognitions of care” more broadly. From close analysis of care practices Joan Tronto develops a political ethic of care, seen as complementary to and enmeshed with justice, and differentiates the four elements of care as: caring about, taking care of, care-giving, and care-receiving. From these arise the four ethical dimensions of care: attentiveness, responsibility, competence, and responsiveness (Tronto 1993, p. 127). Selma Sevenhuijsen adds to these a fifth ethical dimension of trust: “Trust should in this perspective be conceptualized as (the possibility) of entrusting ourselves to the care of others. It implies that caretakers take goodwill, reliability, transparency and accountability as leading values of their caring practices” (Sevenhuijsen & Švab 2004, p. 37).

If the point of departure of these analyses is still the “face-to-face interaction between carer and cared-for” (Held 2006, p. 32), authors such as Walker and Fiona Robinson are discussing issues of international relations as well, and are increasingly insistent that a critical ethics of care (or, for Walker, an ethics of responsibilities arising “from our contact or relationship with others whose interests are vulnerable to our actions and choices”, 2007, p. 113) must interrogate the structural conditions and relations of power that determine who will do caring and under what conditions. Based on “an image of care that recognizes responsibility and responsiveness to particular others as positive expressions of both masculinity and femininity” (Robinson 2011, p. 81), these authors explore, for example, the global “care chain” in which women from income-poor countries migrate to income-rich countries to provide childcare or housework, leaving behind them people who might need their care. They analyse how the concept of “human security” since its introduction in the UN in 1994, while seeking to redirect the security discourse towards the protection and empowerment of people, failed to comprehend that crucial aspects of human security “cannot be realized in the absence of robust, equitable, well-resourced relations and networks of care” (p. 59). This structural approach, looking not only at who does caring but also at who does not – at how care is raced, classed and gendered and structured by the post-colonial global power inequalities – connects care ethics with examining masculinities, constructions of dominance and entitlement, and violence. Although this implication is rarely mentioned, recognising that care practices can be hierarchical and oppres-

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<sup>4</sup> On the crucial distinction between adaptive preferences and complying with oppression see Walker (2003, pp. 176–177).



sive also opens a door to understanding the construction of subordinate childhood (especially in the Global North) and the multiple forms of violence against children.

Much of the literature on care tends to “valorize the perspective of carers over those being cared for”, as Tom Cockburn (2005) points out in discussing how the ethic of care can be applied in the children’s’ rights context. He argues that this has left little room for the voice of those cared for, or for developing the idea of a caring relationship. He advocates caution in adopting a feminist ethic of care that focuses on needs, since in a needs-based framework it can be the more powerful actors – families, experts and service providers – who define what needs are to be met. As a corrective to this tendency he reminds us that children are not simply recipients of care, but active agents, often caring for younger siblings, sick or disabled or elderly family members, or doing caring in schools or communities. The concept of critical responsiveness can broaden the scope of this caveat: women subjected to domestic violence or sexual exploitation are also active agents, and the perspective of those who would offer them care must be balanced against their own voices.

## 6 Confidentiality, transparency and relationships of trust

Confidentiality is a fundamental privacy right, meaning that explicit permission is required for revealing to third parties information that was disclosed in confidence, or personal information garnered by institutions or agencies in the course of their routines, yet it receives surprisingly little attention in ethics. Discussions of breaching confidentiality tend to take legal provisions or professional ethics as their point of reference, thus suggesting that it is only an ethical issue when legal provisions make confidentiality obligatory. Yet “sharing information” with other agencies or third parties against the will or without the knowledge of the person concerned is clearly a paternalist intervention that may violate, rather than enhancing the autonomy of someone whose agency and self-worth have already been severely compromised by violence.

There are several reasons why information sharing may cause harm. Violence may escalate if the abuser becomes aware that disclosure is occurring, and no agency can predict or reliably prevent this. The victim may feel that s/he is up against a coalition of professionals who are jointly pressing for specific decisions rather than widening the field of possible choices. More fundamentally, however, what we call “information” is a rather fluid mix of observations, impressions, deductions by analogy, and interpretations, that are always influenced by personal sympathies and antipathies, by the past experiences and emotional and cognitive framings of the professionals involved. When persons with a minority or migration background are involved, unrecognised prejudices and widespread media portrayals can aggravate stereotyping. Unless the person who has endured and begun to disclose abuse is actively involved in the process of constructing the “information” and in deciding who shall be told and to what purpose, there is a great risk that the “case” constructed in multi-agency cooperation bears too little resemblance to lived reality.

If the ethical reflections on paternalism described in section 4 are brought to bear on confidentiality, it follows that there is only a “narrow corridor” in which breaching confidentiality without consent can be justified. Unless there is imminent danger for life and limb, information sharing for more effective intervention would thus require creating a relationship of trust in which consent to the proposed involvement of other actors can be given. “Communicating moral concern” as a reason for informing and including third parties in further intervention would at least need to “spark the engagement” and give scope

to the (perhaps just emerging) agency of the victim of violence. Transparency will usually be a necessary condition for such a process.

Trust appears in ethical theories for the most part as generalised trust in social institutions.<sup>5</sup> Annette Baier (1994) concluded, from the inadequacy of abstract theories of justice to meet real dilemmas and the possible limitations of a focus on care and caring, that a comprehensive moral theory could be based on the concept of appropriate trust, which she writes is “oddly neglected in moral theory” (p. 10). Trust differs from reliance in being dependent on good will – reliance can be mistaken, but trust can be betrayed (and can be withheld). It presupposes vulnerability of the one who trusts, and a virtue of being trustworthy in the one who is trusted: The fact of mutual vulnerability in the human situation makes the improvement and maintenance of a climate of trust fundamental.

There has been relatively little take-up of her proposal to place appropriate trust in a central position for ethics, and Baier herself did not elaborate this idea substantially in her later works, although she does provide a definition in a later essay: “trust is the absence of apprehension when in another’s power, confidence that the trusted will not use that power against us” (Baier 2009). In many situations, especially when existential concerns are at stake, trust and apprehension may co-exist for a long time, until – in the fortunate case – trust predominates, while apprehension is in abeyance. Margaret Walker (2006) offers an overarching definition of interpersonal trust: “a kind of reliance on others whom we expect (perhaps only implicitly or unreflectively) to behave as relied upon (e.g. in specified ways, in ways that fulfil an assumed standard, or in ways so as to achieve relied-upon outcomes) and to behave that way in the awareness (if only implicit or unreflective) that they are liable to be held responsible for failing to do so or to make reasonable efforts to do so” (p. 80). Violations of trust by a close person, especially through violence, can shatter not only the relationship but also the whole nexus of the injured person’s beliefs and understandings of herself and the world. Walker’s subsequent discussion focuses on the crucial importance that others who are not themselves the wrongdoers intervene if they can, recognise the wrong and the harm and validate the victim’s entitlement to redress: “Trust is the ground of social relations” (p. 96).

Where Walker’s discussion fails as an orienting frame for intervention is in writing as if the injured person will trustfully turn to relevant third parties and agencies to seek validation and vindication. A German study on what factors enable trafficked women to make a statement to the police describes the importance of being able to trust a counsellor or the police, but “Trust does not emerge automatically when offered. After having been subjected to deception and betrayal, coercion and violence can generate a fundamental distrust and corresponding tendencies towards social isolation” (Helfferich et al. 2010, p. 228).

Walker underlines the importance to societies that serious harms are not ignored and wrongdoers are held responsible, but pays too little attention to the challenge of communicating trustworthiness as well as moral concern, and to the obligation “to promote the autonomy and capabilities of vulnerable persons wherever possible” (Mackenzie et al. 2014, p. 16). Entrapment in a violent relationship, family or situation damages social trust generally, as well as the sense of control; their impact on the victim as a moral agent has ethical implications for *how* a response can “reassert the norms and recognise victims and wrongdoers as such” (Walker 2006, p. 95). As Susan Brison (2002) put it, writing as a philosopher from personal experience as a rape survivor: “In order to recover, a trauma survivor needs to be able to control herself, control her environment (within reasonable limits), and be reconnected with humanity” (p. 60). This vital need to regain control also

<sup>5</sup> A search in Google Scholar revealed that the predominant context in which trust is discussed today is the internet and related issues; trust in connection with confidentiality is primarily a theme of medical and psychotherapeutic ethics and tends to be very legalistic.

makes control of information acutely relevant; in the aftermath of violence, women and young persons are especially sensitive to having their stories or other information passed on to others.

Intervention is thus caught between the obligation of society to provide assurance that the norms are valid and the (initial but often urgent) need of the victim for assurances of confidentiality and for regaining control; these two assurances may not coincide. This is a tension that can only be mediated responsibly by building trust and taking care in communicating what disclosure may be necessary and why. Trust and transparency are interdependent during the process of intervention. At the same time, this tension constitutes a further dimension of uncertainty in intervention, pointing to the crucial importance of institutional structures that ensure the availability of experienced consultants with specialised knowledge in the field, and of being able to work in a team so as to qualify the judgement behind intervention decisions.

## 7 Protection, prosecution, and rebuilding lives

Protection, prosecution, and empowerment are key obligations of the state with regard to violence against women, including both trafficking for sexual exploitation and domestic violence, and violence against children<sup>6</sup>. Feminist and child-centred ethical theories exhibit some variation in navigating the relationship among these three requirements, and the national context seems to have an influence. This is most evident with regard to child abuse and neglect, and extends to domestic violence generally.

In all areas under discussion, violence and coercion are exercised by perpetrators with close personal knowledge of the victim. The woman or the child has been living with abuse and under threat of even greater harm for some time before intervention enters the scene. Unless her or his safety can be assured in a way that, by taking full account of the victim's close knowledge of the resources and methods that the abuser has and responding to the victim's concrete fears, can give the woman or the child confidence in the effectiveness of the safety measures, neither prosecution nor empowerment has good chances of success.

From an ethical viewpoint, however, protection cannot be framed as a means to some end not shared by the victim. While the classic formula of Immanuel Kant – “treat humanity, whether in your own person or in the person of another, never simply as a means but always at the same time as an end” – may not satisfy as a general foundation, an ethical theory that derives human rights from fundamental freedoms will necessarily reject using persons for ends that are not their own. Safety from the violence that is made possible by the very structures of inequality that unjustly limit freedoms cannot be conditional on the usefulness of the measures towards some other purpose. Rightly, then, the Istanbul Convention provides in article 18(4): “The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator”. Ensuring safety is thus a duty regardless of whether prosecution is pursued.

Ethical theories that deal with the aftermath of violence, other differences aside, concur in recognising an imperative to protect those who have suffered violence from further harm. The risk of violence rises after women leave an abusive partner, and many agencies still fail to take this into account. Ravi Thiara (2013) also observes: “While there are many

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<sup>6</sup> Regarding children a binding obligation is only specified by European convention with regard to sexual abuse, but State Parties to the Istanbul Convention are encouraged to apply its provisions to domestic violence overall.

commonalities in women's experiences of post-separation violence, the experiences of black and minority ethnic women (BME), located as they are at the intersection of multiple systems of oppression/ discrimination, can be particularly pronounced", in part because professionals fail to respond to their issues (p. 113). Beyond this, however, both in cases of domestic violence and those of trafficking, the woman who cooperates with prosecution may thereby be in heightened danger (see Helfferich et al. 2010).

The emphasis on penalisation (often called "bringing the perpetrator to justice") derives from the explanatory power given to the concept of impunity. Politically, it is argued that the failure of the state to prosecute and punish perpetrators for acts of violence against women "encourages further violence and reinforces women's subordination" (UN Study 2006, p. 37 and passim), and the concept of "dissuasive sanctions" implies that penalisation works as a deterrent. In ethical theory imposing sanctions also follows from the prime importance of reaffirming norms, postulated as essential to the recovery of victims as well as to social trust more generally. In North America the interest of a victim of domestic violence in justice has often been taken to be synonymous with her wish to see the perpetrator punished (Hagemann-White et al. 2015); that the vast majority of women do not pursue this course is usually explained in terms of psychology and given no ethical relevance. More recently, some US-based feminist theory on the vulnerability of children has justified legal provisions that lay heavy penalties on the primary carer for "failure to protect". Marilyn Friedman (2014), analysing cases in which an abused woman had been prosecuted for the felony crime of "failure to protect" a child from physical abuse by her husband or partner, sets forth highly restrictive conditions under which coercion or fear of severe harm to herself or to the child might excuse, but not justify, inaction. She does not question the heavy penalty (and in consequence, loss of custody), but only the fact that the actual perpetrator of the abuse of the child has typically been given only a low misdemeanor penalty or even acquitted.

For all three forms of violence in the CEINAV project, the priority given to penalisation in some national contexts also expresses the belief in an overriding obligation of the state to punish those who break the law (Buzawa et al. 2017, p. 209). This raises the question of whether the state as such has ethically justified "interests". States doubtless have obligations (by constitution, treaties, conventions, or contracts) but a state is not a moral actor independent of the political community which it represents and to which it is bound. State action draws its legitimacy from the claim to pursue the common interests of (or within) a society. In the concluding chapter of his book, Axel Honneth (2014) emphasises the creative power of the democratic process, but also argues that his historical review "has shown how little the state can influence conditions in the other institutional spheres" (among them the family and personal life), and that advances toward freedom "have usually been the result of struggles that have transformed collective perception and mobilized the corresponding principles of freedom", resulting in changes of behaviour (p. 329). Notably, the more recent ethical discussions in Europe on intervention to protect children rarely give priority to prosecution and punishment of abusers; more attention has been directed to conflicts after separation, for example, when a mother has both the duty to protect the child and a legal obligation to enable the abusive partner regular contact (see for example Stanley & Humphreys 2015).

It is not self-evident (nor empirically well-confirmed) that court-imposed sanctions serve as a deterrent, or a safety measure, or secure the rights of those who have suffered harm. Criminal justice is indeed not designed to protect victims from further harm, and it is rare for domestic violence perpetrators or traffickers to serve a prison sentence. For children who have been physically or emotionally abused or neglected, working with families towards non-violent parenting may better support the child's recovery and development than removal to an institution or to foster care.

Judith Lewis Herman (2005) writes that “for many victims, even a successful legal outcome does not promise much satisfaction because their goals are not congruent with the sanctions that the system imposes. The victim’s vision of justice is nowhere represented in the conventional legal system” (p. 575). The observation that victims of violence by known or close persons are often disappointed with (or avoid) criminal prosecution has been presented as a strong argument in favour of “restorative justice” (often presented as originating from practices of indigenous groups; Strang & Braithwaite 2002<sup>7</sup>). Strong claims are made for a collaborative community-based approach that will empower victims and re-integrate offenders, the goal being to repair the harm done by the offence. This is questionable when the claims imply differential protection and intervention between communities within the same country.

Restorative justice has been introduced in many jurisdictions, and the UN Economic and Social Council adopted “Basic Principles” to guide the use of restorative justice programs in 2002. Yet as Chris Cunneen and Carolyn Hoyle (2010) agree in their debate, in practice this approach has been introduced almost exclusively for dealing with youth offenders and only for “low-end” crime, replacing such measures as reprimands and warnings in the UK, for example. While there is some evidence that victims of more serious offences may be more satisfied with the outcomes after alternative proceedings, there is little clarity about what “justice” in these contexts means. Only a small number of programs have piloted restorative approaches to domestic violence, which require careful attention to the accompanying issues of safety and power inequality.

Cunneen argues that the new enthusiasm for restorative programs does not contradict, but complements the increasing use of harsh punitive measures as part of being “tough on crime”. He sees these twin trends as part of a politics of “responsibilisation” (see also chapter 10). With restorative programs it becomes the responsibility of the local community and even the parents (and not the state) to deal with young and first-time offenders; while those who continue to offend or commit more serious offences are made individually and unconditionally responsible for their offences and punished without regard to the circumstances that may have shaped their actions.

Projects that have sought to address domestic violence with approaches such as “transformative justice” (coming from Quaker-based organisations, see Nocella 2011), or the “Cultural Context model” (a community-based DV intervention model from the US, see Almeida et al. 2005) offer alternatives for victims who would not pursue criminal justice, addressing accountability and peacemaking. Kathy Daly (2002) has discussed the limits of such approaches and argues that restorative justice must be concerned “*first* with vindicating the harms suffered by victims (via retribution and reparation), and then, *second*, with rehabilitating offenders” (p. 84).

Susan Herman (2010) has proposed that justice for victims of crime should be understood as conceptually quite distinct from justice for perpetrators and recognised as an obligation of a just society. She points out that neither the criminal justice process nor restorative justice efforts reach the vast majority of victims whose crime reports never result in arrest. Her concept of parallel justice is based on the premise that, alongside holding offenders accountable for their crimes, “society has a separate obligation to repair the harm experienced by the victim” (p. 55). Regardless of whether an offender is ever identified, prosecuted, or convicted, “all victims are entitled to a separate path to safety and justice, one that does not replace, but runs parallel to, the criminal justice process” (p. 53). Victims need to be safe, they need to recover from the trauma of the crime, and they need to regain a sense of control of their lives (p. 59), and society has an obligation to meet these

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<sup>7</sup> Kathleen Daly has analysed this claim to reviving indigenous practices as a typical ‘origin myth’ (Daly 2002).

needs as soon as the violence has been disclosed. This proposal has a wider scope than criminalisation, since it stipulates that the victim be presumed credible and be granted rights regardless of criminal proceedings.

The leading principle of the parallel justice proposal is that “justice requires helping victims rebuild their lives” (ibid, p. 58). The response to victims that Herman suggest includes the moral assurances that Margaret Urban Walker developed theoretically: *voice* (presumption of credibility, opportunities to talk about their experiences and needs) (see chapter 13); *validation* (being told that what happened was wrong, providing for their safety and preventing further harm), and *vindication* (an individualised, co-ordinated, comprehensive communal response that meets their needs). In an era of austerity regimes, such proposals may be discounted as unrealistic, but the cost of unchecked violence is too high to be ignored.

## 8 Culture(s) and ethnicity

Migration, minorities, and structural exclusion all call into question the models of a just society in which all those affected by a norm or a regulation have a voice in deliberations, or are able to make themselves heard. One response to the increasing presence of ethnic and cultural minorities in Europe has been the call for recognition (put forth as a paradigm by Charles Taylor), understood to characterise the struggles of social groups for social relations and legal frameworks in which they can achieve self-realisation in terms of their own identity. Placing recognition at the centre assigns importance to the demand of social movements for cultural recognition of their collective identity, and to a greater or lesser extent, authors sharing this focus may conclude, with Will Kymlicka (1995), that cultural communities may legitimately claim collective rights even to the exclusion of certain individual human rights. This position rests on a construction of cultures as collective entities within which all individuals are similarly socially located. Any power to self-legislate as a cultural group raises the questions of voluntary membership and democratic legitimation. Crucially, in cases of intimate partner violence or exploitation, the freedom of the individual to reject cultural claims to dominance would be curtailed.

In view of these concerns, Gayatri Spivak’s (2012) “tiny working definition of culture” seems to be the best available concept to work with: “a package of largely unacknowledged assumptions loosely held by a loosely outlined group of people, mapping negotiations between the sacred and the profane, and the relationship between the sexes”. She emphasises that among these assumptions and presuppositions “change is incessant” (pp. 10–11). Iris Marion Young (1990) also suggests using a “relational understanding of difference” based on the concept of “affinity groups”: “Affinity names the manner of sharing assumptions, affective bonding, and networking that recognizably differentiates groups from one another, but not according to some common nature. (...) Group identity is constructed from a flowing process in which individuals identify themselves and others in terms of groups, and thus group identity itself flows and shifts with changes in social process” (p. 172). This open-ended and fluid concept of “affinity groups” can avoid reifying cultures and/or ignoring the internal power structures that may exist within religious or cultural minorities.

When they are perceived as groups with a collective identity, cultural and ethnic minorities can be marginalised by prejudice, or by being denied rights that the larger society recognises generally. Those to whom such an identity is ascribed or who identify themselves accordingly are then vulnerable to particular forms of injustice. Judith Shklar (1990)

has argued that moral philosophy and political theory have given too little attention to injustice, having taken for granted “that injustice is simply the absence of justice, and that once we know what is just, we will know all we need to know” (p. 15). By looking only at justice, theories fail to address issues such as the sense of injustice, or the difficulties of identifying the victims of injustice.

Miranda Fricker (2007) has suggested an approach to analysing injustice that does not depend on a prior identification of group identity or claims. Coming from the study of practices through which knowledge is gained or lost, played out by subjects that stand in relations of (social) power, she develops the concept of “epistemic injustice”. It involves two basic everyday epistemic practices: conveying knowledge to others by telling them, and making sense of our own social experiences. There are two kinds of epistemic injustice: *testimonial* injustice and *hermeneutical* injustice. The former relates to how far what someone tells us is taken seriously or believed, since face-to-face communication rests on the spontaneous attribution of credibility to the speaker. The hearer reacts through an “un-reflected alertness to the many prompts and cues” relating to the speaker’s trustworthiness, comprising the two aspects of assumed sincerity and competence (p. 80). Testimonial injustice occurs when the speaker is given less credibility than would otherwise be the case due to prejudice related to social identity. It is “a kind of injustice in which someone is *wronged specifically in her capacity as a knower*” (p. 20). When it is systematic, that is, the credibility deficit follows a person through different dimensions of social activity, a range of further injustices are likely to ensue; but the primary injustice is being degraded (wrongfully perceived as not trustworthy) *qua* knower and thereby symbolically degraded as not fully human. While testimonial injustice is rooted in social relations of power and group identity attributions, it is committed on a daily basis by individuals, and may be reduced by ethical reflection and moral attentiveness to correct for prejudices, include one’s own (possibly unconscious) stereotypes.

Hermeneutical epistemic injustice exists when social groups are unable to participate fully in those social practices by which collective social meanings are generated (ibid, p. 152). Fricker’s emblematic examples are experiencing sexual harassment at a time when no concept for this existed, or having homosexual desires at a time (or in a place) when only constructions of sickness, perversion and sin are available for construing these feelings. She defines hermeneutic epistemic injustice as “having some significant area of one’s social experience obscured from collective understanding owing to a structural identity prejudice in the collective hermeneutical resources” (p. 155). This marginalisation damages the subject’s faith in his or her own ability to make sense of the world.

This concept intersects with Gayatri Spivak’s (2012) description of subalternity, which for her is “imbricated with the idea of non-recognition of agency.” In this context, Spivak employs the concept of *synecdoche*, a type of metaphor in which a part can stand for the whole. It allows a (conscious) choice to identify with concerns and issues via that part of one’s self that is shared with others who suffer harm, oppression or exclusion, thus enabling collective claims without an encompassing identity. When synecdoche fails, writes Spivak, culture becomes reified<sup>8</sup>, because the collective protests or claims are then framed as properties of a group whose members are defined by common beliefs, values and her-

<sup>8</sup> “Agency presumes collectivity, which is where a group acts by synecdoche: the part that seems to agree is taken to stand for the whole. I put aside the surplus of my subjectivity and synecdochize myself, count myself as the part by which I am metonymically connected to the particular predicament, so that I can claim collectively, engage in action validated by that very collective.” When this does not occur, “difference slides into ‘culture’, often indistinguishable from ‘religion’. And then the institution that provides agency is re-productive heteronormativity (RHN). It is the broadest and oldest global institution.” (Spivak 2012, pp. 436–437).

itage. This conceptual approach to culture has a much broader application than that of the subaltern.

Unlike testimonial injustice, hermeneutical injustice “involves no culprit”, no perpetrator. “The relevant gap in hermeneutical resources has genuinely reduced the communicative intelligibility of the speaker” (Fricker 2007, p. 169), so the issue of culpability does not arise in the same way. Nevertheless, Fricker writes: “the phenomenon should inspire us to ask what sort of hearers we should try to be in a society in which there are likely to be speakers whose attempts to make communicative sense of their experiences are unjustly hindered” (p. 168). The virtue called for involves “a capacity for indefinitely context-sensitive judgement” (p. 171), a “more pro-active and more socially aware kind of listening”, “listening as much to what is not said as to what is said” (p. 171–172).

The concept of epistemic injustice seems potentially useful for framing an inclusive intervention practice that responds to diverse voices. While Spivak, taking a global view of relations of oppression, defines subalternity as the complete exclusion from social mobility or agency (so that immigrants from the Global South living in European cities are not, in her view, subaltern), Fricker offers a view of gradations of exclusion from agency and of silencing, positions that can change over time both individually and collectively. If epistemic injustice is an awkward term for discussions with practitioners, it seems promising for “cultural encounters” within Europe. With this approach barriers to intervention in minority contexts can be better understood. It also suggests that intervention strategies, methods and resources cannot be simply patterned on the experiences of the majority population, but must be constructed and implemented in ways that enable and support ethical responsiveness.

## 9 Closing Remarks

This paper has traced a pathway through ethical theory that can connect individual rights with the relational nature of morality and the social conditions for rights to become reality. The theoretical frameworks that have been (however roughly) woven together in thinking about key themes confronting intervention against violence share an overall perspective in that they undertake to bring individual (cosmopolitan) rights and liberties rooted in freedom into a productive dialogue with “morality as a socially embodied medium of mutual understanding and negotiation between people over their responsibility for things open to human care and response” (Walker 2007, p. 9).

We may return now to Seyla Benhabib’s proposition that the right to have rights, despite being cosmopolitan and founded on humanity itself, can only be fulfilled within the framework of some kind of self-governing polity. For her this is indispensable because the variations in how human rights are understood and put into practice has to be legitimated by a process of “democratic iterations”. Postcolonial theory has shown how coloniality, with its foundations of physical, sexual, cultural and moral violence, its construct of “inferior races” as less than human in the service of exploitation, was and still is the underbelly constituent of modernity and of human rights and democratic freedoms. Today, as many states in formerly colonised regions seem to implode or be dominated by violent regimes and militarised conflicts, and millions of refugees and their children see no other future than surviving in camps, or desperately trying to flee, it seems hardly justified to argue that they will have rights as citizens in some political entity.

Global civil society has established the conviction that the right to have rights cannot be limited to citizens able to life safely in their home country. How, then, can an ethical



theory for intervention draw on human rights and democratic freedoms? Gayatri Spivak (2012) proposes learning to use the European Enlightenment from below (p. 3), and Chenchen Zhang (2014) argues that the existence of written rights is above all a point of departure for struggles and making claims.

The relevance of the international conventions on human rights does not lie in the expectation that they could ensure the realisation of those rights, nor in the possibility that human rights organisations could achieve this task. They are relevant in the sense that citizens of states ruled by illegitimate laws or governments, and undocumented migrants who are denied all rights and legal personhood can invoke them to claim their rights. It is through this very action of demonstrating that ‘they have the rights they have not’ that they are enacting the rights they do not have (p. 254).

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SECTION TWO  
**UNDERSTANDING THE FRAMEWORKS THAT SHAPE INTERVENTION**



## Chapter 5

# Information, Intervention, and Assessment – Frameworks of child physical abuse and neglect interventions in four countries

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### 1 Introduction

The well-being of children is not only the concern of parents and families. The UN Convention on the Rights of the Child (CRC) is clear about the multiple responsibilities of the state. In case of child abuse and neglect the state has a duty to enter the private sphere of family life, if necessary unconsented (article 19 CRC). The international standards are reflected in the legal and institutional frameworks of national child protection systems. At the same time systems are shaped by socio-cultural norms as well as legal-organisational traditions.<sup>1</sup> The four countries in the study, England and Wales, Germany, Portugal, and Slovenia, come from different, if not contrasting, historical provenances of child protection policy. Comparing the systems we presumed to find expected divergences as well as unexpected similarities.

In the field of international comparison the descriptive portrayal and mapping of systems (e.g. European Commission 2010 and 2010a; Nett & Spratt 2012) leads the way towards a characterisation that catches the essential points of the individual systems and traditions (Hämäläinen et al. 2012; Meysen & Kelly 2018). The four countries in the CEINAV study only partly fit in the classic three-fold classification by Gøsta Esping-Andersen (1990), differentiating between ‘liberal’ welfare states (anglo-american), conservative and ‘corporatist’ welfare states (continental Europe), and social democratic welfare states (Nordic countries). These „three worlds“ leave out the countries in Eastern Europe, like Slovenia, which share similarities in the socio-cultural backgrounds but show different transformational processes with their particular evolvments of law and culture over the last three decades. Child protection systems in several Continental European and Nordic countries recently seem to show convergence, distinctions have become rather inconclusive. Moreover, the differences between Southern and Middle European countries, such as Portugal and Germany, are hardly reflected in these clusters. Therefore grouping has become more complex. The classic approaches partly lost their convincibility in respect to selectivity and justification over time.

Nevertheless, the rough three-tier political-geographic cluster still influences international comparison (Gilbert et al. 2011; Skivenes et al. 2015; Burns et al. 2016). It is com-

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<sup>1</sup> This chapter additionally draws on eight country context papers produced in the CEINAV project, a legal-institutional and a socio-cultural country portrait for each country.

plemented by a two-tier differentiation making a distinction between risk oriented and service oriented systems (Gilbert et al, 2011; Gilbert 1997). In combining those two Kenneth Burns et al. (2016) propose to differentiate between investigative and protection oriented systems (mainly in the anglo-american countries) and family support oriented systems, split into the Western countries of continental Europe and the Nordic states. To catch the multi-faceted dimensions of child protection systems matrixes of contrasting characterisations could be applied, enabling also to reflect the degree of their allocation to one or the other. Thomas Meysen & Carol Hagemann-White (2011, pp. 175ff.) suggest to classify the responsibility (family-conservative or child rights oriented) on one tier and the primary orientation (investigative-reactive or support oriented-proactive) on the other. The clustering matrix could evaluate degrees to what extent child protection is primarily seen as a family issue or a shared responsibility of families and the states, and how the systems are taking a reacting and investigative approach towards the prevention of risk and further harm, or are placing proactive provision of child and family support at the foreground. For the comparison of child protection systems Sven Hesse (2013) introduces the children-at-risk model and relates to each other the three dimensions of family policy, culture-specific discourse, and child welfare.

To further characterise the four child protection systems of England and Wales, Germany, Portugal, and Slovenia (see 5 below) the multi-national comparison in the following chapter – only – looks through the lens of legal-organisational structures of three procedural aspects of intervention: information, intervention, and assessment (2 to 4 below). The spotlights concentrate on child physical abuse and neglect. Child sexual abuse was left out in the CEINAV study since often differing legal provisions and organisational procedures apply that lead to additional questions. Emotional/psychological abuse was not included on the assumption that dissimilarities in its acknowledgment might divert attention from the ethical and cultural focus in the study.

## 2 Sharing of information

By the time professionals become aware of information that indicates (potential) harm or risk of harm to a child, the question of freedom, discretion, and obligations to act comes up. The handling of information, by some, is considered one of the utmost important aspects in the legal-organisational structure of child protection systems (Svevo-Cianci et al. 2010; Mathews 2015). It is directly related to a high priority policy goal in child protection, the increase of the number of abused and/or neglected children brought to the attention of the system so that protective measures can be taken. For policy in most countries with a developed legal-organisational framework on the protection of children the increase of notifications or, as other countries phrase it, referrals or reports of any suspicion of child abuse and neglect to the competent authorities is a goal if not priority (Rauschenbach & Kindler 2016).

Both in Portugal and Slovenia mandatory reporting laws are in place. A failure to notify is a misdemeanour that can be penalised. Administrative child protection authorities are obliged to inform and involve the criminal justice system, in Slovenia only if a felony with a minimum sentence of 3 years is at stake (European Commission 2010). The legally binding responsibilities of professionals begin and at the same time end with the referral. While in Slovenia the criminal justice system in many cases seems to take over or at least is influencing and likely to dominate the further proceeding towards investigations whether a crime has been committed, the Portuguese child protection law demands to call

on an interdisciplinary child protection commission with criminal proceedings only taking place in exceptional cases (see 4 below).

In England and Wales mandatory reporting was recently under discussion but the government decided not to implement such a mechanism (HM Government 2018). Rather contradicting the lively debate with its main focus on whether professionals can be held criminally liable for the failure to report, guidelines in England and Wales strongly expect professionals to assist statutory social services and, in this regard, to notify perceptions of a child being (potentially) at risk to the statutory social services to ensure that early indications of a child being at risk of social exclusion receive appropriate attention (HM Department of Health et al. 2000, p. IX). In addition, professionals are expected to actively participate in the process of assessment and service provision (see 4 below).

The child protection system in Germany swims against the mainstream and, up to date, abstains from notification duties (Meysen 2015). However, the law lays down an obligatory protective mandate for persons in contact with children and families whose professions swears them to secrecy (see 3.1 below). If becoming aware of weighty grounds that a child is at risk of harm they have the duty to evaluate their perceptions, preferably in confidential reflection with an expert in the field, and to communicate their concerns with the family members they are professionally in contact with as well as to motivate them to voluntarily take on further services if esteemed necessary. Exceptions are made if the protection was otherwise at stake. Notification is permitted, not obligatory, if necessary to ensure protection (Meysen & Eschelbach 2012). In cases of child physical abuse and neglect the criminal justice system is involved only in extreme cases.

### 3 Intervention: service provision and threshold

#### 3.1 Support services and threshold for their provision

Interventions in the CEINAV project were understood in an overarching concept drawing on its etymology: venire – to go, inter – in-between or inside (Kelly & Meysen 2016). In an understanding of support for children, parents, and families, interventions can be carried out by different stakeholders. Support services can be directly accessible or only after a decision of the competent authorities. They can be roughly clustered in early prevention, early intervention, and placement provision. Thresholds also are manifold, differentiating between when professionals are activated or obliged to offer and provide support and when they are entitled to act without consent up to the most intrusive measure of a child's removal (for the latter see 3.2).

All countries in the study except Slovenia give a priority to early intervention, in Germany backed up by a thorough early prevention programme with universal and targeted services secured by the law and fairly reliably provided by health care and child and youth welfare in all communities nationwide (NZFH 2012; NZFH 2014). Service providers are mainly NGOs, privileged by a so called subsidiarity principle placing them prior to support services by state run agencies. Full financing by the competent local authorities, the youth welfare offices, is legally required. Parents have a claim to early intervention support services that stands up in court if they need help to guarantee parenting sufficient for the promotion of the well-being of their child (Kindler 2012; Kindler & Borrmann 2012).

In England and Wales early prevention like the early help programmes are developing but not comprehensively secured across the country. However, early intervention services play an important role. They have been emphatically introduced and significantly strength-



ened under the umbrella of the Every Child Matters programme (2004 to 2008) (HM Government Green Paper 2003) which was continued by a fragmented set of policy initiatives with establishment of the Early Intervention Foundation and the extension of the Troubled Families Programme (2015 to 2020) (HM Department for Communities and Local Government 2017). In each community a set of services is provided, however, financing is increasingly under pressure in times of austerity. The threshold for service provision varies since the authorities have discretion what services they have available in their community and to what extent they finance services. Parents and children in need are not legally entitled to enforce support if not offered.

In Portugal, services for families while the child lives within the family are established, sophisticated concepts are developed and promoted. But availability is lacking and often restricted to certain cities and regions. Overall, support services are not yet sufficiently differentiated, widely and timely available throughout the country and seem mainly to be provided if a removal of the child is the alternative rather than to intervene at an earlier stage (European Commission 2010; Ferreira 2012).

In Slovenia, the main focus concerning support services lies on foster and residential care. At the discretion of the competent administrative authorities, recommended procedures allow a risk assessment with support for parents as an outcome. Service providers are mainly NGOs but rare, not adequate to all needs, and not established nationwide.

### **3.2 Threshold for unconsented interventions and competent authority**

The legitimacy for unconsented interventions is, as mentioned above (1), the state's duty to protect children from all forms of violence, abuse, neglect, maltreatment or exploitation (article 19(1) CRC). However, the threshold has to take into account the proportionality and weigh the protection with the right of the child to live in her/his family (article 9(1) CRC). The legal systems take different approaches, some regulate one, others a stepped threshold. The focus can be on the child development, the child's current situation, the development of the parenting ability, the current parental behaviour, and/or past parental actions. In addition, the competence to order a removal varies between states, either administrative agencies or courts are appointed with the respective right and duty (Meysen & Hagemann-White 2010).

The law in Slovenia authorises the local Centre for Social Work to remove a child from her/his parents if parents neglected the education and care or if the removal is in the best interests of the child because of other, not specified reasons. Maximum duration for the administrative order is three years. In a stepped threshold, the withdrawal of parental rights can only be issued by the court if parents abused their parental rights, abandoned their child, showed that they will not take care of the child, or seriously neglected their duties in another way. All decisions can be appealed. The Slovenian approach stands out in a comparison between European states since it is the only one which solely concentrates on past parental actions towards the child and does not (additionally) focus on the child's development (European Commission 2010; Meysen & Hagemann-White 2011, p. 19).

In contrast, the German law lays down only a single threshold, not differentiating between the measures such as orders to seek support, prohibitions to contact the child, or the withdrawal of parental rights to enable a removal. The presuppositions for unconsented interventions are two-fold, requiring a child endangerment as well as a lacking parental willingness or ability to avert the danger. Child endangerment is defined as a current danger to an extent that without intervention the development would likely lead to future significant harm for the child. Ordering unconsented interventions in parental rights is reserved to family courts. Only in case of an emergency is the administrative youth welfare

office entitled to place a child without parental consent until a court can file an order (Haug & Höynck 2016).

Child endangerment is, as well, the term at the centre of the Portuguese threshold. The legal definition uses a list of situations, including the child being victim of physical, psychological, and sexual abuse, not receiving the affection and care according to her/his age, or directly or indirectly subjected to behaviour seriously affecting their safety, emotional well-being, health, safety, training, education and development. Protective measures under the law are support to the parents or other family members, appointing a guardian with (provisional) custody, or placement. As in Germany or England and Wales the least intrusive measure shall be taken (European Commission 2010a). If an emergency placement is necessary, the local protection commission in its restricted mode (see 4 below) can call on the police or the prosecutor who are the competent authority to order the removal. The decision must be approved by a judge within 48 hours. All other orders that overrule consent are also reserved to courts. Such decisions are made if parents do not fulfil the promotion and protection agreement or if the child opposes the protection measure, decisions and removals (Ferreira 2012).

In England and Wales, the legal threshold for unconsented intervention is, as in Germany, two-fold. Presuppositions are that the child concerned is suffering, or is likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given to him if the order were not made. The orders differentiate between care and supervision orders. Courts are the competent authority to make such orders. With a care order the local authorities are designated with parental responsibility and have the power to determine a person who has parental responsibility for the child. With a supervision order the supervisor has the duties to advise, assist and befriend the child, and inform the court when the order is not fully complied with or no longer necessary (Broadhurst 2016).

## 4 Assessment

The legal framing of the threshold as well as the availability and accessibility of supportive services are reflected in the orientations and procedures of the assessments.

The sole focus on past parental actions in Slovenia leads to an investigative approach with the aim to find out the truth about a criminal act. In distinction, the assessment in England and Wales, Germany, and Portugal concentrates on individual realities and the need for help of the persons concerned. Professional judgement with a weighing of interests and alternatives is highly valued in Germany and Portugal. In England and Wales professionals are guided by rules and actions of decision-makers are far more narrowed down by procedural prescripts (Munro 2011; Parton & Berridge 2011; Stafford et al. 2012; Barn & Kirton 2015). In the other three countries the decisions of professionals on which measures to take and methods to use are more situationally adaptable, less regulated, and at the same less clear. Especially in Portugal and Slovenia the lack of options and resources sometimes makes the freedom and discretion for professional judgement rather theoretical (Meysen & Kelly 2018). In all countries professionals manoeuvre between the two orientations of preventing the worst and achieving good outcomes, sometimes leaning more to the safe side (England and Wales), sometimes being more risk-friendly (Germany, Portugal) (Meysen & Kelly 2018).

The assessments are conducted with diverging scopes and they involve different professionals. In England and Wales the official assessment framework follows a broad un-

derstanding and contains all phases: initial recognition and referring, gathering information, organising the information available, analysing patterns of harm and protection, predicting the likely outlook for the child, developing a plan of intervention, and identifying outcomes and measures for intervention (HM Department of Health et al. 2000; Ben-tovim et al. 2009; Pizzey et al. 2015). The scope in Germany is similarly holistic but the legal provisions are not as structured (Bundesarbeitsgemeinschaft Landesjugendämter 2015). The Protection Commissions in the restricted mode in Portugal are responsible for planning and providing services, for reaching an agreement with the family members, and for evaluating the outcomes (Ferreira 2012). In Slovenia non-binding professional guidelines for the protection of children from family violence by social work centres include procedures for risk assessment. The procedures follow different paths depending on whether the parents admit the violent behaviour and accept their responsibility for their actions or deny it. Plans for help are not included in the limited understanding of risk assessment.

Multi-disciplinarity is established in the rules for assessment in all four countries. The Protection Commissions in Portugal are divided into two types: the extended and the restricted mode. The extended commissions serve as a forum for discussion and reflection on the problems of childhood and youth in general, are developing actions to promote the rights and prevention of risk situations for children and respective families. The restricted commissions work continuously. Part of the duties of the latter is to assess the child's situation, to initiate a prosecution process, to call for advice and collaboration with other professionals and agencies, and to decide on the implementation, monitoring and review of protective measures. In Slovenia inter-agency teams are regulated in the law and mandatory for more difficult cases. The aim is to exchange information, to develop a joint help plan, and adopt appropriate and coordinated measures. In England and Wales Multi-Agency Safeguarding Hubs (MASH) have been established in most of the local authorities. If the particular threshold to call on MASH is met all professionals in contact with the family share information across stakeholder groups and systems, including the criminal justice system (HM Home Office 2014). The German legal provision on help planning demands including service providers, child and youth psychiatrists/psychotherapists, and labour agencies. A multi-disciplinary assessment of the situation of the child is not regulated but announced by the governing coalition for the legislative period (CDU et al. 2018).

## 5 Conclusions

England and Wales are counted as 'liberal' welfare states, Germany and Portugal as conservative and 'corporatist' welfare states, and Slovenia as a transformational Eastern European state. Looking through the legal-organisational lens Portugal and Germany are probably the most service oriented system, giving priority to getting in contact with the family members and achieving voluntary acceptance of services (Wolff et al. 2011; Wolff et al. 2016). Policies in England and Germany promote a proactive approach towards supporting children and families, austerity measures contradict and shortfalls of public finances cause flaws in practice. Besides, the system in England and Wales pushes towards service orientation but deflects professional guidance by excessively restricting the scope for individual professional judgement as well as placing a strong focus on information sharing and assessing the needs and likelihood of harm. The Slovenian system aims towards service orientation but with its focus only on past actions and not on the development of the child as well as of the parenting it seems to be hanging lost in-between.

All four countries have clear duties to react to indications that a child is at risk or suffering harm. In Slovenia and Portugal the expectation to act seems to be closely related to abuse and neglect while in Germany, England and Wales the threshold asks institutions and professionals to provide services at an earlier stage in which a child is in need or even to prevent the child from being in need. Of the four countries in the CEINAV study Portugal and Slovenia leave the largest unsupported portion of responsibility for the well-being of children with their parents and families. In England/Wales and to an even higher extent in Germany a broad set of early prevention and early intervention services are provided and financed by the state. England and Wales and particularly Slovenia call for investigations, taking a stance on reacting to signs or notifications, in England and Wales giving priority to assessment and the proactive part to offer support. In Germany and Portugal the high value of consent and confidentiality shifts the focus during assessments more towards participation and engagement.

The legal-organisational lens brings into view only an extract of the full picture of child protection systems. Socio-cultural backgrounds are reflected in the law and organisational structures and the latter influence society and culture. Ethics introduce a third lens that plays out differently between national child protection systems and within them, for example between organisations, professions, and stakeholder groups. The CEINAV project and the following chapters bring the three tiers into communication.

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## Chapter 6

# Redress, Rights, and Responsibilities – Institutional Frameworks of Domestic Violence Intervention in Four Countries

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### 1 Introduction

While there is an overall consensus in Europe on the need for a comprehensive approach to domestic violence, different models are emerging. Some focus on criminal prosecution of perpetrators, others construct intervention around protection of victims, and the obligations of professionals are differently framed by legal and institutional provisions. The four countries in the CEINAV project exemplify some of these differences, shaping the pathways by which women facing abuse or threats from an intimate partner may enter and move through (or withdraw from) the intervention system. Between these models with their focus on the victim, the need to develop means and methods that hold perpetrators to account and prevent further violence may fade into the background.

*Redress* implies both public recognition of the wrongs done (vindication) and compensation, which can follow from prosecution and conviction, or may depend on civil court proceedings. With the rise of the consolidated modern state, private use of force to redress wrongs lost legitimacy and was replaced by criminal *justice* and the exclusive right of the state to inflict punishment. Although the justice system is thus crucial for redress, the interest of the state in enforcing laws is independent of, and may differ greatly from claims or needs of the victim of wrongdoing. In all four countries in CEINAV, domestic violence, here to be understood as violence against an intimate partner or ex-partner, has been given the status of a public crime, that is, one which is in the public interest to prosecute. Indeed, this is the case throughout Europe, as Council of Europe member states have eliminated the traditionally explicit exemptions for physical or sexual violence within marriage or the family (Hagemann-White 2014a). This does not mean, in practice, that such violence is in fact prosecuted, and some reasons for this will be discussed below.

All four countries also have legislation and/or policies that reflect the *rights* of victims of such violence to protection and support and to other remedies, and all provide public funding for specialised services, although the extent of funding and the conditions for access to services vary. Providers of these services can be statutory agencies, semi-independent organisations guided by state regulations, or independent non-profit organisations. The status of the providers can be a key factor with regard to whether and when intervention decisions can be made without victim consent. As violence against women both violates and impairs or nullifies their enjoyment of human rights and fundamental freedoms, restoring and respecting these more general rights is also an obligation of intervention;



empowerment (CETS 2011, article 18) can be understood as the process of enabling women to claim and use all their basic rights.

In the CEINAV workshops experienced and concerned professionals in the four countries had very similar understandings of their *responsibilities* to intervene when indications point to domestic violence or help is sought. However, the legal and policy frameworks and concepts of multi-professional cooperation in each country brought differing questions about the right way to intervene to the fore. Council of Europe recommendations (2002) and Convention (2015) state that the needs of the victim and the empowerment of women should be at the centre of all intervention, but these principles can be interpreted in various ways. In particular, there are different understandings of professional responsibility to assess needs and possible danger, and to act accordingly.

## 2 Redress and Justice

### 2.1 Legal and policy definitions of domestic violence

Portugal and Slovenia have specific legislation against domestic and family violence. Mandatory reporting duties in both countries are expected to ensure that cases of domestic violence will enter the criminal justice system. In Portugal, domestic violence is a criminal offense that includes violence not only against women, but also against men, children, and other vulnerable people, in intimate and/or family relations, including violence in dating. Reporting the offence to the authorities allows them to recognise “the status of the victim” by which the injured person gains access to specified rights to information, protection, prompt and effective support and compensation. None of the other three countries has established such a legal status.

In Slovenia the legal concept of “family violence” is similar to that in Portugal but with a stronger emphasis on violence against any member of the family, including relatives. It was introduced in 2008 as a specific offence in the revised Criminal Code, appearing under the general heading of “offences against marriage, the family and children”. In the same year, the Family Violence Act set a framework for coordinated support and protection of victims. Police restraining orders to avert a threat from a person in a close relationship existed since 2003; in 2008 new civil protection orders were added that can be granted on application of the victim to the court. However, the legal definition of family violence also lent the Act a focus on children, with protection measures that do not depend on victim initiative. Any suspicion that a child is exposed to violence will activate the Centre for Social Work, so that families with children are more likely to experience intervention from the state and its agencies than those without children.

In Germany, domestic violence is not a legal concept in criminal or civil law although it may be present in police law or regulations in the federal states (*Länder*). The federal Act on Protection Against Violence refers to “a person who intentionally injures the body, health or liberty of another person”, explicitly excluding children whose protection is dealt with under the family law of the Civil Code and the child and family welfare law of the Social Code. There are no specific criminal offences or aggravating circumstances that refer to a domestic or relationship context between adults, although abuse of a position of trust is an offence<sup>1</sup>. In all national policy documents, “domestic violence” is defined as

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<sup>1</sup> Offences against marriage and the family in the Criminal Code comprise non-payment of child support, violations of duties of care and education of a child, bigamy, and incest, not domestic or sexual violence.

any harmful or penalised act by an intimate partner or former partner, frequently accompanied by a comprehensive list of the types of violence included.

In the UK as well, the law did not expressly criminalise domestic violence until the Serious Crime Act in December of 2015, when a separate offence targeted patterns of coercive or controlling behaviour where they are perpetrated against an intimate partner or family member; other criminal offences continue to be flagged when related to domestic abuse. The cross-government definition of domestic violence used in policy documents is: “any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality”. In this definition it is specified that the abuse can encompass different forms of abuse: psychological, physical, sexual, financial, and emotional. On January 21, 2019, the UK government published a proposed comprehensive “Domestic Violence and Abuse Bill” ([www.gov.uk/government/news/government-publishes-landmark-domestic-abuse-bill](http://www.gov.uk/government/news/government-publishes-landmark-domestic-abuse-bill)).

In all four countries, the criminal law provisions and/or the policy provisions with reference to dealing with domestic violence as a crime are gender neutral, even though the background policy papers – such as justification of a law, national plans to combat domestic violence – have made very specific reference to women as victims. Regardless of whether a dedicated law exists, in all countries there are policy documents and regulations intended to ensure that domestic violence is prosecuted if there is sufficient evidence. Nonetheless, in all four countries prosecution is relatively rare by comparison to the large number of cases that come to the attention of the police.

## 2.2 Prosecution and punishment

In Portugal, when dealing with a public crime (such as domestic violence, homicide, or child maltreatment), a prosecutor does not need the victim’s complaint or consent to begin legal proceedings. However, the victim’s “direct testimony” is a crucial part of the evidence. Even though the law allows the use of “indirect testimony” (videotaped statements) in cases of domestic violence, the requirement that women give evidence in court continues to dominate proceedings and the “indirect testimony” is very rarely applied. Testimony by police or by third parties is made difficult by a legal history of requiring that the witness has seen the offence committed *in flagrante*. Thus, even though legal proceedings may be initiated without the victim’s participation, the likelihood of the process continuing without it is extremely low.

In Slovenia the law also foresees that the criminal offense of family violence, now carrying a penalty of up to five years imprisonment, be prosecuted *ex officio*, which does not give the victims the possibility to decide whether they wish to proceed. However, in practice, often “the victim does not want to make a criminal complaint (or the victim withdraws the criminal complaint later or refuses to testify), or the neighbours (or victims) who reported the matter do not want to testify in court”; when this happens the criminal process cannot continue, because if there is nobody willing to testify “the case is usually abandoned” (Jalušič & Zdravković 2015, p. 8).

Prosecution is a high-profile policy goal in England and Wales, and the Crown Prosecution Service reports rising levels of prosecutions and convictions over the past 8 years (ONS 2017). Specialist Domestic Violence Courts, first introduced in 1999, are based either on clustering or on a fast track model; more severe cases go to the Crown Courts. Core components include victim advocacy by a specialised support worker, trained magistrates, risk assessment protocols and data monitoring. An influential evaluation of four such courts across England and one in Wales concluded that these proceedings enhanced the effective-

ness of criminal justice processes, enabled access to advocacy and improved victim satisfaction (Cook et al. 2004). In the meantime austerity measures have resulted in the merging or closing of some domestic violence courts, meaning they are now not accessible geographically for all women (Towers & Walby 2012).

In Germany, although the criminal offences involved in domestic violence are also considered public interest crimes<sup>2</sup>, “prosecution is rarely independent from the victim but tends to depend on her willingness to testify” (Grafe & Hagemann-White 2015, p. 21). While the strict legality principle calls for ex officio prosecution, analyses of case files find that in as many as 92 % of all police recorded incidents (Oberlies 2005; Greuel et al. 2010), no prosecution was initiated due to insufficient evidence. Luise Greuel et al. found that less than half of the women were willing to make a statement to the police, many then withdrew their complaint; only in one fifth of all police file cases were the women willing to testify in court (p. 121). The most important obstacle, however, is that in German law a witness may refuse to testify against a close family member at any point in the proceedings, and if they do so, any prior statements must be excluded from the evidence. Poor documentation can also weaken the evidence, since spontaneous statements, for example when calling the police, and photographs of damage are admissible evidence, but usually not considered strong enough to convict without oral victim testimony in court.

It is nearly impossible to provide figures for the proportion of incidents of indictable intimate partner violence that are subsequently charged, prosecuted or convicted, and such data as exist are rarely comparable. National statistics on police interventions or on judicial disposal in cases of intimate partner violence are not available for Slovenia and Portugal. In Germany the police publish a detailed national report, but the national reports of the (decentralised) prosecution services do not yield specific information on domestic violence cases. Only England and Wales publish figures for both police and prosecutor action. In all four countries, police statistics end when the case is turned over to the prosecution services, and prosecution statistics, by their nature, do not refer to the same incidents as the annual police data, being based on cases that have been concluded in the relevant year. Thus, even when there are national statistics for both, as in the UK, only research studies tracking cases through the files can reveal outcomes of domestic violence cases, and these are one-off regional studies (see Hester 2005; Mönig 2007; Cummerow 2008; Greuel et al. 2010).

In both England and Wales and Germany regulations require that the police record every (alleged) penalised act in a situation of domestic violence between partners. In England and Wales, police are instructed to arrest the perpetrator. In Germany, they are required to write a criminal complaint that will, after investigation, go to the prosecutor. Thus, for these two countries, we have approximately comparable national statistics for 2016 resp. 2016/17. Notably, the total number of incidents in which police recorded criminal intimate partner violence (IPV) is about four times as high relative to population in England and Wales as the figure from the German police statistics<sup>3</sup>. It is impossible to say whether this difference is due to the readiness in the population to call the police, the response level of the police to calls, the threshold for recording acts as criminal, or an actually higher frequency of domestic violence in England and Wales.

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<sup>2</sup> The Criminal Code stipulates that “minor offences” such as simple assault require a victim’s complaint or are a matter for private prosecution unless there is a special public interest in prosecution. Since 1994 regulations for public prosecutors instruct them to confirm the special public interest “if the victim, due to the relationship to the perpetrator, cannot reasonably be expected to press charges”; public interest should thus be confirmed in cases of domestic violence (Schweikert 2000, p. 191). Note that this relationship is also the basis on which the victim can refuse to testify.

<sup>3</sup> 599.549 recorded domestic violence (DV) offences in England and Wales (ONS 2018, p.12; 138.893 in Germany (BKA 2018).

Police in England and Wales do not refer cases to the Crown Prosecution Service unless they see grounds for charging, while in Germany and Portugal, police must deliver a report on every call they attend or notification they investigate. Both the most recent national police statistics in England and Wales and the somewhat older local studies in Germany tracing cases from police registration of an offence to a perpetrator being charged with criminal violence indicate that the “attrition” process filtering cases out of the criminal justice system is still strongest within police recording and investigation. In England and Wales, of all incidents related to domestic violence, 54 % were not recorded as involving a criminal offence. Of the criminal offences, an arrest was made in less than half of the cases, and less than a quarter were referred to the Crown Prosecution Service with a pre-charging decision. For Germany, Cumberow (2008, p. 99) mentions that in about two thirds of police interventions related to domestic violence no crime was recorded; examples are destroying personal property to intimidate the partner or threats<sup>4</sup>. Of the recorded criminal offences, a large proportion in both countries are filtered out during police investigation, either by not being referred to the CPS (England and Wales: 77 % of recorded offences) or by decision of the prosecutor based on the results of the police investigation (77 % of cases in Mönig 2007, p. 140; 91.8 % of cases in Greuel et al. 2010, p. 195). In both countries, the reluctance of the victim to press charges is cited as the major factor leading to cases being dismissed (CPS 2017). As a result, the cases actually adjudicated and those ending with a conviction tend to be about 12 % to 16 % of the cases recognised by police as crimes in both countries, and as Cumberow (2008) shows, the great majority of convictions are fines handed out without a hearing. Extremely few (single digit numbers) perpetrators of violence against a current or former intimate partner go to prison.

We do not have similar data for Slovenia and Portugal, but it seems that the established procedural frameworks in different legal systems have a greater influence on the probability of punishment than does the existence of a specific law<sup>5</sup>. Germany and Portugal share the principle of strict orality; thus, while a prosecutor does not need the victim’s complaint or consent to move forward, the victim’s testimony in court is a crucial part of the evidence. In the UK and in Slovenia, courts can make more use of other evidence (for example, hearsay and reports by third parties), yet in Slovenia, without victim or other witness testimony there is usually no prosecution. For the UK, “victimless prosecution” can be pursued without a statement by the victim; common law traditions for the admissibility of evidence seem to facilitate this, as does the existence of such common law offences as “breach of the peace”, for which the other three countries have no equivalent. Yet the absence of custodial sentences also means that even prosecution with a conviction offers no protection to the victim.

It can be argued that the UK follows an increasingly stringent policy focused on justice in the interest of public safety, while in Germany, the understanding of prosecution as redress has significant influence. This is shown in the requirement of a case-by-case decision on public interest for the prosecution of simple assault, threats and insults, and in the provision in the prosecution guidelines that public interest can be negated and the case dropped if the victim has no interest in seeing the offence prosecuted. It is expressed in a more positive way by granting the victim the legal right to be a party to the criminal proceedings as auxiliary prosecutor with a legal representative, the cost of which can be covered by free legal aid. Slovenia and Portugal could be seen as mixed regimes combining some predominance of criminal justice with elements of allowing or expecting victims to decide.

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<sup>4</sup> Threats are a crime if the act threatened is itself a crime; general threats of abuse or of actions that would cause distress may not meet that criterion.

<sup>5</sup> For a comparison of Germany and Scotland in this respect see Wutz 2011.

### 2.3 Policing and reporting in the interest of public safety

Criminal investigation is time consuming and uncertain in its outcomes, allowing abusers considerable scope to intimidate, retaliate, or manipulate the potential complainant or witness. Thus there has been a growing trend towards measures by state authorities short of prosecution to stop perpetrators from further violence and ensure safety. These include police action to create a physical distance between the abuser and the victim, as well as requirements and procedures of reporting suspected domestic violence to authorities, who can then take action. These are measures that address the perpetrator or suspect directly and do not ask the consent or approval of the victim.

Neither arrest without a warrant nor fast track court proceedings are considered compatible with the German justice system. The power to arrest is strictly limited, the two main justifications – ascertaining the identity of a suspected criminal and ensuring that the suspect has a known address – usually do not apply in domestic violence cases; and police custody is only permitted for a few hours unless there is a serious criminal charge and pre-trial confinement is justified. The Austrian model of police barring orders provided an alternative. In the wake of the German Protection Against Violence Act, police laws in the 16 *Länder* were adapted to enable police to require a person posing a danger to leave a residence shared with the threatened person for a limited period, with no requirement that a criminal offence be proven. While this was justified as giving the victim a breathing space to consider her options and make her own decisions, the police ban itself is directed at the perpetrator; no request or approval by the victim is required, nor can she prevent the ban being imposed. This has become the standard front line intervention for police across the country, and while the checklists for responding to calls require noting any criminal offences that may have occurred, a tendency has been observed for immediate protection to substitute for criminal investigation and systematic gathering of evidence.

Civil protection or restraining orders to stop violence by a partner or ex-partner were instituted in the UK in the 1970s, and civil law injunctions were then also available in Germany, but they failed to ensure safety (for US data see Buzawa & Buzawa 1996). The UK responded with progressively expanded police arrest powers, now seen as part of the duty to act in response to domestic abuse. The arrest does not necessarily mean charging the person with a crime, but is used explicitly to prevent crime and as a deterrent; police in England and Wales are thus advised that if they cannot charge the person, they can set bail conditions that will keep the victim safe. Additionally, in 2010, the Crime and Security Act laid the foundation for police barring orders as in Austria and Germany; after a pilot phase implementation was extended across England and Wales in 2014. Police can now issue a 48-hour “Domestic violence protection notice”, an immediate non-molestation order requiring the perpetrator to leave the residence. Within the 48 hours police can then apply to the Magistrates’ Court for a domestic violence protection order lasting up to 28 days. Information for police emphasises that the intervention of choice is arrest and bringing the perpetrator to court.

In Slovenia, the Criminal Code of 2008 obliges all public officials to report to the police any crime carrying a penalty of at least three years of imprisonment. For all levels of violence, since 2003 police have been empowered to issue a barring (or restraining) order to avert a threat from a person in a close relationship; it is limited to 48 hours, and each must be examined by an investigative judge, who can extend it to ten days. However, the Slovenian police ban has a focus on evidence of an offence already committed, while the bans in Germany and England and Wales have a future orientation to prevent a (further) crime from being committed. The focus on danger explicitly aims to give the victim space for uncoerced decisions. The involvement of the investigative judge in Slovenia may mean that criminal prosecution is automatically considered. The barring order can also be re-

quested by the Centre for Social Work (CSW) on behalf of the victim. A second level of reporting duty is based on the rules for cooperation and information-sharing; the 2008 Family Violence Act obligates all bodies and NGOs to inform the responsible social work centre within 24 hours of detecting family violence “for all violent acts done on persons younger than 18 years, and for persons older than 18 years in cases of a criminal act which carries a sentence over 3 years of imprisonment and is prosecuted *ex officio*” (Jalušič & Zdravković 2015, p. 3); there is an exception to this duty if the victim explicitly objects, but not if a child is concerned. The CSW will usually involve the criminal justice system. Knowledge of the two-level reporting duty tends to dominate procedures, leaving little space for women to decide for themselves what path to take.

Thus, in the UK, Slovenia and Germany, the police are responsible for immediate protective measures to assure the victim’s safety if necessary. In Portugal, however, no measure removing the perpetrator from the home exists, and protection measures can only be issued by a prosecutor; they presuppose that a crime has been reported, and perhaps investigated (so that issuing a protection order may take several months). The categorisation as a “public crime” means that every citizen is obliged to report a domestic violence situation regardless of the victim’s wishes. In this context, the concepts of “public crime” and “obligation to report” are interdependent: one implies the other. Many professionals of the health and social sectors in Portugal view this as a problem because reporting can increase the level of danger that the victim already faces. Hence, reporting constitutes a dilemma for these professionals who on the one hand have to abide by the law and simultaneously have the duty to empower, protect, and respect the victims’ wishes. Furthermore, the law on the crime of marital abuse has changed four times since 1982, its status changing back and forth between a public crime, a private complaint, and a semi-private offence. This has left a residue of uncertainty for intervention practice. As a result, in many domestic violence situations, it takes much longer for safety and protection measures to be implemented than in the other three countries.

### 3 Rights: protection and empowerment through civil and social welfare law

There are numerous international and national instruments defining the rights of victims of crime. Most of these presuppose that the crime has been reported to competent authorities and recognised as such. Domestic violence presents a challenge to this framework, since protection and support may be necessary to enable the victim to report the violence without incurring heightened danger. Furthermore, due to the close relationship with the perpetrator many victims choose not to cooperate with prosecution.

Rights are legitimate claims that should be met by corresponding obligations. The Istanbul Convention defines the obligations of states “to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere” (article 4). Policies should “place the rights of the victim at the centre of all measures” (article 7), and article 18 states that “the provision of services shall not depend on the victim’s willingness to press charges or testify against any perpetrator”. According to the EU Directive 2012/29 on the rights, support and protection of victims of crime (DG Justice 2013), women who have suffered any physical, sexual, psychological violence within the family or the domestic unit or by a former or current partner have the right to protection and support and to civil remedies, even when no criminal proceedings are underway and irrespective of whether it has been reported.

In all four countries there are two main intervention pathways: 1) a sequence that starts with a contact with the police/criminal justice system and 2) an intervention sequence initiated by a contact with NGO, or with social or health services. In the latter case, the social/health services may gain knowledge by noticing indications of domestic violence or through disclosure by a victim seeking help. In addition, schools and other institutions caring for children may see or hear signs of domestic violence and ask child protection services, a school social worker or psychologist to assess the situation.

Along each pathway, institutional arrangements, regulations and guidelines shape the role of intervention actors in strengthening the rights of women facing domestic violence.

### 3.1 Provision: specialised support

In all four countries, help is available for women to leave an abuser with her children. If the level of danger seems high at an emergency call, police can bring the woman to a refuge (shelter), and social or health services may help her find a place of safety, but the conditions for access differ, as does the level of provision. Based on government reports in 2013 to the Council of Europe on the number of shelter beds available, the monitoring report calculated provision relative to 10.000 population at 1.88 for Slovenia, 1.42 for the UK, 0.83 for Germany and 0.62 for Portugal (Hagemann-White 2014b, p. 26)<sup>6</sup>.

In both Germany and the UK there is a long tradition of independent women's advocacy services (refuges, outreach counselling, women's counselling and advice centres) that support women's right to decide when and how to leave and what measures to invoke to achieve safety. There are over 500 refuges in England and Wales, although there have been closures due to funding cuts. Refuges are partially funded through housing benefits as a social welfare payment. With a different and more diversified funding structure, there are over 390 refuges in Germany (Helfferich et al. 2012) to which women have direct access. In both countries, a free national helpline will help women find a place in a refuge, usually on the same day that she calls (in England and Wales it is a DV helpline, in Germany a helpline for all forms of violence against women). Typical for the framing of refuge accommodation is the information given in *The Women's Aid Survivor's Handbook* (2015; [www.womensaid.org.uk/the-survivors-handbook/](http://www.womensaid.org.uk/the-survivors-handbook/)): "Any woman who needs to escape from domestic violence or abuse can go into a refuge at any time. It does not matter whether or not you are married to or living with your abuser, or whether or not you have children."

In Slovenia as well, a woman can seek out a refuge run by an NGO without entering the criminal justice pathway, and an NGO can preserve confidentiality if requested. However, state-run shelters and safe houses are now the great majority, and they work closely with the police. The Social Security Act 2011 established social work centres (62 in Slovenia) as public social care institutions providing services and assistance for families. They maintain 14 crisis centres for victims needing immediate safe accommodation. While the NGO services are actively supported by the state through (long-term) financing schemes, they are not present country-wide, and thus victims seeking help are more likely to make their first contact with the Centre for Social Work.

In Portugal, the network of refuges and women's centres throughout the country is funded and regulated by the state through "cooperation agreements". There are 35 shelters<sup>7</sup>

<sup>6</sup> No separate figures were reported for England and Wales. The 2015 population figures for the four countries in the CEINAV study were 82m Germany, 60m England and Wales, 10m Portugal, 2m Slovenia.

<sup>7</sup> According to Portuguese regulations, "shelter" is a residential unit for six months and the law defines the rules of its uses. One of the rules is that the shelter should have a multidisciplinary technical team.

and 72 women's centres, run by diverse institutions, ranging from governmental agencies (CIG – Citizenship and Gender Equality Mechanism) and social solidarity institutions (IPSS<sup>8</sup>) (78 %) to non-government organisations (NGOs) (4.8 %) (Magalhães et al. 2012a). Except for a few NGO-run refuges, domestic violence victims need a referral by a certified domestic violence service. Hence, in Portugal, active help-seeking by the victims is less in focus than in the other countries. This may be due to different philosophies regarding the victims. Whereas in Portugal victims may be more readily seen as helpless and unable to make their own decisions, in other countries, women are more often regarded as capable agents in their own lives.

### 3.2 Legal rights and civil law remedies

In all countries except in Portugal, there are significant civil law measures that are available for women to take action on their own initiative. Thus, women in England and Wales, Germany, and Slovenia have the option to apply for court protection orders without proof for criminal proceedings, although they are expected to present some evidence that they are in danger of harm. The court can issue an order *ex parte*, that is without hearing the other party first, based on the balance of probabilities. The philosophy behind this is that the law serves not only to punish crimes but also to prevent them from recurring.

In Germany the Protection Against Violence Act included specific provisions for civil protection orders that can offer longer term protection, and these are issued by the family courts that have no jurisdiction in criminal matters. While violation of a court protection order is a criminal offence, it is rarely prosecuted in practice. However, there is no general legal provision to penalise the breach of a police ban, and enforcement practices seem to be uneven. When the police are called to a domestic violence situation they are required or expected to report their intervention to a specialised NGO competent to give advice as needed<sup>9</sup>. All professional counselling relationships are bound by a strict legal confidentiality duty, so that these NGOs will offer the victim information and support if she wishes, but have no power to intervene without her consent.

Civil law options for protection orders have also existed for decades in the UK. In both the UK and Germany, emergency protection orders and injunctions can be obtained on the same day *ex parte*. However, such orders are significantly more costly in England and Wales, and increasingly legal aid is more difficult to obtain, especially for women in employment. Once in place, there are more possibilities for enforcement with the common law tradition of penalising contempt of court and of “breach of the peace”, as well as the broader police arrest powers.

In Portugal, civil law measures are non-existent; for protection women have to enter the criminal justice pathway and provide evidence that a crime has occurred. Hence, the protective measures are always issued by a prosecutor based on the current evidence of a crime, which makes immediate protection unlikely.

In Germany, victims of assault, stalking, violations of protection orders, or sexual violence have the right to be represented by a lawyer as auxiliary prosecutor in criminal proceedings. Since victims of domestic violence are rarely in a strong economic position, the cost will usually be covered by legal aid. More generally, anyone called to testify has the right to a lawyer to advise them during their testimony.

Slovenian law allows a victim support organisation to accompany the victim during criminal proceedings; however, this is not an established right, as it is in Germany, but is

<sup>8</sup> These are semi-independent non-specialist social welfare institutions.

<sup>9</sup> This is regulated in the 16 Länder differently, the majority require the victim's explicit consent.



decided by the court in each case. Victim support in England and Wales can sit with the woman in the waiting room, but not support her in the courtroom. The victim has no legal standing beyond that of witness for the prosecution. However, various measures can be requested to protect her from direct confrontation with the perpetrator (such as separate entrances from the perpetrator, testimony by video or behind a screen, and other provisions). In addition, she can make a “Victim Personal Statement” on how the violence affected her life, and this will be considered in sentencing. The court can also issue a restraining order when passing sentence prohibiting contact, for example, as a tool for increasing the safety of the victim.

Concerning compensation for the harm done, all four countries have provisions for requiring the perpetrator to pay, as far as he is able, and some provisions exist for state funds when the perpetrator cannot pay an appropriate amount. Access to services facilitating victims’ recovery from violence, as called for in article 20 of the Istanbul Convention, tend not to be specifically provided for in all four countries. Very often, such services that would underpin empowerment (the Convention lists legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment, as well as specifically trained health care) tend to be accessible on the same basis as for the general population, and may be means-tested and based on entitlement. Some of these services may be included in the specialised support for women victims of violence.

There are some institutions that set up special units to support women victims of violence, but this is not generally the case. When there are institutional pathways, such as with the housing authority in England and Wales, written applications or referrals may be required. Domestic violence intervention discourses across the countries, especially in England and Wales and Slovenia, seem to rely more and more on the assessment of risk. In England and Wales risk assessment is formalised. In Slovenia the professionals’ guidelines to intervene in domestic violence situations include a risk assessment in each individual case, and there is a set of procedures that are dependent on this assessment. However, in the workshops with professionals risk assessment in a formal sense was not mentioned. In Germany, risk assessment is not formalised to a standard, more reliance is placed on the professional’s judgement and the subjective perspective of the woman; this seems to be the case in Portugal as well. Little use is made of written referrals, support workers from shelters and counselling centres are more likely to accompany women to the general agencies where they can claim their rights to the services named in article 20 of the Convention.

## 4 Responsibilities of professionals

The idea that general agencies and professionals have a responsibility to respond effectively and knowledgeably to indications of domestic violence, and particularly to help-seeking, emerged at different stages in the sequence of events in each country. In the UK and Germany, social movement politics of awareness-raising and support for women escaping men’s violence were at the centre for at least a decade from the 1970s on. With the gradual establishment of refuges, specialised women’s advocacy organisations began offering training for general agencies, such as social services or the police, and this led to establishing standards for general support and intervention agencies. In Slovenia as well, NGO initiatives (opening a hotline in 1989, and a women’s counselling service in 1993) brought the issue into the public eye, but the demand for better professional responses was almost simultaneous, although legislation was not obtained until 2003. In Portugal, the rather frag-

ile women's movement was not able to establish NGO-run shelters until 2001, when the government published a national action plan, and the 2009 Law on Domestic Violence set the framework for specialised support services. Thus, the relationship between NGO activism prioritising empowerment of women and state policy and legislation defining provision of services and standards of professional practice differs.

When the "inter-agency approach" emerged in the 1980s, a key focus was on changing the uncoordinated reactions of police and the justice system as well as the failure of general social services to respond to needs: probation officers or family courts not knowing that there was a protection order in place, abusive men arrested several times by different police officers, none knowing about the previous offence, and the custom of not reacting to "domestic disturbances" or "family quarrels". The foremost goal of inter-agency coordination was thus developing "best practice" policies and protocols and enhancing networking among service providers (Hague & Malos 1998; Shepard & Pence, 1999). Systems of monitoring and tracking cases enabled women's advocates to call statutory agencies to account for failure to implement good practice.

With this approach, the responsibility of each profession and each agency still derived from its specific function and area of competence. Police ought to document and investigate crimes and arrest when appropriate, social workers as well as health care professionals should be aware of signs of abuse and learn to ask about violence, and should be trained to adapt their responses to accordingly, and everyone should provide victims of violence with information about where to get specialised help. The coordinators of community intervention models, concerned not to aggravate danger to the woman and committed to the idea of self-determination, were typically explicit about privacy rights and confidentiality. Thus, when a 24/7 help service could be called to the site of a police call, the original model spelled out that the social worker wait outside the house until the police ask the woman if she could come in (Holder in Shepard & Pence 1999). Overall, in the 1990s and until around 2005 there was a strong focus on calling perpetrators to account through arrest and/or criminal justice, with models such as specialised courts, victim advocates during criminal proceedings, prosecution guidelines and perpetrator programs. Securing specialised services in wide availability and qualifying professionals in the social and health care system to respond were also key elements in cooperation models.

It has gradually become clear that criminal justice is neither meeting the safety needs of the majority of women facing domestic violence, nor was it successful in reducing the risk of serious harm or killing by perpetrators indifferent to legal sanctions. Alongside the Austrian innovation of removing perpetrators from the home with a police ban, in England and Wales multi-agency work was modified to create a framework for joint case conferencing. With the focus on state duties to protect women, interagency information-sharing protocols with regard to victims assessed to be at high risk and joint case management are gaining acceptance.

These developments have entered into the legal and institutional frameworks differently in the various countries and generated a field of multi-professional responsibilities, in which the priorities and the conditions for fulfilling them are not always clear or compatible. These overarching responsibilities for responding to indications or disclosure of domestic violence include

- To support and empower victims with appropriate and sensitive responses,
- To build and maintain a relationship of trust that encourages further disclosure or accepting referral to specialised support,
- To safeguard/ protect victims and their children,
- To cooperate and communicate with other agencies and professions that may be involved in an intervention,

- To refer victims (and possibly perpetrators) to the agencies and professionals with the skills and resources to meet their specific needs,
- To document crimes of which agencies gain knowledge and report them to authorities,
- To notify child protection agencies when a child may be in need or at risk.

Much of this goes beyond the responsibilities usually inherent to the professional roles. These roles can be enriched by awareness-raising, capacity building and further training. However, ensuring safety is a crucial goal of all intervention, and inter-agency cooperation plays a key role in achieving it. National intervention cultures differ with regard to the responsibility for documenting and reporting crimes. The following discussion illustrates how these responsibilities play out differently depending on the institutional frameworks.

#### 4.1 Safeguard and protect

The measures to protect victims from immediate danger are the responsibility, as described above, of the police or of specialised services that provide safe accommodation. In England and Wales<sup>10</sup>, police have broad powers to arrest and to set bail to hinder perpetrators from further violence. In Germany, the primary measure to safeguard against immediate danger is the police barring order. In both countries, women may also contact a shelter directly, or be helped by the police to find a safe accommodation. In Slovenia and Portugal, both police intervention and shelters are available, but as noted above, safety may be linked to cooperation with prosecution, and in Portugal, police powers are more limited, and for access to most shelters women need a prior referral, so that safety is not immediate.

The approaches to protection and safety beyond the first few days differ. In England and Wales, all professionals are expected to assess the level of risk to a victim with a standardised tool, the Domestic Abuse, Stalking and Honour risk assessment (DASH). In cases of high risk, Multi-Agency Risk Assessment Conferences (MARACs), first developed in South Wales, have been established as the core strategy since 2008; they are based on inter-agency agreements regulating information sharing and aim to ensure coordinated intervention on a case basis<sup>11</sup>.

In Germany community level cooperation networks are widespread; and valued, but generally do not serve as case conferences; they do build cross-agency professional relationships that can be a resource for consulting or referral. With a focus on coordinating procedures and intervention approaches they aim to educate and enable professionals to be guided by good judgement. Although there are some recent experiments with the MARAC model, assessing the level of danger is rarely standardised. Only the police have specific guidelines on how they must proceed in cases of domestic violence.

In Portugal and Slovenia, social agencies do not have a duty to confidentiality, and it is common practice to share information amongst agencies and with the police. In both countries all professionals have a duty to report suspected domestic violence, as well as endangerment of a child, to the police (in Portugal) or the Centre for Social Work (in Slovenia, which in turn has a reporting duty to the police); thus, sharing information is seen as an integral part of these service roles.

<sup>10</sup> The policy frameworks for Scotland and for Northern Ireland differ from that of the Westminster government.

<sup>11</sup> For an empirical evaluation der strengths and weaknesses of this approach see Coy & Kelly 2011.

The Slovenian guidelines for intervention in domestic violence situations include risk assessment by the Centre for Social Work, which convenes a multi-disciplinary team for each case to exchange information and organise protection and support. The Centre coordinates Intervention, provides information to the victim, and prepares an assistance plan.

## 4.2 Cooperation and referral

Concerns for safety and avoidance of being held to account publicly for not preventing harm have led to different degrees and kinds of regulation of professional responses. In England and Wales, guidelines and checklists for correct procedure have become very dominant, first in the area of child protection and then, partly as a consequence, for domestic violence. In Germany, qualifying professional judgement is more central. In Slovenia and Portugal neither approach is solidly established

In Germany evaluation of multi-agency cooperation networks has confirmed their potential for coordinating and improving intervention procedures and developing contacts among agencies. Their goal is to build an unbroken “chain of intervention”, intended to offer a victim support and protection at any point of contact with any agency (Hagemann-White 2009)<sup>12</sup>.

A core element of the MARAC procedure in England and Wales is information sharing among agencies on specific cases. It is discussed under the concepts of a “duty of care” and “public protection”. Independent domestic violence advisors (IDVA) have become crucial to multi-agency cooperation and case conferencing, where they represent the interests of the victim. By building networks they are also able to offer support and referrals to victims not assessed as “high risk”. Increasingly, however, entitlement to services is organised hierarchically according to level of risk (Coy 2015, pp. 2–3), and high risk has become the criterion for access to scarce resources.

Regular multi-agency conferences or coordination meetings have not been established in either Slovenia or Portugal. In Slovenia, the 2008 Family Violence Act stipulated cooperation as mandatory and framed the legal basis for collaboration among the different agencies and professionals. Unlike both England and Wales and Germany, multi-agency work is thus tied into the function of documenting crimes. Disclosure of abuse during help-seeking may lead more quickly into the criminal justice system, but this does not necessarily contribute to ensuring safety.

In Portugal, there seems still to be a need to develop protocols of best practice and defining responsibilities. The urban (PSP) police and rural (GNR) police are distinct organisations; each system has special offices to serve victims of domestic violence distributed across the national territory. Coordination and communication between these different agencies tend to depend on the relationships between the professionals. Professionals generally consider it a good practice to share information among each other and to collaborate, however the lack of protocols for communication poses some obstacles to their collaboration as well as raising ethical questions regarding the victims’ rights to privacy.

As domestic violence intervention policies come to rely more and more on the assessment of risk conducted by professionals, risk is increasingly assumed to be an objective and measurable fact. There is little evidence that victims can participate or co-determine the assessment process or the conclusions drawn from it.

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<sup>12</sup> Chain of intervention is a metaphor for interlinked and unbroken intervention grounded in a cooperation network of agencies; to take account of the individuality of victims, the paradigm was elaborated as being non-linear, meaning that each agency can act as the first contact and should be competent to make referrals tailored to needs.

### 4.3 Managing tensions among diverging responsibilities

As mentioned above, in all four countries, domestic violence is considered an issue in the public interest to combat. However, this has different implications in the four countries. In Portugal, while there was agreement about the need to report domestic violence situations, professionals in the social and health sectors seemed to prioritise the development of a relationship of trust with the victims, and value their empowerment to make their own decisions over immediately reporting the situation to the authorities. With regard to information sharing among different agencies, it is considered a crucial procedure to provide an effective intervention. While this is a widely held belief among professionals, they also state that information sharing does not happen very often. Mostly the victim's consent is not considered in this process.

In Slovenia, different categories of professionals manage the "duty to report" differently. Health professionals rarely choose to report against the victim's will and cite patient-doctor confidentiality and the Hippocratic oath. The concept of "soft reporting" has emerged in recognition of the need to support victims regardless of whether or not they want to report to the authorities and initiate a criminal justice process. This type of reporting comprises a referral to social services and focuses on the victim's initiative, choices and actions. Nevertheless, other professionals such as emergency health workers and social workers have a clearer obligation to report, although here, too, victims can block information sharing if they explicitly object and the level of violence is low (Jalušič & Zdravković 2015, p. 7).

Professionals in England and Wales seem to be particularly aware of the potential risk to a child resulting from domestic violence and thus referral to statutory child protection agencies is very common. As "seeing or hearing" the ill-treatment of another is legally defined as harm to children, their presence is enough to trigger a referral to the social services which is described as "no choice" and "having to act" (Coy 2015, p. 5). In addition, these child protection/safeguarding investigations might be seen as a way to lever women to take action. Research shows, however, that few notifications result in action by child protection agencies (Stanley 2011), although they do engage with the MARAC process.

In Germany, the support services do not inform the authorities without first talking with the victim and obtaining her consent. Only if there is imminent danger to life or a child is endangered will the professionals inform the authorities with the woman's knowledge but, if necessary, without consent. Police refer victims (and where possible, perpetrators) to NGO services, but in any case must notify youth welfare offices if a child is present in a domestic violence situation. The statutory social services then contact the mother. Referral to child protective services can be used to push women to take action so that the children no longer be exposed to witnessing violence (see chapter 12). In Germany there are also strong woman advocacy and self-determination lenses that defend the empowerment of women. These lenses emphasise women's will and rights to information and thus prioritise their will and consent. If children are involved, tensions arise.

The growing influence of a risk discourse has implications that are rarely discussed. Risk is an actuarial concept from the finance and insurance industries, using mathematical models of probability to analyse the financial implications of uncertain future events. Such models require a clear definition of the events concerned as well as a broad statistical data base. Unless protection from violence is reduced to the probability of being killed, assessing the danger of future harm to a woman or a child cannot draw on such mathematical models. Assuming calculable probabilities, "risk management" in business discourse is an established term for prioritising the investment of resources so as to avert the events that could prevent an organisation from achieving its objectives. Thus, the discourse itself suggests that resources for protection and support should be allotted according to policy

decisions on the kinds of harm to be avoided. In this context, it is claimed that tools for risk assessment can measure the probability of lethal violence. Greuel et al. (2011, p. 195) contest this thesis with their German police data. More generally, the harm done by domestic violence or child abuse cannot be measured by mortality alone.

Overall, it can be argued that risk assessment primarily serves to meet the needs of professionals to lessen their feelings of insecurity, while narrowing the scope for women's own choices. Thus, it obscures the crucial process of needs assessment in each individual case. The empirical material in CEINAV, both from the workshops with professionals and from the interviews with women who had experience with intervention, did not give the impression that women frequently benefit from empowerment in the wider institutional context. In many cases, rebuilding and restoring the basic rights that violence had undercut or smothered was not seen as a duty of the institutions and general services, but as a benefit that would only be granted after suitable efforts at justification and on recommendation of specialist support. It seems that the duty of the state is perceived (from the perspective of the institutions) as ending when the direct threat of violence is stopped; "moral repair" (see Walker in chapter 4) and empowerment are not recognised rights, but depend very much on the personal engagement of specialised professionals and support workers (see chapter 11).

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## Chapter 7

# Trafficking for sexual exploitation and the challenges of intervention: the price of human rights

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### 1 The role and influence of international and regional law

Unlike domestic violence and child abuse and neglect, the obligations of the state with regard to human trafficking are spelled out specifically in international and regional law; thus, the frameworks for intervention in this area can only be understood against that background. Even so, as will be seen, while the implementation strategies adopted by the four countries in the CEINAV study vary they nonetheless share a common weakness with regard to the human rights of victims.

The four participating countries have all ratified the two primary international and regional instruments that set out the obligations binding participating States. These are respectively the United Nations (UN 2000) Palermo Protocol Against Trafficking in Human Beings, Especially Women and Children (Palermo Protocol), and the Council of Europe Convention on Action Against Trafficking in Human Beings (CETS 2005). They are therefore required to implement compliant domestic law and, particularly with regard to CETS, to ensure all measures also meet the requirements and standards set out therein. The Palermo Protocol has no monitoring mechanism but the State Department of the United States regularly assesses the effectiveness of a country's actions against trafficking with reference to the so-called '3 Ps' of prosecution, protection (of victims) and prevention. Its findings are published annually. By contrast, CETS does have a monitoring mechanism in the form of the Group of Experts on Action Against Trafficking in Human Beings (GRETA). This similarly produces and publishes country reports on compliance with regional law. Both instruments significantly influence the ways in which trafficking is framed in national law but, as will be seen, CETS is deemed to be particularly relevant in shaping the frameworks which underpin measures to protect and assist the victims of trafficking.

#### 1.1 International Law

The Palermo Protocol<sup>1</sup> is significant, particularly in achieving international consensus on the definition of trafficking.

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<sup>1</sup> The Palermo Protocol entered into force in December 2003.

Thus, article 3 of the Palermo Protocol provides:

“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall, at a minimum, mean the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.

(d) ‘Child’ shall mean any person under eighteen years of age.”

While trafficking is envisaged as a process, the definition, set out at article 3(a) above, establishes three elements in the offence: *action*, such as recruitment or receipt, *means*, for example, coercion or deception, and *outcome*, namely exploitation. This international consensus on the definition of trafficking provides states with an important basis for drafting and enacting compliant domestic law that is also compatible with that state’s more general approach to the framing of its laws and policies. Moreover, in not further defining the terms ‘exploitation of the prostitution of others or other forms of sexual exploitation’, the broad terminology is without prejudice to how states deal with prostitution in their national laws. Thus, it allows states with different domestic ‘prostitution regimes’<sup>2</sup> (Kelly et al. 2009) to nonetheless support and ratify the legislation. With respect to the four countries in the CEINAV research, prostitution is legal in the UK and Portugal but certain associated activities are criminalised. These include owning or managing organised prostitution venues such as brothels. In Slovenia, prostitution was decriminalised in 2003. In Germany prostitution has long been legal but the law was revised in 2002 to remove its framing as an offence against public morals. Since then it has been legal to own or manage prostitution venues and to employ women in prostitution, provided they are not exploited through, for example, the withholding of earnings.<sup>3</sup>

In general terms, international law aims to combat and prevent trafficking, to provide measures for the protection of and assistance to victims – although these are non-binding (Lee 2011) – and to promote international cooperation between states to achieve these objectives. The Palermo Protocol is not a stand-alone instrument. Instead, it supplements the UN Convention Against Transnational Organised Crime (CTOC) and is to be ‘interpreted together with [that] Convention’ (Palermo Protocol: article 1). As such, it has been critiqued as applying “to the ‘prevention, investigation and prosecution’ of protocol offenses, but only where these are ‘transnational in nature’ and involve an ‘organized criminal group’, as those terms are defined by the Convention” (Bales 2005, p. 129). Hence, under international law, trafficking is located firmly within a cross-border crime framework, a framework that remains particularly dominant in the UK. This is also discussed further below.

<sup>2</sup> The reference to regime in this context includes both law and policy.

<sup>3</sup> A new law was introduced in Germany in 2017 in part as an effort to better tackle sex trafficking. This includes harsher penalties for those who buy sex from persons forced into prostitution. Additional protective measures have also been introduced, such as registration requirements, health care and employment rights.

## 1.2 Regional law

The perceived limitations of the Palermo Protocol, as identified above, and its lack of binding provisions for victims have been addressed through regional instruments, notably CETS<sup>4</sup> referred to above. The added value of CETS is said to be its human rights perspective and focus on victim protection. It also extends its application to all forms of trafficking, national or cross-border, and irrespective of any connection with organised crime (article 2). From a prosecutorial perspective, these are particularly important provisions in removing potential obstacles to the prosecution of traffickers whose membership of a “structured group” as defined by CTOC cannot be proved, or whose activities cannot be proved to be transnational in nature, again, as defined by CTOC. Further, CETS adopts the same definition as the Palermo Protocol but adds a definition of “victim” as being “any natural person who is subject to trafficking in human beings” (article 4(e)). With respect to victims and in contrast with the Palermo Protocol, its provisions for protection and assistance are mandatory for ratifying states and go beyond the minimum standards set out in international law. These are discussed further in section 4 below.

## 2 Overview of domestic legal frameworks

All countries in CEINAV have criminalised trafficking in persons, retaining the dominant crime framework established in international law. Yet within that overarching framework, the offence of trafficking is framed differently within each of the four countries.

### 2.1 Germany

In Germany, the offence of trafficking for the purposes of sexual exploitation is broadly defined as “exploiting another person’s predicament, or vulnerability arising from being in another country, in order to induce them to engage, or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person”. The same penalty holds for “inducing a person under twenty one years of age to engage in, or continue to engage in, prostitution”, regardless of how this is done. A more severe penalty holds for someone who “induces another person by force, threat of serious harm or by deception to engage in, or continue to engage in, prostitution” or who “gains physical control of another person by force, threat of serious harm or by deception to engage in, or continue to engage in prostitution” or other exploitative sexual activity (Criminal Code, section 232).

Thus, section 232 of the Criminal Codes deals with *outcome* and *means*, two of the elements required to constitute the offence of trafficking for the purposes of sexual exploitation. With respect to *means*, some of those set out in CETS are not explicitly included, such as “other forms of coercion”, or the “giving or receiving of payments or benefits to achieve the consent of a person having control over another person”. However, these are generally accepted to be implicit in the language of section 232 save with regard to the phrase “abuse of power”. This element is deemed to be absent in German law and GRE-TA has urged the authorities to ensure its explicit inclusion (GRETA(2015)10).

<sup>4</sup> CETS entered into force in February 2008. As of March 2017, it had been ratified by 46 of the 47 member states (the Russian Federation has neither signed nor ratified).

The third element of *action* is set out in a separate paragraph that deals with assisting in human trafficking “by recruiting, transporting, referring, harbouring or sheltering another person” (Criminal Code section 233). This is drawn up as a catch-all provision to penalise any act that serves to support or facilitate trafficking.

## 2.2 Portugal

In Portugal the law criminalises trafficking under article 160 of the Penal Code as amended. An offender is “[a]nyone who offers, delivers, recruits, entices, accepts, transports, houses or receives a person for purposes of exploitation”. There are a number of itemised means, including violence, threat, fraud and abuse of power. The same penalties apply irrespective of whether the victim is an adult or a child but increased penalties are prescribed in certain circumstances, for example, where a victim’s life is endangered.

Thus, Portuguese law incorporates all three elements set out in the Palermo Protocol and CETS. That said, the irrelevance of consent where any of the specified means are used is not an explicit part of the legal definition.

## 2.3 Slovenia

In Slovenia, a specific offence of trafficking was created in 2004 but offences such as “abuse of prostitution” or slavery-related offences, governed by separate laws, were used to prosecute some forms of trafficking before and after implementation of the 2004 law. All forms of trafficking are currently prohibited under section 113 of the Criminal Code. This defines the offence as “purchasing another person, taking possession of them, accommodating them, transporting them, selling them, delivering them or using them in any other way, or acting as a broker in such operations, for the purposes of prostitution or another form of sexual exploitation (...)”

As can be seen from the above, under Slovenian law the use of *means* is not a constituent element of the legal definition of the offence. It appears instead as a set of aggravating circumstances that, if proved, will result in the imposition of a greater penalty. While this may be regarded as facilitating prosecution of traffickers in terms of evidentiary requirements, GRETA points to potential difficulties providing for mutual assistance and cooperation with other countries that do incorporate *means* into the definition of the offence. There is also some concern that it may lead to confusion with other criminal offences (GRETA (2013)45).

## 2.4 UK (England and Wales)

In England and Wales, legislation has tended to be piecemeal with different forms of exploitation covered by different laws. Since 2015, however, slavery and trafficking offences have been consolidated in the Modern Slavery Act. With respect to trafficking, the offence is broadly defined by reference to arranging or facilitating the travel of an intended victim into, within or out of the country, with a view to her exploitation (Modern Slavery Act, section 2). Arranging or facilitating travel may include further actions, such as recruiting, transporting, harbouring or receiving an intended victim, whose consent to travel is specified to be irrelevant even where the intended victim is an adult.

With respect to the three elements required to constitute the offence of trafficking under the Palermo Protocol and CETS, the Modern Slavery Act incorporates *action* and *out-*

come but omits reference to *means*. This may be attributed to the lack of any requirement to negate consent but, at the time of writing, the new legislation had not yet been subject to scrutiny by GRETA.

### 3 Similarities and differences in legal (crime) frameworks

As previously indicated, all four countries criminalise trafficking in keeping with their international obligations and the duty of the state to prosecute trafficking offences and offenders. Even so, some differences emerged in the ways in which trafficking laws are formulated and the offence of trafficking is framed.

The three elements envisaged by the Palermo Protocol as required to constitute the offence are affirmed in the explanatory notes to CETS which specify that while none should be taken in isolation, “for there to be trafficking in human beings ingredients from each of the three categories (action, means and purpose) must be present, except in the case of children where only action and purpose are required” (CETS 2005, p. 15).

As can be seen from the above, all three elements are present in the laws of Germany, Portugal and Slovenia. Under the Portuguese penal code, they are contained in a single article. In Germany, *means* and *outcome* are combined but the *action* element is set out separately. In Slovenia *action* and *outcome* are combined while *means* appears in a separate section of the Penal Code attracting higher penalties. In England and Wales the Modern Slavery Act 2015 contains no reference to *means* but, as mentioned above, the new law will be scrutinised by GRETA. Irrespective of how laws are actually framed, none of the CEINAV countries identified tensions internationally in the requirement to cooperate with other States and to provide mutual assistance. To verify this or otherwise would require further research.

However, the focus on movement in UK legislation reflects the dominant approach to trafficking as cross-border immigration crime, an approach also evident in Portugal where trafficking is strongly associated with migrant populations. This did for some time, at least in the UK, hamper recognition and prosecution of internal trafficking although such referrals into the national referral mechanism (see below) and subsequent prosecutions have now significantly increased.

### 4 Institutional frameworks and the rights of victims

CETS requires States to design and implement a comprehensive framework to combat trafficking. One part of this is the obligation to enact compliant national criminal law to ensure effective investigation and prosecution. This has already been discussed above, but CETS is also influential in shaping other institutional frameworks and in establishing victims’ rights. Thus, States are further obligated to establish appropriate institutional frameworks, comprising both State and non-State actors, through which to implement measures to prevent trafficking and to protect and assist victims whose human rights have been violated through their trafficking experiences (Explanatory Report – CETS 197 – Action Against Trafficking in Human Beings, p. 11).

Specifically, States must, inter alia, establish and implement a formal identification procedure (article 10), afford victims access to protection and support services (article 12),

and grant a recovery and reflection period of at least 30 days (article 13). In addition, those with irregular status in the country must be granted a temporary residence permit if this is necessary due to their personal circumstances or if their continued presence in the country is required for the purposes of a criminal investigation or trial (article 14).

These provisions, then, establish part of the overarching framework for State compliance with regional law. The country-specific institutional frameworks are discussed further below together with the rights of victims.

## 4.1 Institutional frameworks

Institutional frameworks must comprise both state and non-state actors to develop and implement policies and measures to combat trafficking and to provide protection and assistance to victims. CETS envisages that knowledge and expertise should be drawn from a broad base of stakeholders. As will be seen in the following section, all CEINAV countries have established such institutional frameworks, although greater differences emerge in particular with respect to the rights of victims and access to protection and support. The following section first provides a brief overview of the respective institutional frameworks.

### Germany

Germany has a federal structure comprising 16 states. It has established a Federal Working Group on Trafficking in Human Beings with representatives of various ministries, police and prosecution services, and non-governmental organisations (NGOs). The lead agency is the Ministry for Family Affairs, Senior Citizens, Women and Youth. The Federal Working Group coordinates anti-trafficking initiatives at federal level and finances the German Network Against Trafficking in Human Beings. This is an umbrella organisation that provides support to its 37 NGO-based counselling centres. These, in turn, offer safe accommodation and other services to victims of trafficking in the various states.

The states and local authorities are primarily responsible for establishing protection and support services to victims. They finance the work of the counselling centres and oversee cooperation agreements between, for example, police and NGOs. These cooperation agreements contain guidance for the different agencies and set out mutual roles and responsibilities. Most of the states have set up roundtables with representatives of relevant stakeholders and chaired by a representative of a regional Ministry. Some larger cities have specialised police units dedicated to combating trafficking for sexual exploitation while prosecution of trafficking cases is dealt with by specialist organised crime units.

### Portugal

Portugal has appointed a National Rapporteur for Human Trafficking who is located within the Citizenship and Gender Equality Commission and who is responsible for coordinating action against trafficking. The Commission itself is made up of representatives of different government departments and is supported by a technical committee.

An Observatory of Trafficking in Human Beings has been established which works closely with the police and collects, processes and disseminates information and knowledge about trafficking and other forms of violence against women. A specialist organised crime unit within the public prosecution services deals with trafficking cases while the Social Security Institute provides financial support to NGOs in the sector, notably, the Association for Family Planning which runs the Centre for Shelter and Protection and provides support and assistance services to victims of trafficking. The Association for Family Plan-

ning and the (Office of the) National Rapporteur work directly with victims. In addition, a Support and Protection Network for Victims of Trafficking has been created composed of state and non-state actors. The border police and the judicial police are the nominated competent authorities, as foreseen in CETS, involved in the formal identification of victims.

#### Slovenia

In Slovenia an Inter-Ministerial Working Group has been established as the umbrella organisation responsible for combating trafficking. This comprises representatives of various Ministries and Inspectorates, the General Police Directorate, the Office of the State Prosecutor General, and a number of NGOs, notably, Society Ključ, Slovenian Caritas – a Catholic Church organisation – and Slovenian Philanthropy. Society Ključ and Slovenian Caritas are the main NGOs providing support and assistance services to victims of trafficking. The activities of the former are based on agreements with the Directorate General of the Police, Ministry of the Interior and the Office of the Prosecutor General. It receives some State funding.

The Inter-Ministerial Working Group is chaired by a National Coordinator. Its members meet on an ad hoc basis to decide whether a person is a victim of trafficking.

#### England and Wales

The UK has established an Inter-Departmental Ministerial Group to coordinate policy and anti-trafficking activities. As in the other three countries, it comprises representatives from various government departments and agencies and is chaired by the Minister for Immigration. A Strategic Board monitors UK progress and compliance with international and regional law, together with a National Referral Mechanism Oversight Group (see below) which has specific responsibilities with respect to CETS and whose members are drawn from both the State and NGO sectors. The Home Office has overall responsibility for UK actions, strategies and policies to combat trafficking although this, in fact, falls to the Minister for Immigration.

There are two competent authorities involved in the identification of victims. UK Visa and Immigration deals with third country nationals while the UK Human Trafficking Centre is concerned with British or EU nationals. Support and assistance to victims of trafficking are provided by a wide array of NGOs, many of them faith-based, but one NGO, the Salvation Army, also faith-based, currently holds the government contract and receives State funding. It sub-contracts the provision of some services to other NGOs. Prosecutions are conducted by the Crown Prosecution Service.

#### Comparative summary

Thus, all four CEINAV countries have established institutional frameworks involving State actors and NGOs in combating trafficking and in the implementation of measures to protect and assist victims of trafficking. However, this is not to suggest parity between them. The CEINAV research indicates that State actors have the stronger voice and greater resources. This, in turn, means that efforts to combat trafficking tend to be law enforcement-led. This is particularly apparent in the UK, and to a lesser extent in Portugal, where trafficking is still predominantly framed as cross-border immigration crime. It also means that NGOs are left to compete for much scarcer resources in the provision of support and assistance services to victims. Even in Germany, many NGOs are required to seek funding regularly, creating uncertainty for staff and victims alike. In Slovenia and the UK in

particular, State funding is allocated through a process that requires NGOs to compete with one another. This not only leads to tensions among NGOs which could otherwise better serve victims through cooperation, it also means that non-faith based NGOs can struggle against the greater resources of church-led NGOs. Factors such as these do little to level the playing field and ensure the allocation of resources to those best placed to serve the interests of victims. This suggests a need to realign institutional frameworks to give a greater voice to specialist NGOs, particularly those in the specialist women's sector, and ensure a more equitable distribution of resources, focused on the "imperative to act to restore the human rights, health and well-being of victims" (Doherty & Morley 2016, p. 121).

## 4.2 Intervention pathways and victims' rights

There is broad consensus that traffickers often go to considerable lengths to prevent women from escaping their exploitation. Yet a number of writers argue these are not the only constraints that hold victims of sex trafficking in "conditions of confinement" (O'Connell Davidson 1998). More particularly, women are subjected to both "personal" and "impersonal" forms of control (Andrijasevic 2010). The former include physical restraint, violence or the threat of violence, intense surveillance, and being forced to share accommodation with their traffickers, while the latter tend to be state-led and include visa regimes and border controls. Here, various scholars have drawn attention to the ways in which counter-trafficking measures may serve government agendas of migration control (Kapur 2005; Pickering & Weber 2006), which criminalise migrants (Welsh 2003; Melossi 2003) and which may inadvertently promote trafficking (Lee 2011), especially trafficking in women. This is in part because restrictive migration regimes "tend to create gendered access to legal migration favouring men and male-dominated industries" (ibid, p. 56). When coupled with criminal justice systems which require women's cooperation in exchange for residence in the country in which they have been exploited, such impersonal state controls may be experienced as similarly, if not more restrictive, than the personal controls imposed by traffickers. In this sense, women's escape from specific conditions of exploitation may leave them exposed to further exploitation and control.

To counter such controls, intervention systems must focus on the human rights of victims. They must offer women easy access and clear pathways to the restoration of their rights and personal agency. Key to commencing this process is early identification coupled with the right to non-deportation, cornerstones of victim protection and core provisions of CETS.

### Identification of victims

In order to enter the intervention system and access support and assistance services, victims must first be recognised as such. Hence, article 10 of CETS requires States to establish and implement a formal mechanism for the identification of victims. The formal mechanism envisaged by CETS comprises a competent (public) authority, made up of persons who are adequately qualified and trained in identifying and helping victims. It is acknowledged that the identification process may take some time involving, for example, cooperation and information sharing with other agencies or countries. It is therefore further envisaged that there may be an interim period where there are "reasonable" grounds for believing a person to be a victim of trafficking (CETS 197, p. 23), and during which they should be entitled to protection and assistance, before a definitive decision is reached.



Germany has no such formal mechanism at national level, in part due to the decentralised organisation of its law enforcement authorities. While this may be noted as a non-compliance with CETS, the cooperation agreements, referred to in the preceding section, between police or other statutory bodies and specialised NGOs are said to be the equivalent of such a mechanism; additionally, decision-makers in immigration and detention centres have been trained to identify victims. The decision to certify a woman as a victim of trafficking lies with the public prosecutor, but the procedure by which identification occurs is regulated separately in each of the *Länder*, hence, there are variations. Most typically it is delegated to police but in one of the six states represented in the CEINAV research, a government decree also authorised specialist NGOs to certify victim status (although evidence from the CEINAV study shows this is not always accepted by other relevant agencies).

The identification process may be initiated in a number of different ways but the CEINAV research suggests that victims access the intervention system via one of two primary routes: (1) through coming to the attention of police; or (2) contact with a specialist NGO. The former route is more likely in larger cities with specialised police units. Third parties – individuals or organisations – who encounter a possible victim, and choose to act on their concerns, would opt for one of these routes. For example, men buying sex may call the police (or occasionally an NGO) when they are concerned, while social workers in the health services are more likely to provide suspected victims with information about specialist NGOs. With respect to the police, however, a recent GRETA report (GRETA(2015)10:36) notes that general awareness of trafficking is significantly lower in rural areas. Here, it is more likely that victims will slip through the net or be deemed illegal migrants and referred to a reception/detention centre. In fact, this represents a possible third route into the intervention system. Where this occurs, the detention/asylum centre arranges an intake interview to which the woman is accompanied by a social worker and possible trafficking indicators are explored. If the victim discloses relevant information, she is referred back into the intervention system via one of the two main routes. However, the same GRETA report referred to above, also noted that staff shortages, including a shortage of interpreters, in reception centres may make it difficult for victims to get the appropriate assistance (GRETA(2015)10:37).

In Slovenia the primary route into the intervention system is via the police. If police officers directly in the course of their duties encounter a possible victim of trafficking, for example, during an inspection of a nightclub, they interview the woman to ascertain her circumstances and may then remove, or attempt to remove her. Where another professional or practitioner from an NGO had first contact with a potential victim, all relevant information would be passed to the police except for the personal data of the victim. If the regular police are first notified, they pass the information to the criminal police who have specially trained officers in combating organised crime, including human trafficking, and a referral to an NGO would be made.

Like Germany, however, the procedure for the identification of victims in Slovenia is not formalised. Where a possible trafficking offence is detected, police notify the Specialised State Prosecutor's Office. This then directs any investigation. Potential victims are referred to a crisis centre contracted by the Ministry of the Interior. Police also notify the National Coordinator and the Inter-Ministerial Working Group, which meets to decide whether the individual in question is a victim of trafficking. In practice, therefore, the identification of victims is a shared responsibility involving both agencies of the state and NGOs, notably, Society Ključ and Slovenian Caritas. This is usually stipulated in bi-lateral agreements and contracts. Decisions can be challenged, ultimately through a legal process in the administrative court.

The police and Ključ, in particular, actively cooperate and notify each other of signs or suspicions of trafficking. The bi-lateral agreements also stipulate that confidentiality will be maintained with respect to information about victims, and specify procedures for inter-agency cooperation. Nevertheless, GRETA has noted that “professionals involved in the identification process apply different sets of indicators and do not seem to be fully aware of how the identification of victims [of trafficking] functions as a whole and what their respective tasks are in this context” (GRETA(2013)45prov:28). As in Germany, it has called upon the Slovenian authorities to introduce a formal national referral mechanism.

In contrast with Germany and Slovenia, Portugal and the UK have introduced a national referral mechanism (NRM), as envisaged in CETS, for the identification of victims of trafficking. There are both similarities and differences in the way in which the mechanism is operated in each country. In both Portugal and the UK, identification is a staged process moving from presumed to confirmed victim status and involving the two competent authorities already discussed above.

In Portugal, there are a variety of ways in which victims of trafficking might enter the intervention system but, as in Germany, this is most likely to involve the police or an NGO. Other professionals, such as health service workers, or workers in community or immigration advice centres would contact one or other of these agencies if they encountered a woman they suspected to be a victim of trafficking. Police themselves may also come into direct contact with potential victims, for example, during an inspection of a brothel and conducting identity checks<sup>5</sup>. Similarly, in the UK, victims may enter the intervention system through contact with police or an NGO. Health services, particularly sexual health services, may also be a point of first contact. For third country nationals who are found to be in the country illegally, contact with professionals in detention centres is deemed to be a likely route, as it was in Germany, as interviewing staff from UK Visa and Immigration are trained in trafficking indicators<sup>6</sup>. Social services are not deemed a probable route into the intervention system unless potential victims are children.

With respect to the identification process, a number of Portuguese NGOs have entered into a memorandum of understanding with the Observatory of Trafficking in Human Beings to which they are required to submit a “reporting/flagging guide”. This guide is intended to assist in the identification process in containing a list of indicators and responses to a series of questions. The police similarly complete a “unified registration form” that is sent to the Observatory. During the first stage of identification, if the woman consents to referral, a multi-disciplinary team considers the evidence. Where there are sufficient grounds to believe the individual in question is a victim of trafficking, the second stage commences. Here, the final decision falls exclusively to the police. This has led some NGOs to express concerns that a victim’s willingness to cooperate in judicial proceedings is a disproportionately significant factor. In turn, this has prompted GRETA to urge the Portuguese authorities to ensure that the “formal identification of victims is dissociated from their participation in the investigation and court proceedings” (GRETA(2012)15:30).

In the UK, identification is a three-stage process commencing with referral to one of two competent authorities into the NRM by a so-called first responder. There are a number of agencies that are designated first responders, such as police and immigration services, as well as some NGOs. As in Portugal, in all cases, a woman’s consent is required for the referral. Where the suspected victim is a third country national, an official from

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<sup>5</sup> This would seem to suggest that, as in the UK, while brothel-keeping is illegal, the existence of brothels is both known to, and tolerated by, police; further, that in conducting identity checks, police may be seeking to impose the type of impersonal control referred to above in possibly targeting migrants.

<sup>6</sup> Training is far from universal and some professionals would dispute this as a likely route into support and assistance services.

UK Visa and immigration receives and considers evidence submitted by relevant stakeholders, including that contained in the referral form completed by the first responder and other evidence from, for example, police, health or legal professionals. The test for the initial “reasonable grounds” decision is framed as follows: “I suspect but cannot prove” the individual in question is a victim of trafficking. This is a low threshold decision and, if positive, the process proceeds to the third and final stage, the “conclusive grounds” decision. It is possible for further evidence to be submitted but the standard of proof is higher at this stage and based on a “balance of probabilities” test. This means the decision-maker must conclude that it is more likely than not that the individual concerned is a victim of trafficking. There is no appeals process for NRM decisions but decision-makers can overturn their own decisions if new information comes to light. It is also possible to challenge decisions, as it is in Slovenia, through an administrative court procedure. As in Portugal, concerns were expressed about inadequate NGO participation in the decision-making process. In response, the UK government established a National Referral Mechanism Oversight Group. This group includes representatives of NGOs and monitors compliance with CETS in the identification procedure. However, concerns have also been expressed that the same officials within UK Visa and Immigration make both national referral mechanism and immigration/asylum decisions which creates a conflict of interest (Anti-Trafficking Monitoring Group 2014). This was also identified as a source of concern by GRETA who urged the UK authorities to “entrust the identification of victims of trafficking who are illegally present in the UK to persons who are not involved in the asylum seeking procedure of the applicant, to avoid conflicts in the decision making” (GRETA(2012)6:54).

*Similarities and differences in intervention pathways.* Timely identification is recognised as key to providing access to intervention, support and assistance to victims of trafficking and, hence, to a country meeting its obligations under international and, more particularly, regional law. As can be seen from the above, two of the CEINAV countries, Portugal and the UK, have introduced the formal system of identification envisaged by CETS while two, Germany and Slovenia, rely on less formalised means. No evidence emerged from the CEINAV study that these differences hampered or enhanced identification but, in Germany, in particular, the absence of a formal process and, specifically, the absence of any requirement to formally confirm victim status afforded women extended access to support and assistance (see below). In all countries, however, the process is frequently law enforcement-led with the risk that women’s rights and access to support and assistance is prematurely and too closely associated with their willingness to cooperate with the authorities. This is discussed further below.

#### Victim protection and assistance

Under the terms of CETS victims of trafficking have rights to a range of protective and supportive measures. These rights are triggered when a potential victim first comes to the attention of the authorities. Here, article 13 of CETS obliges States to introduce provisions in national law to grant a suspected victim of trafficking a recovery and reflection period of at least 30 days, irrespective of whether the identification process has been concluded. The recovery and reflection period should not be conditional on cooperation with police and a woman must be permitted to remain in the territory of the State in question. If certain conditions are met, CETS also requires States to issue women with renewable residence permits (article 14).

*Recovery and reflection.* In Germany, the relevant law provides that a suspected foreign victim of trafficking is permitted to remain in the country for at least three months. Portuguese law stipulates a minimum of 30 days and a maximum of 60 days, while under Slo-

venia law presumed foreign victims have the right to remain in the country for up to 90 days in order to decide whether to cooperate in any investigation and prosecution. In England and Wales, there is no statutory basis for granting a recovery and reflection period. Instead, third country nationals who are given a positive, second-stage, reasonable grounds decision are entitled to remain in the country and to receive assistance for a period of 45 days or until a conclusive grounds decision has been reached, whichever is greater.

All four countries, then, provide for the non-deportation of potential victims during the recovery and reflection period although there is varied compliance with the full terms of CETS. In Germany foreign victims of trafficking without EU residence rights are given an “order to leave the territory” which is suspended for a minimum of three months. While the suspension of the order to leave may be extended repeatedly, in practice it has been noted that victims of trafficking are often required to be in contact with police and prosecuting authorities during the suspended period with potential adverse implications for their well-being (GRETA(2015)10:40,41). In Portugal, evidence from the CEINAV research indicates that it is relatively rare for a decision to be reached on victim status within the 30 to 60 day reflection period and this most commonly expires without any decision, exposing a third country national to the risk of deportation or, in some cases, leading to premature assisted returns to the home country without sufficient assessment of the risks of re-trafficking. In Slovenia, under the Aliens Act, foreign victims are generally granted the right to remain in the country for 90 days, including a 30 day recovery and reflection period although, again, the CEINAV research indicates that only a relatively small number of women identified as victims of trafficking and availed themselves of support services. In the UK, a 45 day period of recovery and reflection is granted but there is no statutory basis for this, leaving open the possibility that not all victims will be systematically informed of this right and of their entitlements during the period (GRETA(2012)6:65).

*Support measures.* During the recovery and reflection period, suspected victims of trafficking must, inter alia, be provided with secure and safe accommodation and have access to emergency medical care and such other services as may be necessary to ensure their physical, psychological and social recovery (article 12 of the Convention). Such assistance must not be made conditional on their willingness to cooperate with the police and judicial authorities.

All four countries broadly comply with these provisions. In Germany, the cooperation agreements between police and specialised counselling centres stipulate that when a possible victim of trafficking is encountered, she must be informed of her rights under CETS. If she consents, she will then be referred to one of the centres. The centres are run by NGOs that help victims access the required services. These include secure accommodation, emergency medical care and counselling, help with obtaining a residence permit should this be necessary, and help in accessing some social and welfare benefits. Similar services are available to suspected victims of trafficking in Portugal, Slovenia and in England and Wales. In Slovenia, women who accept an offer of help are first housed in an NGO shelter offering crisis settlement for up to thirty days during which time their needs will be assessed. They will be entitled to basic subsistence, emergency medical assistance and counselling.

The rights of victims beyond the recovery and reflection period then depend on a number of factors. In Portugal and in England and Wales access to continued assistance is predicated on a positive and conclusive NRM outcome confirming the woman’s status as a victim of trafficking. Although Slovenia does not have a formal identification mechanism, as noted above, the Working Group meets on an ad hoc basis to determine the status of a presumed victim within the 90 day period granted to third country nationals. If a positive decision is reached, a victim’s continued entitlement to dedicated services is conditional on her cooperation in criminal proceedings against her trafficker/s and the weight of her tes-

timony. Dedicated services are funded by the Ministry for the Interior and earmarked only for women willing to engage with police and prosecutors (GRETA(2013)20–29). Any third country nationals will be granted renewable residence permits. If women are not confirmed as victims, if their testimony is not deemed to carry sufficient weight, or if women decide not to cooperate with the criminal justice system, all intervention and assistance measures cease. In such circumstances, however, NGOs may draw on funding outside of their contractual arrangements and obtained from different sources such as foreign donors (GRETA(2013)45prov:30). Alternatively, third country nationals may receive help in returning to their countries of origin, or they may be liable to deportation unless they successfully claim asylum.

In Portugal and in England and Wales government funded services are available only to women who consent to referral into the NRM. While in both countries some services are available through NGOs that operate outside the identification mechanism, again and in practice these are limited. In Portugal, formal and positive identification is followed by a third stage of integration. Victims who agree to cooperate with the judicial authorities continue to be housed in safe accommodation and are able to access services designed to facilitate their social integration and promote participation in the labour market. Third country nationals may be authorised to remain in the country if authorities deem this necessary for the purposes of an investigation. The victim must also have broken all contact with her traffickers. Exceptionally, a renewable residence permit may be granted to a third country national where the aforementioned conditions are not met but where the personal circumstances of the victim warrant her continued stay in the country. Such circumstances include the vulnerability of the victim, her close family or other persons with whom she has a close relationship. However, as noted above, where a decision on victim status has not been reached within the stipulated 30–60 day period, the woman faces the risk of deportation or premature return to her country of origin.

In England and Wales, a third country national may be given discretionary leave to remain, again if she also agrees to cooperate in criminal proceedings and her continued presence in the country is deemed necessary for these purposes. As in Portugal, the Home Office may also consider granting discretionary leave to remain in the absence of confirmed victim status where the woman's personal situation justifies this, for instance, particularly adverse conditions in her home country but in practice this is rare, leaving the only possible option of seeking asylum. In such circumstances, women will be required to leave the shelter where they were originally housed and assisted by dedicated trafficking NGOs and will be moved into a different intervention system known as the National Asylum Support Service. This will also be the case for confirmed victims of trafficking once the positive conclusive grounds decision has been communicated to them. They will then be entitled to local authority accommodation, welfare benefits, and will have free access to the national health service. In practice, they also often continue to receive support, usually from the NGO where they first received assistance.

In Germany, access to some support and assistance services, in particular, financial support, depends on a woman's residence status. In practice, however, the CEINAV research indicates that women are readily granted renewable residence permits, if it appears a woman needs more time to decide on whether she is willing to cooperate in a prosecution and testify at any trial. The rationale behind the granting of these extended periods is the desire to prosecute traffickers which is contingent on a victim's testimony. Police and prosecutors therefore require the victim to be sufficiently stable to do this. During these periods, women continue to access the dedicated services provided by specialist NGOs, although few women remain in the protected shelters for the entire period and are, instead, moved to apartments. If a woman returns to the trafficker, the residence permit will be withdrawn and a third country national may be deported unless she is granted a humani-

tarian visa. Third country nationals who are illegal immigrants and who refuse all offers of help, advice and support may also be liable to deportation although, as previously indicated, the intake process at detention/asylum centres offers another opportunity to enter the intervention system. Alternatively, an NGO may help her apply for asylum or assist in a return to the home country.

#### Similarities and differences in protection and assistance

All four countries provide victims with NGO-run support and assistance services for varying periods as set out above. Thereafter, continued access to such services is contingent on confirmation of victim status in three countries, Portugal, Slovenia and the UK. Exceptionally, in Germany there are no second or third tier decision-making mechanisms geared to a determination of “status”. Instead, women who are simply suspected of being victims of trafficking and who wish to accept offers of help are granted often prolonged access to NGO-run services. Even so, in all four countries women’s willingness to cooperate in police investigations and criminal prosecutions of their traffickers is a key factor in the provision of sustained support and their right to remain in the country. The alternative is for them to seek continued residence on humanitarian grounds and/or through asylum applications. These processes involve often protracted, expensive and complicated legal proceedings that create prolonged uncertainty for women and do little to assist their well-being.

## 5 Conclusions

Overall, the four countries involved in the CEINAV study are broadly compliant with the provisions of the Palermo Protocol and with those set out in CETS. The continued emphasis in all four countries on the requirement that women cooperate in criminal investigations and trials may be said to reflect tensions between the state’s crime prevention and prosecution mandates and its duty to protect and assist women who have been trafficked and exploited within that state’s borders. Nonetheless, these tensions are difficult to reconcile. On the one hand, the criminal justice system is tasked with securing justice, not only for victims but also on behalf of society. On the other hand, to impose what are, on the face of it, arbitrary time limits and/or pressures on women to re-live their experiences through verbal testimony may risk subjecting them to further harm, particularly when accompanied by the possibility of removal from the country. As has been noted, even in Germany, concerns have been expressed about the potentially negative impact of contact with police during the (extended) recovery and reflection period. In all countries, then, it seems that “[m]uch more needs to be done to put victim care at the centre of the responses of all key players involved in human trafficking” (Laird 2015, p. 110). Protection and assistance to victims should play a more prominent role in shaping intervention frameworks, with greater focus on the human rights of women who have been trafficked and sexually exploited within the borders of a state. In particular, more consideration needs to be given to the separation of victims’ rights from the interests of the state to prosecute their traffickers and to enforce visa and immigration regimes.

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SECTION THREE  
**KEY ISSUES IN INTERVENTION**





## Chapter 8

# The contested concept of culture: encounters in policy and practice on violence and abuse

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As our research was part of a programme on “cultural encounters” the concept of culture has been central to our work, explored through both the histories of, and variations in, intervention cultures across our four countries but crucially through reflecting on the experiences of women and children from minoritised communities.

### 1 A conceptual framework

The CEINAV project explored both the intersections (and at times, collisions) across national legal and institutional cultures in the search for common European standards, and the growing diversity within European countries, where symbolic boundaries of cultural belonging, while constantly “under construction”, also define realities of social exclusion and inclusion. One of the starting points was that culture “is thus what allows us to perceive the world as meaningful and coherent and at the same time it operates as a constraint on our understandings and activities” (Säljö 1991, p. 180). Our study took place at a particular time, within specific historical and national contexts, so it reflects the intersections and contradictions that exist in the four countries in the early 21<sup>st</sup> century. Our research was carried out before the sustained inflow of refugees and migrants over the years 2015 and 2016 met a political response framing migration as an issue of national security, and thus does not reflect the impact of this securitisation process.

Culture cannot be seen as static and homogenous, but rather as a complex and polysemous concept, in the sense that it has strong connections for some social groups with different and additional meanings that reflect social and power tensions. Culture can be seen as a political arena, both within academia and politics, but it is also a battleground, open to assignment of new meanings. It is attributed to dominant groups and the elite (through art and sophistication) and, at the same time, to marginalised groups (through markers of difference). As researchers, we believe that the concept of culture has to be carefully considered, that we need to guard against crystallising groups and people as homogenous – be this professionals, Roma people, recent migrants or citizens with Asian or African heritage.

Modernity, colonialism and anthropological research contributed to shaping culture into something exotic, sometimes alien to a default white European norm. We prefer to think about culture as something that happens in our daily lives, as social practice (Thompson 1968). Understanding culture as social practice means bringing into consideration language and speech (as in the professionals' discourses from the project), but also politics and religion. None of these aspects can be separated, "[r]eligious dogmas, economic practices and politics do not stay dammed up in neat separate little ponds but they overflow their supposed boundaries and their waters mingle inextricably one with the other" (Benedict 1989, p. 12–13).

Viewing culture as social practice also offers the possibility of understanding how power relations translate to different cultural constructions (Willis 1978; McRobbie 1991). People from marginalised groups create their (daily) culture as a form of resistance, a counterpoint to dominant cultures and cultural hegemony (Gramsci 2000; Mayo 1999; Santos 1987). For the CEINAV project the key points were the professionals' voices – captured through focus groups – alongside the narratives we collected from victim-survivors. Michel de Certeau (1984) defines culture as quotidian resistance in social practices – this can highlight the professionals' social representations about the migrant subordinated groups not abiding with the national laws and regulations; culture is also part of the Bourdieu (1989; Bourdieu & Passeron 1964) concept of habitus, where he acknowledges that dominant symbolic structures constrain social practices and yet at the same time, people produce and actualise symbolic and material structures of ways of living and world visions. Despite the difference in perspective to that of Pierre Bourdieu, this resonates with Judith Butler's (1990) argument that gender is performed and actualised in everyday practices and discourses.

The CEINAV team members come from distinct academic fields (education, law, philosophy, social politics, sociology and creative art) and within these, carried certain "baggage", especially understandings of specific concepts. These cultural and academic encounters affected how we approached our data. We explored initially a range of concepts to guide our work – minority, intersectionality, post-colonialism – with each having greater or lesser relevance for the country teams. These debates also confirmed that the concepts of "minority" and "culture" were far from neutral or innocuous: In some academic fields and in some countries, the idea of "minority" sparks divergent reactions. Within certain theoretical traditions, "minority" is mostly associated to benign multiculturalism (Torres 1998) which, in turn, does not reflect the power relations and cultural tensions among different status groups. This criticism became particularly relevant in the "cultural turn" in the 1980s and 1990s, where power relations, discrimination and exploitation of social groups (such as women) found a safe place to affirm cultural differences through a logic of the exotic and othering. In Portugal, the concept of "minority" is not used with regard to oppressed groups: It is unconstitutional to do so. In Germany, the research team talked about women or families belonging to an ethnic or cultural minority or having a migration background. Sometimes the terms disempowered groups, or subordinated groups were used but none of these words or their German equivalents carry the meaning of being located in a subordinate position by others, that is, having "belonging to a devalued group" attributed and in consequence being treated as inferior. In England and Wales the terms black, minority ethnic (BME) or Black, Asian Minority Ethnic and Refugee (BAMER) are widely used in policy and practice circles and the concept of "minoritised" used more recently to indicate the social and political processes involved. For Slovenia this had a specific resonance, since their primary minoritised community is Roma people, for whom issues of race and ethnicity remain matters of debate and discussion.

In the CEINAV project, despite long-lasting working relationships and highly reflective discursivity in the group, we could not reach a consensus across these different un-

derstandings and perspectives. It took us some time not to see this as a failure, but acknowledge that the different positions and perspectives reflect the rich diversity of disciplines and the varying histories of our countries. Pragmatic agreement on unitary concepts would surely have made data analysis simpler, but by recognising the different viewpoints the research is probably more accurate in relation to the intervention cultures as well as to the dilemmas that professionals face.

We, the authors of this chapter, use “minoritised” intentionally here, to highlight that this is a social process, within which there is a default “majority” which invariably has greater access to resources, including the power to define what is normative. Differences are, therefore, not simply variations in practices – such as language, dress, food – but carry hierarchical worth, value and recognition. It is these processes which, in the white majority countries of Europe, mean that “culture” is frequently attributed to others or used to “instruct” those who are not the normative majority how the “culture” of the particular country supposedly is. Awareness of this process was part of our deliberations as a group of white researchers, finding ourselves within this framing, whilst seeking to question and challenge it.

## 2 Culture clashes

The four countries involved in the study have not just diverse, but to some extent contesting, histories and intellectual engagements with these issues. Whilst the UK and Portugal have documented, and to some extent acknowledged, colonial heritages, this is less the case for Germany, and Slovenia can claim to have been colonised by the Soviet Union. The four countries also have diverse recent engagements and national politics with respect to race and ethnicity.

What this project uncovered were largely unspoken, yet profound, different histories and engagements with issues of race and ethnicity, constructions of majorities and minorities. The depth of these variations is evident in the fact that there seems not to be a shared language (see above) which could accommodate the past and present of four Member States of the European Union, which certainly can be called a cultural encounter in itself.

In this chapter we explore how the issue of culture emerged in the multi-disciplinary focus groups with practitioners that we conducted to each form of violence (see chapter 2 on the methodology). Towards the end of all the 24 focus groups we asked participants whether it would have made a difference for their interventions if the persons in the phased story we discussed before had belonged to a minority or, as the terminology in other languages could be translated back into English, had a migration/migrant background. Our analytic template for working with the data from the focus groups not only included to explore the implicit cultural premises of intervention, including professional and organisational cultures, but also the framing of culture, cultural difference, and the minoritised position of the persons concerned in the interventions. The explicit focus on difficult decisions and dilemmas that practitioners face proved useful in highlighting perceptions of difference.

### 3 Working with a contested concept

Culture as a concept is complex, contested. The discourse enters an arena of political perspectives both theoretically and practically. Academics and professionals enter a slippery ground seeking to avoid homogenising and stereotypes. At the same time this unease, especially when relating to cultural differences, carries the risk of diluting, or even failing to recognise, how variations in cultural norms affect victim-survivor experiences, and how professionals respond. In this respect culture becomes a discursive resource which can be used in multiple ways in relation to violence against women and/or children: it can be drawn on as an explanation for the violence itself; for how victim-survivors respond; and/or as a reference point for the actions of professionals and agencies.

In the focus groups on domestic violence and on child abuse, the participants were first given a fictive case considered typical and implicitly located in the majority population, and then asked to reflect on what might or should be different if the woman or the family belonged to a minority. Reflections on culture were thus elicited in the context of difference, and while some professionals, especially from the services specialising in violence and abuse, insisted that their response would be no different, experiences of difficulty with access, acceptance of legal norms, or with language were then discussed and understandings of culture as applying to “*them*” rather than “*us*” emerged in all four countries. The focus groups on trafficking for sexual exploitation were presented with the story of a woman from Africa working in prostitution, and the question about “*what would be different*” was aimed at a trafficked woman from an EU country. While the focus groups in England and Wales focused on legal rights, those in Germany discussed cultural dimensions as an important pathway to gaining trust.

Across the different focus groups, culture broadly was described as: norms; ways of living, being and seeing; traditions; mentality; how we form networks and kinships; “codes of understanding”, accepted power relations, and “visions of the world”. That said, when identifying “cultural groups”, or a cultural bond, the concept was sometimes conflated with immigration patterns: in this framing migration was co-terminous with minoritised/subordinated groups. Whilst unsurprising given the current politics of migration in Europe, this led to excluding dominant groups from discussions of culture. This taken for grantedness is the ground on which the process of “othering” can flourish:

“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” (Grafe & Hagemann-White 2015).

Professionals, especially those from majority positions, often used culture to refer to those that they perceived as being different and foreign, although this was less the case when support workers themselves had a minority or migration background. By contrast, our interviews with survivors contained a number of explicit narratives of encounters with racism, whilst attributing culture to their communities of origin. This complexity reflects the global politics of ethnicity, and tends towards a neo-colonial rather than a decolonised concept of culture.

Introduced as a potential into the focus group discussions, culture, therefore, appeared to offer an opportunity to focus on differences rather than similarities. In line with that culture was repeatedly referred to as something “others” have: a tangible basis of difference, different to “our” way – implicitly, sometimes explicitly meaning the “right” way. These cultural differences were discussed through variations in norms, capacities for and understandings of violence, gender relations, family structures and the role/space the family holds within particular groups/communities.

*There is a problem with the laws: they do not respect nor understand very well our intrusion ... They have many prejudices culturally; they do not ... They are socialised differently from us. (police, DV, Portugal)*

*Yes, with the Romani, for example, it does show that it's another culture. Also the women from Albania – that's another cultural environment, too. Every woman that comes from another country, really. (NGO, DV, Slovenia)*

*We have to be quite versatile but it's a sensitive area but what worries me is that sometimes sensitive areas mean that you look at their culture, their colour more than look at the safeguarding issues. (midwife, CAN, England/Wales)*

The emphasis on differences varied somewhat across the four countries, with a sense of unreflected superiority surfacing rather frequently, most clearly expressed by some participants in Portugal and Slovenia, with neo-colonial tones evident in the former and nationalism in the latter. In all four countries culture was typically located “over there” rather than “in here”: majority cultures were the unstated, presumed normative referent. Exceptions could, for example, be found in focus groups in England and Wales as well as Germany, where some time was spent critically engaging with, and problematising, the concept of culture, including an explicit discomfort with the potential of homogenising and stereotyping communities or reflecting on the grounds on which it was appropriate to intervene in the lives of people with different origins and heritage. In contrast, however, in other focus groups in England and Wales participants were preoccupied with cultural difference among recent migrants, who needed to be “educated” on parenting and childcare.

*It's about educating the people when they come here about how they can discipline their children in the correct and safe way. (teacher, CAN, England/Wales)*

There were reflections on the need to respect diversity when intervening against violence and abuse. In Germany, “migration sensitivity” is a policy and professional concept (Jagusch et al. 2012) that clearly influenced attitudes in the fields of child abuse and neglect and domestic violence, but was less salient in the focus groups on trafficking. This orientation was also evident in some discussions about safeguarding in England and Wales.

*Of course, the approach has to be different, of course, you have to begin with asking, and accepting that they grew up quite differently. (headmaster primary school, CAN, Germany)*

*You have to be sensitive to culture but you can't work differently with different cultures ... and it doesn't matter where you're from – if you're from Africa or Lithuania ... so you might work differently with families around what is acceptable there and what is acceptable here but you still focus on the child. (statutory sector social worker, CAN, England/Wales).*

*And there are special structures in the family which you have to discover first of all. I ask many questions, too, how is this going and how would it be in your country and so on, to understand it. (guardian ad litem, CAN, Germany)*

“Other” cultures were sometimes homogenised. For example, the “French culture” was described as “cute” in a Slovenian focus group. Often minority groups were described as hyper-patriarchal, meaning that women and children would be less likely to name or question abuse.

The analysis that follows is not aimed at comparison or generalisation, but aims to illustrate the discursive tensions present in the focus groups. That we present evidence of othering processes does not mean that these were shared by all professionals across the four countries. There were challenges and debates: the tensions reveal the conflicts within discursive formations. For example, in Portugal there was a clear division and tension between a more racist view of the Roma people, when one professional (teacher) stated that Roma regarded gypsy rules as above national Portuguese law, and a more educated, rigorous and humanised view from other professionals (teachers included) who had taken time to get to know and interact with Roma people. These professionals brought new and challenging information to the group, including that there were Roma women activists on domestic violence and that in some areas positive relationships with the police were developing.

#### 4 What makes the difference in “cultural difference”?

In this section we explore how differences were articulated around parenting in relation to child maltreatment and gender relations with references to domestic violence.

A perception that minoritised families had different approaches to parenting was evident across the focus groups in Slovenia, Portugal and Germany, with some variation in England and Wales. The perceived differences orbited around the acceptance of the use of violence as punishment and discipline. Values and principles towards parenting were questioned as to whether they were in line with universal children’s rights or “our” norms in the particular country. These perceptions were linked to family structures, both in terms of who holds legitimised power and influence and the cultural significance of the family. For many this was connected to fathers having an uncontested position at the top of a hierarchical pyramid of power.

*Yes, there are some Islamic laws according to which the father automatically gets sole parental rights when the child turns two. Of course, we don’t approve that but it obviously has become firmly rooted in his [the father’s] mind. (family court judge, CAN, Germany)*

*Culturally, using the whip did not have a negative connotation in that African country. That is, the father did that because of cultural tradition, what is clearly shocking for us, but he hadn’t, let us say, the emotional disaffection in the relationship with his son. On the contrary, he liked his son very much ... He said things like “If [my son] doesn’t fear me, he will not respect me” ... It is a wrong model of beliefs. (social worker, CAN, Portugal)*

Such knowledge of conflicts in terms of social norms created tensions for professionals in relation to intervention: there seemed to be a clear orientation that respecting cultural differences should not divert from the right of every child to non-violent upbringing. The is-

sue of whether mothers and fathers should have choices with regard to same-sex case workers was explored, as a rejection of a worker on this ground left the professionals uneasy, some rejected the preferences whereas others acquiesced if it enabled engagement.

Difference was also located in gender relations, and here it was power that men held within interpersonal relationships and communities which was foregrounded. That gender inequality is recognised on a global scale, and domestic violence sits within this, was not the reference point for these discussions. Cultural differences were then attributed to more pronounced unequal gender relations, with a subtle polarity of hyper-patriarchy (them) versus recognised (if not always fulfilled) norms of gender parity (us) emerging. This framing can provide a space in which the household gender regimes that underpin domestic violence in the majority culture are not subject to scrutiny, at the same time as suggesting that minoritised women were more likely to understand men's practices as legitimate.

*The vulnerability of the Gypsy community has to do with the total absence of the role of the woman as a person. (magistrate, DV, Portugal)*

*There are cases where the men lack an understanding of what they are doing as wrong ... for them what they do is not wrong. They just execute their right ... they feel entitled to beat their wife, to correct her. ... 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. (prosecutor, DV, Germany)*

Tensions within focus groups were also expressed within contrasting perspectives on women from marginalised groups: in focus groups on domestic violence, some professionals discussed the submissive, passive and subjugated role of Roma women, whereas other professionals highlighted their self-esteem and agency, in the family and the economic sphere.

These observations about patriarchal masculinity sit somewhat uneasily with research on perpetrators in the UK and Germany, where a sense of male entitlement is evident, and in which their actions are routinely minimised (Kelly & Westmarland 2016).

Such framings could influence how participants interpreted their experiences when they encountered cultural groups that did not adhere to national legal frameworks, or even rejected them outright. In Slovenia, the place of origin led to a hierarchy as to who was obeying the law better within minoritised groups, with those from other parts of former Yugoslavia at one end of the scale and Roma, seen as acting in a parallel legal system, at the other. This “lawlessness” was discussed, predominantly by participants from the law enforcement and justice system, in terms of not wanting to integrate, as an “active” rejection and even rebuke of national law, with limited reflection of why there might be either distrust of state agencies or reasons for creating autonomous structures.

*If we talk only about the citizens of former Yugoslavia, we take it that they've adopted the basic civilisation norms, approximately the same civilisation norms – and I think that ... Although they don't see us, the system, as their own – the Albanians, for example, don't accept certain of our rules. (prosecutor, CAN, Slovenia)*

One variant on this theme, most evident in discussions in Germany and Slovenia, was a sense that some communities had become “closed systems”, with an underlying assumption that there was a responsibility on minoritised groups to open up. In comparison, how closed or uninviting majority cultures might be to those whom they have designated “others” was rarely explored; it came into view most clearly when women were prevented from speaking with a professional unless accompanied by the religious authority of the community. There are implications here for women and children isolated through violence and abuse, whose access to support is narrowed internally and externally. It is this reality



which has led some activists to create and campaign for support services that are rooted in marginalised communities, whilst raising critical issues about rights and equality within them.

*Who it is really difficult with is, yes, with Russians, Kasakhs, Bulgarians, Romanians, Sinti, Roma, they are closed systems ... Where the youth welfare office sits together with us, different NGOs, management and says: there's this little house ... there are often very strange living conditions, too. Closed, closed shop, closed system, you can't get in. (NGO, social Worker, ongoing service, CAN, Germany)*

*There's another difference: in the Romani world, within their population, violence is the appropriate mode of disciplining a woman. (social worker, DV, Slovenia)*

#### 4.1 Violence as normal

The view that violence was normal in some social groups was especially evident in the domestic violence focus groups: a trope repeated across countries and professional groupings was that women from different cultural and political contexts could be desensitised to, or ignorant about, violence and abuse. This argument drew on a notion of habituation, subtly different to the ways in which abuse can become normalised within gender relations, which has been long a focus in domestic violence research.

*Because they've been raised in this way since a very young age, and it's completely normal that they're restricted in all they can do. (police officer, DV, Slovenia)*

*They are socialised differently from us; so, they accept very well, and women accept very well the violence. (police, DV, Portugal)*

One version of this was to position minoritised women and children as less knowledgeable: that they did not know that they were being abused or alternatively that abuse was wrong. This is a revealing assertion, as it positions majority culture women and children, and importantly professionals, as the knowers, those who can educate others. There were professionals across the focus groups on domestic violence who argued that minoritised, and especially migrant, women did not perceive men's actions as wrong, that they accepted legitimacy for men to correct and punish. Participants in England and Wales and Germany spoke more about women not knowing about rights to protection and support services. This indicates indistinct contours and confusion between on the one side resigned coping, because there is no belief that women have the right or power to end violence, and an acceptance that male violence is legitimate on the other. It also reflects the necessity to be sensitive about different levels of knowledge and agency to claim own rights and the accessibility of support when women make a choice to change their situation – which could be contested as being an issue of culture or minority.

There was some, albeit limited, recognition of the ways in which minoritised women might have more ambivalent positions on intervention which were rooted in the realities of social and institutional racism: for Muslim women, Islamophobia might lead to more reluctance to report to the police, and for women from African-Caribbean communities, not wanting to compound the over policing and criminalisation of young black men. The effects of intervention on family relationships were an issue some participants saw as most relevant to Muslim women and children.

## 4.2 Exploitation as social mobility

In all but England and Wales participants in the focus groups on trafficking talked about some women's understandings of what had happened to them as not necessarily being trafficking or abuse. This was attributed to the idea that women's lives/situations were so bad in their country of origin that trafficking offered a possibility of escape, a form of social mobility. The focus groups in Portugal also evoked stereotypes about African women: the notion that they have different relationships with their bodies and attitudes towards sex. In England and Wales a stereotype of Indian women as more manipulative was voiced. The racist connotation in these views was not reflected on nor contested by other focus group members.

In one of the German focus groups professionals explored whether cultural norms primed some women to adapt passively to the coercion within trafficking. In addition, cultural practices could serve to entrap even when identified as a victim of trafficking: an example here was the ways in which Nigerian women are often bound by voodoo rituals which makes it difficult for them to imagine being free of exploitation and exploiters. The ways in which culture shapes survival strategies was understood to make intervention, especially offering realistic and practical alternatives, a challenge for practice.

*From childhood on the girls constantly get the message: the man has the authority, and if father says: You're going with second cousin Ali to Germany and will earn your money there, then that's just how it is. They don't resist, because they have never learned how. And it is really hard to get through to them, you can't break through the system. We Germans don't understand this very well. (police, TSE, Germany)*

German and Portuguese professionals drew distinctions around victims of trafficking from Europe and women from further afield, including Africa, South East Asia or Latin America. Here, European women were framed as having more social and cultural capital in terms of understandings or familiarity with European contexts. Linking this to broader discourse from across the focus groups and forms of violence, professionals first framed women as “*not knowing*” based on cultural heritages, and yet, in comparing European with third country nationals, those from Europe were accorded more knowledge. The possibility that there are degrees of othering, and that this turns on race/ethnicity cannot be ignored here.

## 4.3 Working appropriately with diversity

Across all four countries focus group participants reflected on the complexities of working with women and families from minoritised groups. At the core of these complexities was how to navigate the perceived cultural differences outlined above, in so far as they may shape the approach, and possibly influence judgement and course of action. These reflections outlined the professional dilemmas and raised questions about what best practice might look like.

One clear example here was discussed in terms of the tensions between different cultural approaches to parenting, and official national frameworks for child protection. The dilemma was in acknowledging that physical violence towards children may form part of cultural norms and practices, yet this created a question about “*holding the line*” in terms of national policies on children's rights and the law. In Portugal this was described as a debate on children's rights versus cultural rights, and it was explicitly stated by some that professionals had to be more tolerant of child physical abuse because of cultural difference. A similar dilemma was articulated with respect to domestic violence being more acceptable in some cultural groups.

*The principle must be that nobody is allowed to be violent towards another person. Full stop. This is what we have to insist on. We can consider the actions of a father who punished his daughter in good faith by beating her senseless because she went out with a boy as a social explanation of why he did it perhaps, but we should process it as a criminal offence. (prosecutor, CAN, Slovenia)*

*It's important for professionals in an area ... to have an understanding of the issues in different ethnic groups, you know, this particular ethnic group tends to behave in that way, and so on ... but then to keep in one's mind always that the important, that the key issue is the safety of the children concerned and while it's all very well for them to follow their cultural norms or whatever but they should never ever come above the safety of the child. (midwife, CAN, England/Wales)*

Holding the line – maintaining the same standards as set by law and policy – was an ethical reference point for most professionals, but whilst this gave them a safe ground to stand on it did not resolve the question of how to engage in practice.

I would have, how would I have explained to these children bringing them to another place, where nobody speaks their language, where they are basically not cushioned or supported at all, where they don't know what is actually happening, why they are separated from their families? (social worker, social services, CAN, Germany)

#### **4.4 Diversity as a barrier to intervention**

Speaking a different language to the national context was the most frequently cited barrier to working with women and families, but a number saw this as compounded by precarious immigration status and material constraints. Different family regimes were also framed as a point of difficulty: the difficulty in “*entering families*” was linked to hyper-patriarchal family structures, with German professionals noting how men in such regimes may refuse to accept women as competent practitioners.

A different thread in these deliberations was that a focus on cultural difference may lead to over-estimating the level of risk in child abuse and neglect and domestic violence based on preconceptions and stereotypes. This can also suggest that there is limited capacity among professionals to understand and deal constructively with the life context of each family. This appeared across countries and forms of violence, particular explicit in Germany where “*cultural sensitivity*” in interventions is a strong professional norm. Whilst most professionals were at pains to stress that intervention methods would be the same, a number of stories were told in which cultural backgrounds hindered successful intervention, or where appropriate intervention required considerably more time and effort to explore the unfamiliar context.

*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. (intervention centre, DV, Germany)*

*I know that I was startled about that myself, to realise that, that I had really made a difference there. (social worker, social services, CAN, Germany)*

In cases of child abuse and neglect where children were removed from their homes, professionals highlighted difficulties in finding new homes which would fit with a child's religious and cultural heritage. Similar difficulties were noted for shelter accommodation

for victims of domestic violence. An interesting contradiction, noted specifically in Portugal, but extending to the other countries, was between the contention that procedures and processes should be the same no matter what the cultural/migration background might be, whilst at other points asserting that every case is unique. The concept of intersectionality – which enables exploration of difference in terms of the matrix of oppression in the lives of children and women – was not drawn on by professionals. Lacking a conceptual framing that can hold similarity and difference simultaneously meant that the focus groups often contained contradictory elements.

#### 4.5 “Removing those barriers”

While discursively culture and cultural differences were frequently discussed within implicitly superior referents, the focus group discussions also contained reflections about how to work more thoughtfully and effectively. Some professionals spoke about the dangers and problems of working with culture in terms of homogenising or stereotyping groups. Here more “*space, time and expertise*” was seen as necessary. What this expertise might look like was seldom specified, but could be linked to other assertions, such as: recognition of material constraints; taking time to explore the history and background of each child, woman or family. This implied an openness in practitioners to not position themselves as the knowers, but to be willing to learn about the meanings, and potential consequences, of courses of action in each context. This could be seen in the idea of removing the barriers to accessing appropriate support. In addition, not overemphasising cultural differences was brought up, through a suggestion that culture should be seen as only one potential lens through which professionals approach women or families. Being curious about the beliefs, self-concepts and cultural belongings of those one is working with has been seen as way to connect to the women, men and children (see also France 2013).

*It's about finding ways to enable them to access the service for their benefit. It's seeing where the barriers are in place, whether that be language or cultural issues, and removing those barrier. (specialist NGO, DV, England/Wales)*

*I think there's a little bit of a danger when you place issues of culture or ethnicity in such other separate categories. You move away from the fact that when you have a child in a family you might have a series of lenses that you have to approach looking at the child or working with the family through. (lawyer, CAN, England/Wales)*

Another route proposed by some was being able to pair victim-survivors with professionals from similar cultural heritages. The same benefits were outlined in terms of professional training being delivered by members of the relevant community.

*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. (lawyer, DV, Germany)*

A development of this theme was provided by a specialist NGO from England/Wales, which works with black and ethnic minority women. Their approach was based on enabling women, the focus not on cultural difference, but on challenges for support and intervention. Here there were additional barriers to accessing support which it is the responsibility of agencies to dismantle. This creates extra layers to the work, which included:

building trust, particularly around confidentiality; enabling women to access support where options are more limited because of immigration status; recognising the complexities of family and community connections where these are associated with honour and shame. One method was to ask women additional questions about what their community norms were, in order that practitioners could understand if barriers could, where possible, be dismantled.

*So as a family law solicitor, my advice on legal remedies is exactly the same regardless of where they're from. I'd ask different questions – being alive to the specific issues that those women face, not so much because that will affect the legal remedies, but more so that I can understand her case and to be able to present it to the judge properly, to be able to advocate for her properly – If they're from an ethnic minority background, try to understand their case, but the actual legal remedies would be exactly the same. My difficulty is that they can't access me. (lawyer, DV, England/Wales)*

*And there are special structures in the family which you have to discover first. I also ask a lot of questions, how is this going and how would it be going in your country and stuff like that, to understand. (guardian ad litem, CAN, Germany)*

## 5 Reflections

Culture was an ambiguous term in the theoretical discussions in the CEINAV project and remained as such when exploring our data. Culturalising the situation of the persons concerned can, on the one hand, lead to stereotyping and justification of discriminatory views. On the other hand it can help the persons concerned explain themselves, their beliefs and needs as well as the understanding of professionals to find the appropriate intervention for the individual situation. The tensions and interrelations were strikingly present in the discussions on culture in our research. They obviously call for permanent reflections. The complexity and dilemmas which in particular the focus groups revealed led us to conclude that the professional trope of “cultural competence” is insufficient in the effort to ensure that all women and children who experience abuse have equal access to support and protection. The insights from the focus groups, alongside interviews with survivors, form the foundation for the ethical framework for intervention developed out of the CEINAV project (see chapter 16).

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## Chapter 9

# Protection and Self-Determination

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## 1 Introduction

The responsibility of the state to protect women against intimate partner violence and trafficking for sexual exploitation and children against abuse and neglect builds on a broad consensus across the European Union. The demand for intervention to end the violence and to support the persons concerned is laid down not only in international instruments but also in the national laws (see chapters 5 to 7). The state is bound to exercise due diligence if (potential) violence comes to its notice. Professionals in contact with the persons concerned have a legal and/or ethical duty to act. If violence is known to occur, entering the private sphere of families and individual persons' lives is not a matter of professional discretion. Although often the children, parents, women or men themselves call the police or reach out to someone else for help, it can be the case that it is not the person concerned who decides whether the state takes action to end the violence or to assess the situation.

Acting for the welfare of others is a classic problem of pedagogy which also arises in the discussion of interventions against violence. Micha Brumlik (2004) proposes an advocacy ethic stating that intervention is justified even without the consent or even the knowledge of those concerned, if needed to maintain a minimum of physical and mental integrity and human dignity. Holger Ziegler (2014) argues that the question is not whether it is ever justified to provide "unsolicited help", but on what grounds. He demands proof of the intrinsic functionality of the interventions as well as respect for human dignity (p. 269). Christoph Schickhardt (2012) asks when it may be justified to intervene in the interest of the present or future well-being of a child. To the extent that children are not yet capable of responsibly deciding their best interests, it may be necessary and justified to intervene against their wishes (pp. 219–222). Friederike Wapler (2015) explores paternalistic justification for all individuals who experience limitations in their ability to make autonomous decisions in their own interest, and applies this to those who live in a situation of coercion, violence or manipulation, explicitly referring to women. According to Wapler, paternalistic measures could be called for but would have to offer participation or transparency and should always give room to the wishes of the person concerned (p. 341; see also chapter 4 on ethical theory).

Not only the encroachment on the rights to freedom from state intervention but also the proactive offer of support that a person has not asked for have a bearing on the self-determination of women, parents and children. Professionals manoeuvre the lines between a caring and besieging and an empowering, self-determination strengthening offer of help

(Dallmann & Volz 2013; Großmaß 2006). Support, no matter how good the intentions, has roots in paternalism (Ziegler 2014; Neumann 2013; Olk & Otto 1987) as well as in ideals of (restoring) self-determination (see chapter 11 on empowerment) and, hence, has to be aware of the risks of colonialising living environments (Thiersch 2016; Gängler & Rauschenbach 1986). Therefore an unsolicited offer of support, even though it often can be justified, needs a legitimisation itself. A fortiori, this holds true for measures to protect and support, as they frequently initiate significant changes to the life course of the persons concerned. Professionals in helping roles have their own views, estimation of the situation and what might be supportive, and by doing so implicitly or explicitly are in competition with the persons in need. This requires a high level of reflexivity (Schön 1983) and negotiation of the different kinds of knowledge and a potentially differing assessment of the situation.

Informational self-determination is a similarly sensitive issue in the field of protection against violence. The Charter of Fundamental Rights of the European Union limits rightful information sharing to having a basis of consent or a legitimate basis laid down by law (article 8). The protection of personal information is thus a human right. As a question of ethics it clashes with the possible necessity of gathering or sharing information without consent to secure protection from further harm. In child protection, the failure to provide the statutory social services with relevant information has been identified in various serious case reviews as one of the causes that contributed to a child maltreatment death (NZFH 2019, pp. 77ff.; Sidebotham et al. 2016, pp. 163ff.). Policy makers and legislators reacted and in most countries around the world implemented mandatory reporting mechanisms or notification duties (Mathews & Bross 2015; European Commission 2010, pp. 40–41). The role as guardian to protect children from harm brings the state in a different position towards parenting than towards a woman's choice of partners. In consequence, intervention approaches to indications of intimate partner violence or trafficking are more diverse (see chapters 6 and 7).

On a general level, the legitimacy for not fully respecting self-determination can be found in the duty of the state to protect victims from any further acts of violence (article 18 Istanbul Convention) as well as to protect children from all forms of physical or mental violence, neglect and sexual abuse (article 19 UN Convention on the Rights of the Child (CRC)). This duty has to be seen against the background of article 12(3) Istanbul Convention which demands all these measures to take into account the needs of victims and to respect their human rights, including the personal freedom of action. This correlates with the duty to hear the child's views and to give them due weight in accordance with the age and maturity of the child (article 12 CRC).

The story shifts when self-determination leaves the field of protection and support and enters the arena of the criminal justice system. Trafficking, intimate partner violence and child abuse and neglect are punishable offences, with legal concepts in the criminal codes varying across countries. For victims, criminal prosecution can play an important role on their way to a self-determined life by having the perpetrator's wrongdoing officially acknowledged and "any liability for the violence being taken off them and placed where it belongs" (quote of a survivor of sexual violence in Unabhängige Kommission 2019, pp. 216ff.). The sovereign power to enforce sanctions, though, remains with the state. Still, women and children exercise agency differently, find different pathways to restore their lives as survivors of violence and, therefore, criminal prosecution and interaction with the criminal justice system can be an inadequate route to justice and to meeting their needs (Rehman et al. 2013). The examination can be not only stress- and painful but also harmful to victims (FRA 2017). In addition, the conviction of perpetrators might fail for reasons that at least partly lie in the sphere of the victims; they might retract their evidence (Smee 2013) or their witness statements might not be believed (Unabhängige Kommiss-



sion 2019), which might place further burden on them. Whatever the individual case may be, self-determination or the lack of it is an utterly important issue for women and children as victims also in contact with the criminal justice system.

## 2 Protection and self-determination: tensions and hierarchies

If indications or knowledge of intimate partner violence, trafficking for sexual exploitation or child abuse and neglect come to the attention of the state or the protection or help system, self-determination comes under pressure and complicated questions arise: who decides whether and how much a woman needs support to escape the violence or might want to maintain her living circumstances? To what extent do parents have a say when their parenting is assessed and when are support and protection measures taken? Do women have a right to live in a partnership where there has been violence if there are children involved? Are children co-creators of interventions to support their safe and flourishing development?

Exploring the protection systems on the three forms of violence in the four countries, it emerges that conflicting priorities between the duty to protect and self-determination are present across the field but dealt with quite differently. The formal as well as informal rules and regulations of the particular systems call for decisions about when the duty to protect trumps self-determination and when the freedom to autonomy is paramount. Due to the basic situation of paternalism in childhood (Wapler 2015) this plays out differently when the autonomy of children as well as of parents is in question, as it does situations of weighing the autonomy of adults. No matter how hierarchies are preset on a legal-structural level, the professionals have to handle the ethical dilemma and practical constraints in the individual situations. They differ in their awareness that they might, at the same time, act in line with, and act in conflict with the individual rights of the persons concerned, and they reflect differently on the implications of this fact. The following traces how these tensions played out in the 24 multi-disciplinary group discussions with professionals in the CEIN-AV project (for methodology see chapter 2) and is based on 12 working papers, one on each form of violence in each country (<http://ceinav-jrp.blogspot.com/p/working-paper.html>).

Intervention can only be triggered if the situation comes to the knowledge of someone who is able to act. Women or young persons might reach out by themselves, in other cases non-professionals such as family members, friends, neighbours, colleagues or professionals in contact with the persons concerned can see indicators or have direct observations. As long as the person who suffers the violence reaches out and receives the help s/he asks for, her or his self-determination is initially respected. There are also cases in which they reach out and do not find help nonetheless, because they are not believed, no appropriate measure is available or professionals only accept a different form of intervention. While this also affects the question of self-determination the attention often concentrates on cases where a woman or child has not yet reached out but other people become aware of potential violence.

Professionals in the group discussions on intimate partner violence and trafficking agreed that the woman should be asked before interventions are initiated. In Germany, reaching out to the woman and offering support without her asking for protection or help seemed to be widely acknowledged as good practice, but it was a delicate question how to do that. In Portugal, professionals seemed much less reserved. In case violence was denied, intervention could only go forward if there was either grave danger to the life of the woman or a child was maltreated him-/herself or was witnessing violence by living in the

household. In the field of child abuse and neglect professionals shared a view that child maltreatment calls for action and cannot wait until the parents or the child reach out themselves; the response is a matter of how not if.

*The perception that she is a victim, giving her the power to decide what to do. Sometimes, when there is a risk to life, an imminent danger, they [victims] acknowledged and have to go a long way, before we come to her with our, often times, “rescue instinct”. (NGO shelter, DV, Portugal)*

*Under no circumstances would we press her to make a statement, we know that is useless. As long as she is not stable, she is unable to testify. (counselling centre, TSE, Germany)*

*You pick up who’s controlled and who’s fine. We give out mascara with phone numbers, meet for coffee, build relationships. A lot of girls are scared by police and authorities. There’s a lot of gut stuff, whole mannerisms, open or quiet and hesitant. (faith-based NGO, TSE, England/Wales)*

*And here, in my opinion, it is very important to assess how far to go or how far to go into other institutions in these situations. (social worker, CAN, Slovenia)*

Especially when there are no children involved in situations of violence, the question arose whether, after years of oppression, a woman in an abusive relationship can have (sufficient) self-determination to seek help or, if protection is provided, she will be able use the newly given freedom. Again, professionals in the German group discussions clearly stated that “*by no means*” would they initiate protection against a woman’s will, but would give her time until she knows what she wants. In Slovenia as well as England and Wales, several professionals seemed to have a notion that it is necessary to lead the way after “*a certain freedom of choice has been taken away*” from the woman and perceived themselves as the ones who help the women to make the “*right choice*”. A feeling that their “*hands were tied*” seemed to leave them dissatisfied if they respected the woman’s decision not to make use of support services or protection measures.

*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. (intervention centre, DV, Germany)*

*That can be the case even where they do understand, they still don’t want to leave because he says he won’t do it again, or you’ll be homeless, you’ll have no money and that’s time and time again why women choose to stay, even if they know they’re being abused. (lawyer, DV, England/Wales)*

*(...) any intervention plan has to be done according to the woman’s will. Because, in the end, we realise that women are the experts of their own risk, of the risk they are living. ... We wait that the victim does the complaint herself. (NGO women’s centre, DV, Portugal)*

The idea that women cannot make good choices can be linked to a perception of them as subaltern and marginalised. When they are seen and treated as incapable of well-founded decisions, the result can easily be “epistemic violence” (Spivak 1988; Fricker 2007). In this framework, a division between professionals as knowers and the persons concerned as not knowers emerges, and did appear in some of the group discussions. In particular (but not only) when persons from a minority were involved, professionals tend to count themselves among the knowers with the power to select who the non-knowers are, along

with entitlement to decide what is best for them. Some professionals explained that arrangements had to be made for women, parents or children who then had only to accept or reject. But for many, the dilemma of self-determination was apparent when it came to different views on whether anything has to change and if so, what.

*His safety is always first and foremost so, although he's said that, we need to make sure he's protected ... and explain that we're doing this for him.* (teacher, CAN, England/Wales)

*I have a difficulty with the belief that I know what's good for another person. I want to persuade others, because I think that's good for them, that this is the only right way for them ... And here unfortunately ... If someone kept telling me what was good for me, I don't know if I'd accept it very well. I don't know how respected I'd feel.* (NGO representative, DV, Slovenia)

*From what I read until now, I absolutely do not have the feeling that she is with this man voluntarily. She is with him, because she is afraid of him and because she still does not know how she can escape this man. I have the feeling she screams in all directions please, how do I get rid of him? ... she does not want to stay in that relationship, she just does not know how to get out of it.* (shelter worker, DV, Germany)

*Or interpreters actually saying to women "have you really thought about the impact this is going to have on the children, on the community, what will your mother at home think."* (police, DV, England/Wales)

### 3 Unsolicited offer of support and gathering information

Entering the private sphere of family life and sexuality does not only touch essential human rights but also involves intimate information. Access to privacy is limited unless the persons concerned open the "doors", start to disclose their situation and to cooperate with the professionals who are willing to end the violence and support them. In Germany, a trustful relationship is seen as crucial in many cases to gain an accurate understanding of the child's or women's situation. Professionals reflect that straining the trustful relationship or putting it on the line by gathering information behind the back of the family or without consent can have influence on the options to help and protect. Depending on how it is done, this influence can enable access to support or damage the relationship upon which support depends (Beckmann & Meysen 2015).

*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 anymore.* (advisory centre, DV, Germany)

*And then the victim stopped coming to the sessions. I don't have any information about whether the violence stopped or at least didn't intensify.* (social worker, DV, Slovenia)

Some of the professionals working in the field of intimate partner violence said they would respect the freedom of an adult to live in a violent relationship. Some also called for caution not to cause a "lasting disruption of the family peace" which was contested by the question of how a violent situation could be referred to as "peace". In Slovenia a distinction was made between private actors such as NGOs and the state. In the latter case, self-determina-

tion was seen as overruled by the state's duty to act. Similar discussions came up in England/Wales on trafficking when more than the one woman could be affected and information was needed to protect the others as well (see also below). Professionals working in the field of intimate partner violence and trafficking for sexual exploitation drew the line when children were involved. Indications that a child was present led to the notion of an obligatory search for access to the situation of the child. The same applies to the field of child protection. If the concern was sufficient professionals are required to gather further information, investigate and assess. Self-determination in child protection seems to be out of question: if the child is being abused the professionals must act. The child's will, in contrast to the women's will, seemed to have no relevance for the question whether the professionals should take action and get in contact with the child and the relevant family. Only in Germany, where helping relationships are of high value for professionals, did considerations come up that gathering information should be transparent, even if conducted without consent.

Women, men, children, mothers and fathers might not be willing to share their information and views with someone from outside. The dilemma of taking too much or not enough action was particularly present in Germany and Portugal, where professional judgement is far less delegated to guidelines (England and Wales) or normative requirements (Slovenia) (Meysen & Kelly 2018). Still, in the group discussions across countries, forms of violence, and stakeholder groups, various professionals showed an awareness that unconsented action can put help and protection at risk. The situation was repeatedly referred to as a "tightrope walk".

*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 ... 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" (police, DV, Germany)*

Minority women quite frequently were considered as not knowing about their rights (see chapter 8). Approaching potentially abused or trafficked women to provide them with the necessary information that enables them to seek help and protection might therefore be seen as a moral duty, even if they are contacted proactively and it is an unsolicited offer. In addition, it was discussed that women do not always see the advantages to themselves but see many risks if they leave the violent situation. Showing them alternatives, even if they are imposed on the women, might increase the level of their self-determination in comparison to solely being told what to do. Choices can be made as long as the decision when and how to act and to initiate a further process of intervention stays with them. Not all agreed that making use of services and searching for ways towards protection should be voluntary and pointed to coercive situations the women cannot escape.

*This is a situation of coercion. ... We know how strong the pressure is. And I don't have any illusions. It's very hard to bring the woman to the tipping point just by talking to her. (police, TSE, Germany)*

#### 4 Information sharing without consent, knowledge or against the will

In the four countries of our study, there were stark differences in policy and practice on the issues of information sharing, confidentiality in helping relationships and informational self-determination. For example, Germany's child protection system is one of the very few not following the international mainstream of requiring immediate notification or re-

porting, so that the decision about when it is necessary to share information without consent is left to professional judgement (see chapter 5). The systems in England and Wales, Portugal and Slovenia set such professional notification or reporting obligations either in law or in guidelines. In the field of intimate partner violence against adult persons one would expect a higher degree of respect for their self-determination since there is no intergenerational conflict of interest involved. However in some countries this is not the case. In England and Wales referral mechanisms for high risk cases of intimate partner violence have been implemented by calling a multi-agency risk assessment conference (MARAC); consent of the victim-survivor is sought, but can be dispensed with. Cooperation between professionals is elevated to a paramount value (Coy & Kelly 2010). If children are involved, violence against women can be reframed as a matter of child protection (Hester 2011). Immigration laws strongly restrict the self-determination of immigrant women who are trafficked for sexual exploitation (see chapter 7). This has implications in relation to the General Data Protection Regulation when it declares consent that an authority asked for as not “freely” given in the legal sense (article 7, recital 43).

Professionals working to support women to end intimate partner violence are often acting within a legal framework or organisational rules. They may have explicit responsibilities to protect. In England/Wales as well as in Slovenia guidelines or protocols shape practice. Generally prescribed processes seem to be the dominant orientation, and not the wishes and needs of the persons involved nor any ethical reflections. Following the rules appears to trump choice and self-determination. Guidelines and protocols seem to be followed without further reflection about the implications and circumstances for the individual person concerned.

*We'll prepare everything, we'll be in agreement, in a process, but in the end we'll follow the domestic violence protocol.* (social worker, DV, Slovenia)

*(...) surely if you're a worker and you're governed by these procedures, you would follow them.* (specialist NGO, DV, England/Wales)

In Portugal, professionals from different stakeholder groups engaged in emotional conflicts and contradictions on the issue of “victim’s consent” against “state responsibility” arguing with re-victimisation.

*If it [the women's will] is not taken into account this attitude will break the relation of trust with the professionals and the women will feel diminished by the institutions, in a similar way as they have been by the offender.* (NGO, DV, Portugal)

Between professionals in the group discussions in Germany the duty to respect confidentiality was unanimously given high value. Supporting self-determination and empowerment was the goal to be achieved through helping women to discover their own resources and expanding their scope of action.

*It is important that self-determination is preserved because otherwise there is no advice and counselling for the woman.* (intervention centre, DV, Germany)

Across the four countries the narrative shifted if children lived in the household in which intimate partner violence took place. Children can legitimise, and beyond that can be seen as calling for unconsented information sharing. In England and Wales, some practitioners spoke of threatening the women with removal of the children as a powerful lever to persuade them into taking the action the agencies expected. Moreover, parents who (potentially) abuse or

neglect their children are scarcely allowed informational self-determination. The decision to share information among agencies is seen as a decision at the full discretion of the agencies in Portugal. For professionals in England/Wales, even if an ethical dilemma is perceived at all (e.g. by health care professionals), it is always overridden by notification duties. References are made to serious case reviews to legitimise sharing information at the earliest point. Professionals in Germany handle the issue with a high norm of transparency. It is seen as a matter of course that parents are informed. Their wishes might not be taken into account but they are at least given the chance to express their point of view.

*That's an interesting one where it says both parents have not given consent to share information ... by the time it gets to conference level, the threshold's been met to share information because if you don't, it's detrimental to the child (...).* (statutory service social worker, CAN, England/Wales)

*I would try to be very transparent.* (social worker, social services, CAN, Germany)

Transparency can be challenging in direct contact with family members. Therefore, ways of working around the transparency requirement came up several times. With children who disclose their situation to a professional there seems to be a stronger sense that passing on the information without consent is an ethical issue. Nevertheless, it was almost always overridden across the four countries. Concerns that children might subsequently withdraw their statements were dealt with as “anxieties” of professionals secondary to the necessities of safeguarding issues. In Portugal, children seemed to have no say at all. Some remorse could be sensed that professionals in child protection in principle act over the heads of children. Other than in England/Wales, where unconsented information sharing almost seemed to have become an end in itself and the possible effects on the help process were not discussed, there seemed to be a clear awareness in the other three countries that acting against the will or knowledge has to be weighed in every single case. Professionals need to make a decision whether to strain their trustful relationship with parents and children or whether it is necessary to put it on the line. When professionals see a need to share information but do not want to confront parents and perhaps unsettle the working relationship with them, they sometimes work around transparency to make sure the information reaches the responsible professional or authority.

*Well, he is acting a bit behind the back?* (family court judge). *Yes!* (social worker, social services, CAN, Germany)

Sharp contrasts between the countries appeared in professionals' views in the field of trafficking for sexual exploitation of women. In Germany, professional secrecy was of highest value and a legal obligation. Those in a helping role claimed never to breach trust. Professionals in the criminal justice system underlined the importance of providing information even if the specific victim could not be named without her consent. As an example police suggested the counselling service could share context knowledge, such as the location of a brothel where trafficked women might be found. A similar but stronger tendency to blame helping professionals for hiding behind data protection arose in England and Wales. In consequence, wishes of a potential victim of trafficking can be overruled in England/Wales in view of the need to ensure a woman's or other potential victims' safety (“public protection”). An exception was a feminist NGO position that no action should be taken without the victim's express agreement. Conflicts between agencies on this issue could be found in the Slovenian group discussions. Professionals in private NGOs noted that they always needed the woman's consent and would never act without it. But those working in the administrative or criminal justice system cited official

procedures that demand information sharing. Police (not only) in Germany deemed data protection to be perpetrator protection. In Portugal, consent was seen as an “*ambiguous concept*”. Though acknowledging the importance of inter-agency collaboration, professionals gave more weight to the survivors’ will in regard to information sharing. Lawyers in all four countries confirmed that they are duty bound to act only on instructions and with their client’s express consent.

*Non-disclosure obligations and such. That also is a protection of the rights of a person, so to say, that you do not pass on information and that is very, very important to us. (advice centre, TSE, Germany)*

*I do not pass on nothing to no one, of course. Never. (lawyer, TSE, Germany)*

*The whole consent issue is massive. I think it’s a non-issue and agencies have hidden behind in the past to do nothing. (police officer, TSE, England/Wales)*

## 5 Intervention without consent

In the context of family, the duty and right to intervene to end intergenerational violence involving children has developed towards a consensus across Europe. In the case of adult women the state has to respect freedom of choice for intimate partner and sexual relationships, but if state authorities, particularly the police, are informed of any danger of imminent harm to an adult, this knowledge usually initiates a duty to act. Nonetheless, such paternalistic actions need to be legitimised. From an ethical standpoint, disregard of self-determination cannot be justified in hindsight nor on the basis of self-referential “good promotion theories” (Brock 1988). Intervention without explicit consent only has an ethical foundation if self-respect or human dignity of the person concerned is at stake (see chapter 4 on ethical theory; Ziegler 2014).

Creating living circumstances in which women and children can live and develop free from violence can be described as a process of co-production and change. It involves the persons concerned as well as a broad spectrum of professionals. The success of support and protection is increased if intervention is grounded on participation and ethical practice (Pluto 2007). This in turn presupposes trust in the professionals’ sincere care, benevolence, reliability and taking of responsibility. To encounter women, men, children, and parents with respect, to esteem their dignity even if there is unacceptable behaviour requires a reflective professional identity (Thiersch 2011). Therefore, handling ethical issues of self-determination in interventions against violence is not static. It is contextualised in relation to emotional and other resources of a person to make self-determined decisions at the particular time. Systems and professionals take widely different approaches to end violence and support survivors.

### 5.1 Intervention without consent and violence against children

In the transgenerational context of child protection, parental self-determination can be restricted. Child abuse and neglect calls for paternalistic intervention if parents or carers are not able to prevent the risk of further harm themselves even after support has been offered or accepted. Child protection systems assign tasks and responsibilities to the various actors. For professionals in contact with children, parents, and families in England and Wales

the referral to the statutory social services stood at the forefront. Whether to notify or not seemed to be the primary question and thresholds that trigger a report were discussed. The cooperation of professionals was clearly placed above the cooperation with parents. A relationship of trust with the child also was seen as a secondary consideration, clearly over-ridden by the duties to work together as professionals to safeguard children. A participant claimed that there was “*no conflict of mandates*” because professionals must act – whether that is a referral, an assessment followed by a plan, or a stronger, immediate intervention to remove a child. Whenever the issues came up that professionals should engage with parents and children, should build a trustful working relationship to support the parents to make changes, and should let the child have a say through participating, they were pushed to the side in the same breath.

*(...) if you had a medical report that the injuries were more likely than not to have been caused by being struck with an object, I don't think you would get a social worker or team looking at support for the family, you'd get a social work team looking at immediately safeguarding a child from further physical harm, and emotional harm. (lawyer, CAN, England/Wales)*

In Slovenia, the participants were aware of the rules but had doubts that it is always best for the child to follow them. This mainly referred to the high norm that child abuse is a crime, that the past actions need to be investigated, and that the criminal justice system has to be involved (see also below). Concerns about false criminal complaints were discussed, though at the same time, the importance of interdisciplinary cooperation and coordination was emphasised. In that respect, professionals expressed the need for more explicit guidelines that would give a clearer orientation about the steps and measures to be taken in case of child abuse and neglect. With some professionals, taking responsibility to protect a child was incompatible with the helping role of the professional, which made it possible to avoid the question of consent.

*But when the safety of the child is at stake, we assess what is the bigger risk. And that for us is always an ethical dilemma, but we do try to respect all the rules and on the other hand try to find these options. (social worker, CAN, Slovenia)*

*Would I ask the mother about the possible abuse? Looking from the point of view of my profession, no. I am interested to keep the contact. (midwife, CAN, Slovenia)*

Working towards parental consent was of importance in the discussions in Portugal. While information was shared among agencies regardless of consent, agreement of the parents was required for the implementation of support services and a help plan. The alternative was to initiate judicial proceedings, which seemed to be a high threshold for professionals. Overall, there seemed to be a reluctance to intervene in the life of families, which left the freedom to self-determination with the parents and raised the threshold of severity at which professionals had to act. Rather striking was the high level of paternalism towards children, whose will was seen as irrelevant in child protection, even if children were older than twelve.

*I think that if we really want to help children, we have to look at the parents and families. (teacher, CAN, Portugal)*

*I think we have to be very careful when we talk about violence, because the term became generalised and now it is applied in such a [trivial] way, and trivialising this is extremely dangerous. (teacher, CAN, Portugal)*



In Germany, all professionals emphasised the necessity to act as early as possible, and were determined to do so according to their roles. In health care, education, and child and youth welfare, professionals constantly referred to their relationships of trust to children and/or parents or discussed how to make and maintain such relationships. In consequence unconsented actions were seen as a breach of trust and needed strong justification. The reflection on the effects of interventions on the working relationship and the access to the family led to an individualised decision-making about taking measures without or against the will of parents as well as children. That self-determination cannot always be given in child protection was taken for granted. Paternalistic actions were compensated with a strict requirement for transparency, which gave the persons concerned the alternative to act themselves or could increase the chances of keeping parents and children engaged in the intervention process.

*I also think that it is important to make it absolutely clear to the mother: I cannot be silent about this. There is an alternative to this, I'll do it behind your back and I'll notify the authorities. I cannot just let this happen. (social worker emergency care, CAN, Germany)*

*From the view point of those who intervene directly, we've repeatedly made the experience that even families who didn't want any help in the past say, yes, now we want help. (social worker, home visit services, CAN, Germany)*

## 5.2 Intervention without consent and violence against women

Intimate partner violence is perpetrated against adults. Restricting their self-determination cannot be justified by the “paternalistic basic situation” (Wapler 2015) as in child protection. In Germany, professionals hence agreed on a clear orientation and stressed that nothing will happen against the woman’s will or without her knowledge, respecting that “*each must find her own way*”. The “*failure*” of women to engage with intervention sometimes frustrated professionals but still kept them from doing anything without consent. In Portugal this dilemma led to a lively debate. Professionals positioned themselves on different sides. The intensity invested in the arguments showed the professional implications and the emotional involvement. In Slovenia, some participants passed the dilemma on to the Centre for Social Work that then should “*prepare*” the woman. The question of self-determination was rather dealt with as a matter of the ability of the woman to stand by her will to end the violence. This seemed to switch the focus from the violence and its effects to the women as becoming the problem if not consenting to intervention, leading to discussion of how to support them so that they comply. The stance professionals took in England and Wales was, again, rules-oriented. Multi-disciplinary risk assessment was mandatory. The guidelines to conduct a Domestic Abuse, Stalking and Honour risk assessment (DASH) and to make a referral to a Multi-Agency Risk Assessment Conference (MARAC) were universally accepted processes throughout discussions. Failing to follow the guidelines was seen as letting the woman down, which placed the dilemma on a general level and did not question the individual needs or concerns of the woman. More than once participants said that women had the right to make “*bad decisions*” and to be in “*bad relationships*” but women’s self-determination was always subordinated to the responsibility of agencies, with the notion of empowerment barely engaged with, and only then briefly by specialist NGOs.

*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. (family court judge, DV, Germany)*

*(...) if they [the husbands] are still there in the family home, we have to be very cautious and do the risk assessment, and a safety plan (...) We wait that the victim does the complaint herself. (NGO women's centre, DV, Portugal) For me, when there is a criminal practice, I have to be relentless, with that woman. I will not give her a second chance. (police officer, DV, Portugal)*

*(...) Centre for Social Work whose task it is to prepare the victim. (social worker, DV, Slovenia)*

*Perhaps you help her by not starting with the police, but rather the centre so she gets another kind of support, a wider one, to prepare her for the procedure. (prosecutor, DV, Slovenia)*

*It seems these three agencies are letting her down by not doing it, by not making a referral. (specialist NGO, DV, England/Wales)*

Dynamics shift when children are involved. In all countries showing mothers the consequences of not leaving the violent partner was an option, sometimes meaning a threat to remove the child. Some participants saw this as a powerful lever to persuade women into taking the action the professionals considered necessary. While in England and Wales the situation seemed to change its character towards a child protection case, the dilemma was clearly noticeable. The presence of children sharpens the situation to a point at which professionals can use it as a “door opener” by which the woman can be convinced to accept help and to initiate what professionals think is best for the woman. The question came up how long the protection of the child could wait until the mother takes necessary action. Some denied the women the ability to consider the best interests of the child properly if they were subjected to intimate partner violence. Professionals seem to feel helpless if survivors do not cooperate sufficiently so that protection could be provided and prosecution expedited, which is the reason why they have to bear the tension of not being able to do what they consider to be their mandate. Thus paradoxically, survivors can become the object of frustration of professionals and be seen as “the problem”. Often mothers instead of perpetrators were assigned responsibility for the safety of the children. In our group discussions across countries we could only rarely find reflections about these dynamics or concern that professionals might even infantilise women. A lawyer in England, a professional with a distinct advocacy role, pointed out that women were blamed for the failure to protect their children and then felt abused not just by the perpetrator but also by the services.

*(...) and find out if it's domestic violence due to the children involved, so it's a safeguarding issue. (emergency nurse, DV, England/Wales)*

*Do we bypass the victim and protect children or work on her motivation and for how long. (social worker, DV, Slovenia)*

*Here, there are children at risk (...) we have to move forward. (victims' centre, DV, Portugal)*

The group discussions with practitioners in the field of trafficking for sexual exploitation revealed similar frames and patterns as in the field of intimate partner violence. In Portugal consent was identified as an ambiguous concept in trafficking; when women are coerced to work in prostitution while being required to collaborate with criminal investigations to escape it, self-determination becomes a euphemism. Law enforcement professionals pointed to the same tension in Germany, raising the question to what extent women can escape their coercive situation.

*We let the women decide for themselves. That's all very fine. But no-one is helping her. If we take her out, then she is at least, she is no longer under pressure in the situation.* (police officer, TSE, Germany)

Police carefully questioned the “mission statement” set out by the umbrella association in which it declares that all NGOs have a duty of confidentiality, that nothing will be done against the women’s will, and that contact to authorities will only be made on express request while ultimately accepting it. While the NGOs in Slovenia always needed the woman’s consent to take further action, the state officials had a duty to proceed regardless of consent. Again, practice in England/Wales was aware of the ethical dilemma but it was always dissolved in one direction by giving more weight to “saving lives” in comparison to self-determination; other than a faith-based NGO, a feminist NGO was the only exception.

Self-determination and consent are particularly under pressure in the field of trafficking. On the one hand the illegal residence or the unresolved residency status of many trafficked women brings in the threat of deportation and the requirement of immigration authorities to cooperate with prosecution as gateway to services, thus limiting women’s choices. On the other hand trafficking is a crime that is usually committed not only against a single woman but against a number of other women and is regarded as organised criminality. In Portugal, the severity of the crimes was seen as legitimising to take action without consent. The state’s duty to dismantle trafficking networks as well as to protect other (potential) victims led to an unstable balance between respecting the victims’ choices and professionals’ dedication to end the violence and prosecute the perpetrators. The choice women had, as described in several group discussions, was not about intervention but to take part in a victims programme or to be either deported to the country of her origin or to return to prostitution after the criminal justice system intervened. In the group discussions in England/Wales the “duty of care” was discussed back and forth. Since there was likely to be more than the one woman forced into sex work, several professionals stated that intervention could not be a matter of her choice and willingness. Nevertheless, women were perceived as autonomous and almost in the same sentence as dependent on compliance. This understanding of choice despite no choice was not completely disentangled in any of the group discussions.

*We can't force anyone; (...). But as I've said, the will of every victim, for us they were victims, was her own personal will. She decided whether to take part in the offered programmes, to trust, what we, the police, or the NGO people offered, or to return to the environment she had come from.* (police officer, TSE, Slovenia)

*There is prima facie evidence of a crime, there will be more than one woman in the brothel so I have a duty of care to potentially rescue sometimes, potentially rescue others.* (faith-based NGO, TSE, England/Wales)

## 6 Prosecution and self-determination

The initiation and the process of prosecution of violence such as trafficking, intimate partner violence and child abuse and neglect regularly is not for the victims to decide. The criminal justice system acts on behalf of the state’s monopoly on force and takes control. Self-determination of the victims is decidedly not the guiding principles of criminal pro-

ceedings. While on the one hand criminal prosecution does not depend on the will of the victim prosecution or proceedings on the other hand affect the person's integrity. Someone whose agency and self-worth have already been severely compromised by violence should not be re-victimised. After violent acts of trafficking, intimate partner violence and child abuse and neglect there are plenty of reasons for a victim not to press charges. Victims might face danger or threat to themselves or other family members, may suffer increased violence or may want to uphold the relationship. At the same time sentences are often not satisfying and not sustainable and prosecution can jeopardise other intervention measures. Thus not only is the victim at risk of being re-traumatised, s/he is also re-victimised and made partly responsible for something wrong done to her/him. This defies the principle of empowering victims and opening possibilities to move forward to leave these experiences behind.

While technically prosecution is in the interest of the society; still it cannot be completely independent of the victim. Police, prosecutors, lawyers and criminal court judges underline the need for a credible and consistent testimony of stable victims who are able and willing to appear as witnesses. Secure evidence requires a statement from the victim the only exception being England and Wales, where some possibilities for victimless prosecution exist. Victims therefore do have sort of control not over the start of investigation, but over the success of conviction and outcome. They can withdraw their complaints, refuse testimony and withdraw themselves from proceedings which mostly will result in proceedings being stopped.

*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. (prosecutor, DV, Germany) How do you prosecute at all? (intervention centre, DV, Germany) We don't, proceedings dismissed. (prosecutor, DV, Germany)*

The criminal justice system is used to gather information without consent. Police and prosecutors are allowed and can be obliged to investigate secretly. Transparency only becomes a value in court. Therefore, women, parents and children lose control at some points if criminal investigations are initiated. Choice and consent are not considered by law, but are effectively controlled by the power of the victim to deny testimony. Tension with women's self-determination arise when action in the aim to reduce risk and promote safety are taken (Coy 2015). Professionals started a debate on the contradiction on the issue only in the group discussions on intimate partner violence in Portugal and on child abuse and neglect in Germany. Conflicts between stakeholder groups of the criminal justice system and the support oriented systems about the extent to which women should have a say seemed to be avoided in the other group discussions.

*I don't think we should be relying on the engagement of survivors. I know it's easier with engagement but if you don't have it you don't have it. It's a bonus if you do have it, but we should be looking at what other information is there available to us as professionals to intervene (...). (prosecutor, DV, England/Wales)*

In child protection a distinction was emphasised between "social" and "criminal" investigations. The need to avoid "excessive" intervention was a strong theme in Portugal. In contrast, if the maltreatment was deemed a criminal offence the assessment by the criminal justice system might be an entry to child protection in Slovenia. Representatives of the criminal justice system or closely linked professionals stressed respect for the right of the state to prosecute child abuse. Tensions between professionals from the criminal justice system and the child protection system became apparent in other group discussions of the

other countries as well. But such a call for or request by the criminal justice system to take over was not found in other countries, rather the opposite. In Germany, where the emphasis is on building protection through a relationship of trust with as much self-determination as possible, concerns were expressed that initiating a punitive intervention could jeopardise help for victims. This even was acknowledged by representatives from the criminal justice system. In general, unconsented prosecution stayed in a status of unease in the discussions.

*I would firstly report the incident to the police and then it would be assessed.* (social worker, social services, CAN, Slovenia)

*And then one social worker said, listen, I'm a social worker, I'm not a spy for the police ... We have to find a balance.* (police officer, CAN, Germany)

*There isn't that ribbon through it – it's really hard to see how those two systems can sit side by side really.* (lawyer, CAN, England/Wales)

In awareness of these tensions participants in the group discussions still agreed that perpetrators in general ought to take responsibility for their actions and that there is a need that they can be punished. Especially in the fields of violence against women prosecution and punishment were not only seen as important to send the message that the actions were wrong, are not tolerated and should not be repeated. Some also saw a need of victims for the acknowledgement that the perpetrators actions are not only unacceptable but criminal. For victims prosecution was seen as “*entitlement*” to justice and maybe even to compensation.

*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. (...) Sometimes it is also important to just say “you have suffered injustice”.* (counselling service, DV, Germany)

## 7 Conclusions

Being subjected to violence means losing control over one's body and mind. Restoring the freedom of a self-determined life presupposes protection from further abuse and harm. Intervention to protect and support might in itself override self-determination of the persons concerned, professionals may share information or take action without consent. Then again, persons may reach out and find that their needs cannot be met, thus remaining in the situation they want to escape. Finally a person might want to change the situation but not on the conditions the protection system has to offer or might consent to first intervention steps and withdraw the consent at a later point. Thus, self-determination is an important topic not only for the persons concerned but also for professionals. At the same it is a complex and delicate issue especially in the context of violence and close personal relationships. Systems and professional have to find a balance between enabling and guiding decisions which in itself reflects a relationship of unequal power between professionals and the persons professionals seek to protect, help or prosecute.

National systems and within them the different groups of professionals take strikingly different approaches when it comes to the questions of when and how intervention should be enacted, as the data of the CEINAV study shows. Professionals are given more or less discretion and space for professional judgement in the decision-making processes. This

had effects on the level of awareness of and attention for the dilemmas professionals have to navigate through conflicting interests when intervening in the lives of women, men, children, mothers and fathers. While self-determination is rooted in human rights and widely accepted as important, ensuring protection against violence implies that self-determination might be overruled. Obeying the rules was often, but not always prioritised. The available resources had a significant influence on how dilemmas could be manoeuvred in professional decision-making. With exceptions, women were given more autonomy in cases of intimate partner violence than in trafficking for sexual exploitation, due to additional requirements for the access to protection and support. In the field of child abuse and neglect the transgenerational dimension called for a differentiation between parents' and the child's self-determination but for both professionals seemed to limit participation more than for women. If children were witnessing or involved in intimate partner violence a convergence of approaches or even re-framing of the intervention as child protection could be observed. This prompted earlier and more insistent support, resulting in less self-determination for women with children.

In any case, interventions in the fields of intimate partner violence, trafficking and child abuse and neglect demand a lot from professionals. Preserving and restoring self-determination in interventions proved to be a most challenging task. Respecting self-determination not only needs commitment to their exacting job but also reflective creativity in the encounters between professional expertise and procedures and self-determination of the persons they are dedicated to serve.

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## Chapter 10

# The responsabilisation of women who experience domestic violence: a case study from England and Wales

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### 1 Introduction

Over the last four decades understandings of, and responses to, domestic violence have been transformed: a foundation for these changes were profound shifts in how the issues have been framed. These shifts have been underpinned by specialist agencies hearing the accounts of victim-survivors<sup>1</sup> and by research which has placed their voices at the centre. What was uncovered were processes of power and control which are deployed by perpetrators, which simultaneously limit the “space for action” (Kelly et al. 2014)<sup>2</sup> available to victim-survivors (Kelly et al. 2014). Domestic violence, alongside child maltreatment and trafficking, cannot be encompassed in an “incident” of crime framework; rather it is a course of conduct, with cumulative impacts over time. Understanding the web of abuse in which women become entrapped has been a foundation of policies and practice since the 1980s. A number of the abusive acts which contribute to this entrapment are not criminalised but have clear consequences: for example, repeated verbal degradation undermines personhood. Awareness of the extent to which a woman or child can be diminished within the process of violence and abuse – and potentially empowered through support – is an important foundation for appropriate and ethical practice (see chapter 16).

For intervention, this has meant that professionals should seek to make the control and its impacts an explicit topic for exploration (with both victims and perpetrators), and to expand the “space for action” of victim-survivors in order that change becomes something which can be contemplated. Practice that reflects these principles has been the foundation of many NGOs, encapsulated in the concept of an “empowerment model” (Cattaneo & Goodman 2015) and has been a topic in training and new guidelines in some state agencies.

From the early recognition of the UN through the Declaration on the Elimination of Violence Against Women (DEVAW) in 1993 through to the 2011 Council of Europe Istan-

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<sup>1</sup> We use the term “victim-survivor” to recognise both the material reality of victimisation and the many ways in which those subjected to violence find ways to cope, and sometimes resist, whilst it is occurring and in the aftermath.

<sup>2</sup> This concept underpins the training done by Scottish Women’s Aid, including with the police and social workers and is also a core component in the Change that Lasts programme introduced by Women’s Aid in England in 2017.



bul Convention, a rights based framework has established that states have a responsibility to, at minimum, protect women from violence and ensure they have access to support, alongside the rights to information and self-determination. The UN Convention on the Rights of the Child establishes parallel responsibilities with respect to children. This framing is widely invoked within Europe and has driven a range of legal and policy reforms in the last two decades.

These principles have been implemented differently across the four countries in the CEINAV project. In Germany self-determination remains central, with the removal of perpetrators by the police for a temporary period an accepted early intervention (see chapter 6). Whilst there is some recognition of an ethical tension between women's self-determination and child protection, this has not yet taken the directions demonstrated in this chapter. In Portugal and Slovenia, professionals struggled with whether any action was worthwhile or justified, with strong hesitance about involving state agencies given the rigidity of possible interventions. This chapter explores recent shifts in England and Wales<sup>3</sup>, which move responsibility for safety back onto victim-survivors, often without ensuring the protection or external support that was previously understood as necessary. We apply the concept of "responsibilisation" to this process and suggest it is a salutary lesson of how quickly principles of practice and intervention, rights even, can be overlaid by new discourses rooted in wider processes of change – in this case neo-liberalism and the welfare reforms which often accompanies it.

## 2 Risk and responsibilisation

The country context paper on policy in England and Wales noted that it was here that some of the first specialist NGOs on domestic violence were founded, strongly rooted in notions of empowerment and self-determination. State responses – in terms of legal reform, training for state agencies and multi-agency fora – were evident in the 1980s, moving to national policies in the 1990s. From the 1990s a new discourse focused on risk emerged, and rapidly became embedded in professional practice through the practices of risk assessment and Multi-agency Risk Assessment Conferences (MARACs). Whilst drawing on wider social changes as documented by Ulrich Beck (1992) in *Risk Society*, how risk discourse has played out within the domestic violence field has had a particular trajectory and a range of unanticipated consequences. That said, some feminists were always critical, noting that this moved away from the principle of women being experts of and in their own lives (Humphreys et al. 2005).

Within a decade, risk had overtaken safety in domestic violence discourses in England and Wales with risk assessment becoming a screening filter: entitlement to services is now organised hierarchically according to level of risk.<sup>4</sup> This has created a "high risk pathway" as the most common entry point into intervention. High risk cases are referred to a MARAC, sometimes without the consent of the victim-survivor, a clear contravention of self-determination (see also chapter 9). All agencies are expected to attend and to share the information they have about the case. Originally intended as a space in which to hold perpetrators – the risk – to account, MARACs increasingly focus on victim-survivors, those *at risk*. High risk designation is increasingly a threshold for whether or not interven-

<sup>3</sup> There are different legal systems in Northern Ireland and Scotland, so CEINAV research was only undertaken in England and Wales.

<sup>4</sup> Risk assessment and MARACs were part of the WAVE PROTECT11 project.

tion is necessary, or resourced. Risk has, in this jurisdiction, become a compass which guides all other routes of intervention: risk assessment, which has been standardised through the Domestic Abuse, Stalking and Honour risk assessment (DASH), is now a common framework across state agencies and NGOs. The DASH, despite adjustments, still places greater emphasis on incidents of physical and sexual violence over course of conduct, psychological and emotional harm (Myhill & Hohl 2016). Thus, risk discourse supports a crime incident-based framing of domestic violence, rather than the pattern of daily domination and micromanagement: what Stark (2007) terms coercive control.

Responsibilisation refers to the process by which neoliberal economic policies displace responsibility for welfare and safety from the state to communities and individuals (Godard 2012). Privatising responsibility requires that risks are managed by individuals, with a focus on their agency, rather than the structural and institutional constraints that limit the possibilities for safety and freedom. The concept has been applied to interventions with young people (Kelly 2001; Phoenix & Kelly 2013) and adult offenders (Kemshall 2002) in criminal justice systems and to wider changes in welfare states (Rogers 2004; Juhila et al. 2017). The criminal justice system is the primary arena where responsibilisation has been identified and theorised as a mechanism of neoliberal policy frameworks (see, for example, Garland 1996 and 2001), creating a “responsibilisation era” (Silverstein & Spark 2007, p. 339). This clearly has implications for jurisdictions, like England and Wales, where the framing of domestic violence sits within policy on crime.

At its most basic, responsibilisation refers to the individualisation of risks that are generated structurally, with analysis and addressing of risk factors becoming a route to creating rational and responsible citizens (Kelly 2001). Responsibility is thus privatised and the role of the state becomes to educate and facilitate citizens to make “good choices” (Kemshall 2002). Audit methods through risk assessment and risk management are key features: risks are transformed from contextual factors into choices, which can, in turn, lead to the designation of individuals as willing/unwilling, compliant/non-complaint (Lieberberg et al. 2013). Patricia Grey (2005) notes that this framing creates tensions for front line staff between service efficiency and the needs of people; efficiency requires needs to be redefined as risks but practitioners are often aware of the limits to which people in need can manage these without support and resources. They (op cit.) expand on this finding arguing that in child welfare, adolescent mental health and youth justice case files failure is increasingly referred to as due to lack of engagement, with young people defined as continuing to place themselves at risk.

Kiesi Juhila et al. (2017) focus on the shift of responsibilities of the state to the individual through a series of case studies “at the margins of the welfare state”. These are spaces in which rights and responsibilities are considered to be uncertain and open to review: where being responsibilised has different meanings and consequences for those already disadvantaged. As a foundation for realising rights, being encouraged to actively manage one’s own choices can be read as empowerment and self-determination. Abstracted from social context, however, this expectation can rather swiftly assign blame, couched as responsibility for not “managing”, onto individual personal inadequacy. This expectation that individuals actively manage their own choices is an implicit expectation within the concepts of recovery and resilience – concepts increasingly invoked in literature on violence and abuse. Harm that results from unaverted risk therefore suggests complicity (read blame) by individuals in their continued marginalisation. In their thoughtful text, Juhila et al. (2017) acknowledge opportunities for empowerment whilst asking searching questions about when responsibilisation creates spaces in which disempowerment and exclusion are more likely outcomes, with ethical implications for practitioners: “There is a risk that too much responsibility, for a client with limited resources, abilities and choices, may result in disempowering outcomes” (p. 220).

This is what Carol LaPrairie (1999) refers to as “responsibilisation without resources”. We reflect later on the significance of this in the shifting professional discourse on domestic violence, which has coincided with an era of austerity and public spending cuts in England and Wales.

### 3 Responsibilisation, risk and violence

That women are held responsible for violence which they experience has long been documented in feminist research. Betsy Stanko’s (1998) analysis of safety advice for women exposed how a notion of “the responsible woman” becomes an individualising strategy focused on women’s “prudent” choices in order to avoid violence. The same sentiment is evident in messaging for young people about the practice of sexting, where the burden of responsibility is on girls to protect themselves by not sending naked/sexual photographs (Salter et al. 2012; Coy et al. 2013). In a powerful exploration of one woman’s experience of ongoing sexual assault by her father, Elizabeth Comack & Tracey Peter (2005) situate her interactions with professionals in the context of state policies oriented towards individual responsibilisation of citizens. They describe how “Brenda” was, once in contact with professionals, deemed responsible for managing the risk he posed to her and expected to keep herself safe: “she has been put in charge of her own self-governance. It is now up to her to protect herself from re-victimization” (p. 303). Thus, “responsibilisation slips too easily into ‘blaming the victim’ for all that has happened to her” (p. 305). In other words, women become responsibilised at the same time as abusers become invisible and not held to account – de-responsibilised through this process of expecting women to manage their own safety.

There is a small literature linking the concept of responsibilisation to domestic violence interventions. Debate over the potentials and pitfalls of mandatory prosecutions rests on precisely this issue: should victim-survivors be responsible for decisions to prosecute? (see, for example, Stubbs 2002). Outside of the criminal justice arena, Martin Silverstein & Roberta Spark (2007) analyse a state-sponsored Canadian programme for women who experienced domestic violence. From materials, peppered with the language of “choices and responsibility” (p. 331), they conclude that the programme suggests to women they can be responsible for escaping from violence, finding employment and future success. They conclude this programme “reinforce[s] individual responsabilization as the strategy of freedom” (p. 335). An advocate interviewed in a study about refugees experiencing intimate partner violence shows how this can become woven into support work: “If they make a choice [to leave the partner], we tell them how to do it. We don’t actually do it for them. We push them to do it, that’s how they realize ‘oh, it’s not really that hard. I have control over my life, I have control over myself’” (cited in Uehling 2015, p. 1022).

What is absent in these examples are both the actions and choices of perpetrators, and the responsibilities of the state to protect, since the focus of professional concern has become how women and girls should adjust their behaviours. A similar focus, rooted in the notions of risk and public protection, was evident in the CEINAV focus group data from England and Wales. Analysis of the data suggested that responsibilisation was connected to what others (see, for example, Matoesian 1993) have called “blame work”: a failure to be sufficiently responsible provides professionals with spaces to undertake forms of victim blame, since victim-survivors had failed to act about already known risks.

## 4 Responsibilisation in the focus group data

Two multi-agency workshops were conducted in which the intervention responses to a specific form of violence were explored. 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 (see chapter 2 on methodology). Participants in the workshops drawn on here were: five police officers from two cities; two social workers from two cities; three housing workers from two cities; two social workers from two different cities; two health workers; six workers from non-governmental organisations (NGOs) across two cities (including specialist domestic violence NGOs); two lawyers from two cities; one magistrate and one prosecutor.

The extent to which women were responsabilised surprised us. It was the strongest theme in both workshops, expressed primarily through the twin principles of “*providing information*” and “*choice*” within the interlinked practice frames of “*risk*” and “*child protection/safeguarding*”. Practitioners returned again and again to reflect on how women were making “*bad*” choices to stay with abusers, drawing their own roles as directing women to understand the risk they (and their children) faced: a risk that women were then expected to manage and minimise.

### 4.1 Enabling women to make the “right” choice

The providing information frame influenced how practitioners perceived that it was possible to steer women to the “*right choice*”. Giving women information (that the behaviours of their partners were abusive, and that support was available) was widely described as the way to influence women’s decision-making. When asked how practitioners could know that women were making an “*informed*” choice (used synonymously with “*right*” in the discussion), one participant said:

*You measure by the amount of information, but they can still have that information and make a bad choice.* (DV co-ordinator, DV, England/Wales)

This mirrored an assumption implicit in discussions of multi-agency information sharing between professionals: that having amassed all the information is in some, albeit ill-defined way, a form of intervention, whilst providing information to victim-survivors facilitates their space for action regardless of their material contexts (see Coy & Kelly 2011). Having passed on information practitioners saw their responsibility for addressing the risk posed by perpetrators and ensuring women’s safety ended, and women’s own responsibility began. In multi-agency settings, some professionals (often in the statutory sector) saw information sharing in a similar way: by passing on what they know to others, the others – or the multi-agency forum itself – become responsible for any actions that could, or should, flow from the knowledge. In both cases the conditions and resources that make action possible were a secondary consideration.

Whilst for advocates supporting women this process of giving women information was thought of as empowerment, few practitioners also identified resources, let alone histories of abuse, as constraints on women’s capacity to act. One who did recognise this cast space for action against “*understanding*”.

*That can be the case even where they do understand, they still don’t leave because he says he won’t do it again, or you’ll be homeless, you’ll have no money and that’s time and time again why women choose to stay, even if they know they’re being abused.* (lawyer, DV, England/Wales)

Some acknowledged that women may have a different perspective on what choice was “right” for them in their circumstances, albeit that this was often linked to “not understanding” that they were subject to domestic violence.

*I think [specialist NGO] is right, lots of these people that we deal with, do not understand that what they have been subjected to is domestic abuse for years if not decades. So a lot of the time those questions are asked, the answers they will give may not be what we would perceive as the correct ones because they do not understand. They've been subjugated for years, treated poorly for years and perhaps we don't as professionals deal with it the correct way. I don't think we should be relying on the engagement of survivors. I know it's easier with engagement but if you don't have it you don't have it. It's a bonus if you do have it, but we should be looking at what other information is there available to us as professionals to intervene, to protect not just her but the children. (prosecutor, DV, England/Wales)*

Women from minority communities were frequently cast by professionals as not understanding what counts as abuse, and even not thinking that domestic violence was wrong. These separate understandings – one can know violence is wrong, even unjust, while believing it to be normal – indicate that some practitioners conflated habituation with acceptance when notions of culture were in play (Coy & Sharp-Jeffs 2016). Participants in the focus groups reflected a version of this, especially where interpreters were viewed as key to giving access to knowledge and information that would in turn enable women to make the “right choice”.

*But that's her choice and what she's saying to us is “I want this to continue, I want to stay here, because if you take him away my children and I have nothing”. (police, DV, England/Wales)*

In these deliberations women were understood as not making “good choices” (Kemshall 2002) when they had been afforded all the information to enable them to do so. This is a crude translation of the principle that knowledge is power, with an expectation that awareness of options is all women need to be able to escape. An implicit neo-colonialism also emerged, whereby professionals positioned themselves as having insights which women of colour lacked. The notable failure of either group to explore the process of violence, how it restrains and constrains action, meant that professionals moved rapidly to a position where if a woman failed to act in accordance with professional advice, risk (mainly to the children) overrode any aspiration/intention to empower her. There was a shared, if implicit, presumption that women were considered responsible for using the information they were given, and that it should lead them to make the choices which professionals deemed “right” – to separate from the abusive partner. In the process of these deliberations, professionals positioned themselves as knowers – knowers about what constitutes abuse, levels of risk, what was in the best interests of children and women. Whether intentional or not, the position of victim-survivors as knowers was occluded: they were positioned as not knowing that they were being abused, not knowing the level of risk their partner represented and not knowing what they needed to do to end abuse. Having been provided with the knowledge held by professionals, women were then responsible for using it, promptly and wisely.

The long held knowledge of specialist domestic violence services, that ending violence is a process which is aided by having a supporter/advocate accompany you, has thus been submerged under the risk and responsabilisation agendas.

## 4.2 For the sake of the children

The most frequently – and quickly – mentioned intervention in the focus group discussions was to make a referral to child protection/safeguarding services<sup>5</sup>, sometimes without any explicit conversation with the woman herself about how she understood her own situation. Making a referral to child protection services on the basis that children were being “*exposed*” to domestic violence was an early response to the first part of the story in one workshop (where it was not yet clear what was happening), and dominated the rest of the discussion. Statutory agencies, in particular, were adamant that even based on the deliberately vague information in the first part of the story, the threshold for a referral to Social Services had been met because of “*risk of harm to the children*”.

While this frame dominated one focus group more than the other, across both discussions professionals took it for granted that child protection procedures enabled agencies to act. Even health professionals, with a strong principle of patient confidentiality, thought the involvement of children justified a referral, even without women’s consent.

*From a nursing point of view, in an emergency department, what would lead me to try and find out if it's domestic violence due to the children involved, so it's a safeguarding issue. As a nurse my hands are pretty much tied with regards to the woman, but for the children I could go down that avenue.*  
(emergency nurse, DV, England/Wales)

Police and prosecutors considered the possibility of a “*victimless*” prosecution, in which they can act without the support of the woman, social workers mused on whether they might initiate child protection investigations as a lever to influence the decisions women might take.

One police officer raised the principle of protecting children through protecting women (Kelly 1996):

*(...) everyone's said the same thing, safeguarding the children is paramount, here, but the best way to safeguard the children is to be engaging with the mother; because she's the best person to be protecting the children.* (police officer, DV, England/Wales)

Revealingly this insight was not returned to in either workshop. Again, we see how far thinking has moved away from self-determination (see also chapter 9).

There was a tension, potential ethical dilemma, here between a guiding principle of respecting women’s “*choice*” (framed this way rather than in terms of autonomy/self-determination) and protecting children. That the “*right choice*”, for professionals, was to seek support and separate from abusive partners was strongly shaped by the child protection/safeguarding frame. It was evident that since child protection trumped woman protection for agencies, so it should for women. More than one practitioner stated explicitly that whilst women had the right to make “*bad decisions*” and be in “*abusive relationships*”, they did not have the right to “*expose*” children to this.

*(...) she has the right to be in whichever relationship she chooses to be, but my concern is the protection of the children (...) when it's adults alone, we don't do anything, which is frustrating really.*  
(emergency nurse, DV, England/Wales)

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<sup>5</sup> In the UK ‘safeguarding’ has increasingly become a preferred or interchangeable term with child protection, and participants in the focus groups used both.

The presence of children thus legitimised professional intervention, irrespective of women's consent, with a consensus that this provided a lever to hold women responsible for the welfare and safety of their children. In this framing, to remain with an abusive partner was equated with collusion in harm to children and potentially falling under interpretations of "failure to protect" (Humphreys & Absler 2011). Such responsabilisation can also be seen in the fact that there was no discussion in either focus group of potential interventions with the abusive man until this possibility was introduced by the facilitators. Moreover, the limited time spent exploring this and the few options offered provide further confirmation that the target of intervention was the victim-survivor, in her position as the mother of children. If she had not been a mother, the implication of the previous quote is that nothing would have happened. For some practitioners, explicitly threatening to remove children – even at an early point of contact – was considered an appropriate intervention, since it would "*push*" women to take the actions they deemed the right ones.

Even some staff from specialist NGO domestic violence services expressed regret that they lacked the powers to ensure women made the "*right choice*". Making a referral to child protection services was considered even by women's organisations as not only a legitimate but necessary action. Two participants talked of "*not being able to force women*" and even that unless women agreed to take action themselves their "*hands were tied*". By this they meant that they were obliged – legally and ethically – to make a referral to child protection. Here women are being required to walk a tightrope, weighing up when it is possible to leave – neither too early and nor too late.

In each workshop, one participant provided a counterpoint to this narrative, questioning whether anyone but the woman could really know what was "*best*", the dangers of "*deferring to the experts*" and "*ignoring the woman's wishes*". A minority also recognised the potential tension in reproducing abusive dynamics – "*carrying on controlling behaviour*" through insisting on a particular course of action. One health visitor commented that: "*often part of the abuse, or the way the abuse is perpetrated, is threatening her with loss of the children, and actually as organisations what we do is play into that*". However, the contradiction – that this group explicitly and unwaveringly advocated making a referral to Children's Services and clearly viewed child protection as more important than women's self-determination – was not explicitly discussed by participants. Martin Silverstein & Roberta Spark (2007) note that the outcome of a responsabilising approach is to expect and enforce appropriate behaviours from victims, just as perpetrators do. In this way, responsabilisation of women is not simply about blame, but it may reproduce the power dynamics of violence and abuse, despite professionals aspiring to enable women.

### 4.3 Risk and the contradictions of responsabilisation

Risk discourse was a significant normative motif throughout the focus groups: it was rarely the subject of discussion, but peppered the musings of professionals on what the appropriate intervention might be, in an entirely taken for granted way.

*Obviously for the police initial concern would be immediate risk, that's where the police would probably become involved, Social Services, at a very early stage. They would be looking to make sure that actually there is no ongoing risk, and clearly there is indication here that there is [the first section of the story]. (prosecutor, DV, England/Wales)*

*I work with children and young people and if they disclose something to me that I know is a risk of harm, regardless of whether or not a parent says I can do that, I'm going to put a child protection referral in. It doesn't mean I'm happy to do that because I've built up a relationship with that pa-*

*rent, and I could be causing emotional harm to that parent by doing so, but ultimately if there is a risk that someone is going to be harmed in any way, a child or a young person or a woman, or a man, whatever, that overrides my personal viewpoint on how I feel about it.* (specialist domestic violence NGO, DV, England/Wales)

The necessity of risk assessment was axiomatic in both workshops, with references to completing the DASH and making referrals to MARAC threaded throughout discussions as if they were universally accepted processes. Risk had become the legitimisation for professional intervention, eclipsing the alternative framings of safety, self-determination or empowerment. Within this women were positioned as having no power and under the total control of perpetrators: in need of the information and guidance that professionals could impart. In some presumed and never articulated way this should somehow enable her to marshal power, evade control and “*make the right choice*”. We argue this is one of the dangerous implications of risk discourse – it universalises and homogenises, making it unnecessary to know and understand each woman’s specific situation, to be interested in the barriers which limit her space for action. This relational space was at the heart of the practice which developed in the 1970s and 1980s, but it requires time and resources, both of which are in shorter supply in England and Wales following almost a decade of austerity measures in public spending.

Lacking the time and the policy encouragement to create supportive relationships, professionals are inevitably faced with situations where despite being provided with information women “*chose*” not to act. Here interventions which are potentially more punitive and undertaken without consent were considered through a frame of “*public protection*”: a concept which first emerged in policing and has some parallels with child protection, except here we are talking about adults. The College of Policing lists most forms of interpersonal violence within its public protection framework<sup>6</sup>, and it has clearly become an elastic umbrella, within which state responsibility to protect women from violence has been folded. It was unclear in the focus groups whether professionals were grappling with their responsibility for public protection in ways that have been linked to high profile “risk management failures [that] elicit public scrutiny and blame” (Kemshall & Wood 2008, p. 612).

Whilst we were not able to tease out all of the threads of how professionals reconciled public protection and strategies of “empowerment through knowledge” (Coy & Kelly 2011), it was evident that when combined with state powers, intervention could shift to a punitive strategy of responsabilisation, and from there to forms of state intervention, regardless of whether these were wanted or sought by the woman concerned.

This protectionist discourse was also deployed to support “*victimless*” prosecutions – where there was sufficient evidence to proceed on a charge without a statement of complaint from the victim. These were described as a “*huge step forward*” (by a health visitor) because it reduced risk to women, who did not have to be seen to be co-operating. Police said they would “*always look to see if there’s the possibility of a victimless prosecution*” because “*it will be always be in the public interest to prosecute*”, and acknowledged that they were “*unburdened*” by questions of potential negative impacts because these were picked up by support agencies. Only a prosecutor reflected that victimless prosecutions might have unintended and unknowable consequences for women. MARAC was one route to a victimless prosecution, as police who hear of crimes at MARAC are apparently required to log these on a crime report, which might then lead to prosecution without women’s statements. Whilst it was noted that this “*removed choice*” from women who

<sup>6</sup> See e.g. [www.college.police.uk/app-content/major-investigation-and-public-protection/](http://www.college.police.uk/app-content/major-investigation-and-public-protection/).



had earlier decided not to report to the police, the risk frame within public protection was considered sufficient to legitimise such potential intervention.

Responsibilisation of women could slide into an infantilisation when women were blamed for not making the right choice, which as we have already seen, was often a choice to be made in a vacuum, abstracted from her social and economic circumstances. The right choice in professional terms was always to separate from their partner, despite the well documented risks of post-separation violence (Kelly et al. 2014) and the widely acknowledged connections between leaving and domestic violence homicides (Sharp-Jeffs & Kelly 2016). The long recognised fact that what many women want most, when they first seek help, or are identified, is an end to the violence rather than the relationship (Kelly & Westmarland 2015) has disappeared, replaced by an inflexible risk framework. A parallel process with how perpetrators construct a reality around women about what is really going on and how they should act (Williamson 2010) was only noted by professionals from specialist NGOs, who had a deep understanding of the dynamics of power and control. The profound constraints on women's space for action, many of which are connected to their positioning in intersectional power relations, were virtually absent from the focus group discussion – a clear sign of the power of risk discourses to place responsibility on individuals for their fate and future.

## 5 Reflections

We have drawn on data from the focus groups with professionals in England and Wales to show that principles established in international law and European policy can be overlaid by wider socio-economic shifts, in this case neo-liberal approaches to the state and risk discourse. This introduced the process of “responsibilisation” to domestic violence interventions. Revealingly, rights were only discussed in relation to a “right” to choose “*bad relationships*”; only one participant made a fleeting reference to a woman's right to live free from violence.

We have argued elsewhere that risk assessment is problematic in both rhetoric and practice (Coy & Kelly 2011): the CEINAV data extended this analysis revealing evidence of a shift from managing risk *to* victims to managing risk *through* victims. This was underpinned by a model of minimal engagement by professionals, since the key to inaction, in their view, was limited information: providing this to victim-survivors was presumed to overcome the barriers and constraints. When professionals perceive that they have given women information about a) recognising and naming violence b) support options and most of all c) the impact on children's welfare, the responsibility to act on this information is transferred entirely to her. It then became the responsibility of victim-survivors to “*make the right choices*”, that is separate from their partner. Failure to do so created space in which professionals could shift from responsibilisation into what Mateosian (1993) terms “blame work”. This is most acute in the practice of professionals in the statutory sector, since they have powers to scrutinise women's parenting, and at the most extreme remove children.

Whether women had the material and emotional resources to act was not explored in any detail in the workshops: echoing the “responsibilisation without resources” (LaPrairie 1999, p. 150) point made earlier. There were references made to public spending cuts limiting women's options (in terms of access to legal aid, access to refuges/shelters and specialist support), but this was not a significant subject of discussion. A brief but important contribution was made by one participant who noted that cuts to Legal Aid and ra-

tioning of resources have combined with discussion at MARAC being included as evidence of victimhood, so some support agencies might make this referral to enable women to access public funding for legal advice. However, this “*removed choice and consent from the victim*” since it kick-started a domino effect of police hearing about offences, logging these as crimes, contacting women for statements, and possibly pursuing victimless prosecutions. This is an acute illustration of how systems framed through risk can be in profound tension with women’s self-determination.

Although the focus of the phased story was intimate partner violence, the dominant frame in both workshops was child protection, with children’s welfare invoked as superseding women’s rights. There was an unacknowledged contradiction in the first workshop that although threats to remove children by agencies reflect the abusive dynamics used by some perpetrators, they nevertheless endorsed referrals to Children’s Services and even used such threats as a lever to enable women to make “*the right choice*”. Notions of privacy were overridden by the presence of children and obligations to protect them. Elizabeth Comack & Tracey Peter (2005), writing with reference to survivors of sexual violence sum this up neatly, highlighting: “(...) the current socio-political climate that empowers the criminal justice system to intervene into their lives while, at the same time, holding them responsible for their own self-governance” (p. 309).

The ironic consequences of responsabilising strategies have been further identified in existing literature: “The slide towards victim-blaming is apparent in the individual responsabilization strategies inherent [in the programme]. It is uncomfortably reminiscent of a time when battered women (sic) were deemed to have ‘provoked’ or ‘precipitated’ their own victimization” (Silverstein & Spark 2007, p. 338).

Towards the end of the workshops, perhaps when participants were more reflective, there was an acknowledgment that there is “*more pressure on victims to make the changes, rather than the perpetrators to make the changes*” (specialist NGO). But even this was promptly refocused on the complexities of enabling women to make the right choice. Even attempts by facilitators to focus on perpetrators were only fleetingly engaged with. Revealingly one participant commented that “*survivors complain[ing] that plan[s] of protection around children are always about the mother*”.

These observations and interactions point to the process whereby women are increasingly responsabilised in England and Wales for the safety of themselves and their children. This part of redrawing the boundary between public services and private responsibility is a particularly significant dimension of the retreat from the social democratic welfare state (Newman 2006). This process was most evident in England and Wales, but offers a point of reflection for other European countries in relation to domestic violence. In particular, the rights and principles established in the Istanbul convention are potentially undermined through wider socio-economic processes.

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## Chapter 11

# Empowerment and intervention: perspectives of survivors and professionals

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### 1 Introduction<sup>1\*</sup>

The recognition of violence against women as a manifestation of historically unequal power relations between women and men has given rise to an obligation on states in international law to implement measures that aim at the empowerment of women (Istanbul Convention, article 18(3)). The concept of empowerment is linked to notions of power, powerlessness and oppression and to perspectives on social change (individual and collective agency), and has a long history. In a brief historical overview it is possible to track its use throughout the 20<sup>th</sup> century across fields as diverse as social work, management, psychology and development studies, both as a research topic and an intervention strategy for the improvement of individual and group strengths as well as the redistribution of power (Perkins & Zimmermann 1995; Sen 1994; Batliwala 1994). Feminists have also long engaged with the concept, specifically focused on the process of women's empowerment within the context of patriarchal domination.

Here, Sardenberg (2008) has identified two main perspectives, which she refers to respectively as liberal and liberating empowerment. The former is embedded in liberal notions of power that conceive of society as comprising individuals with free choice and free will, within a context of minimal state regulation and on the basis of a social contract. Hence, empowerment is seen as a range of individual competences and proactive behaviours that enable people to make individual choices if the legal environment is adequate. This perspective was deemed limited as it considered individuals as isolated units, and no account is taken of the social constraints involved everyday life arising from power relations based, for example, on gender, race, social class, sexual orientation and ethnicity (Stark 2005; Nussbaum 1997).

In contrast, the notion of liberating empowerment takes power relations as its central theme. While Jane Stein (1997) traces the term back to the “community organising” movement in the United States in the 1930s and others suggest origins in the Civil Rights Movement of the 1960s (Bruera & Gonzales 2006), from there it was appropriated, in particular, by Second Wave Western feminists. The aim was to shift the focus from vicimisation

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<sup>1\*</sup> Ana Filipa Beires Pinto provided important contributions to this chapter with her work in translation together with Maria José Magalhães.

to the empowerment of women and, through this process, to promote women's autonomy and self-determination as a means of challenging and eventually transforming patriarchal gender orders. The emphasis was on women's collective action while recognising the need for, and value of, personal empowerment to women individually. Some feminist scholars (e.g. Simon 1990; Gutierrez 1994 and 1995) have drawn on Paulo Freire's work (1987 and 1999) and his foundational claim that conscientisation, that is critical self-reflection of the individual in relation to society, is a necessary precursor to social change. Yet other feminists have critiqued this approach as too static (e.g. de Lauretis 1986; Alcoff 1994) and point to the importance of historical, social and political context when theorising empowerment. Even so, empowerment, and liberating empowerment in particular, certainly resonates with feminist notions of consciousness raising among women to deepen awareness of the political dimensions of personal problems and an understanding of how the exercise of men's power in the family is intertwined with gendered power relations in the wider society. Jeff Hearn (2012) argues that patriarchy does not only consist of men dominating women, but "may be seen as a system that also subordinates men to other men within society, using women as a commodity to do so" (Hearn & Whitehead 2006, p. 45). Empowerment thus served to contextualise the experiences of differently situated women under patriarchal power relations in both the private and public spheres.

For many feminists and anti-violence activists, the empowerment of women who have been subjected to violence stood at the centre of political mobilisation and woman-to-woman help. While this would seem to suggest that empowerment is an outcome, it is a continuing process. Although some scholars suggest that empowerment is both a process and an outcome (see, for example, Rappaport 1984; Perkins & Zimmerman 1995), during the CEINAV research process-oriented definitions proved more helpful for understanding the conditions which facilitate it, and also better capture the fluidity of conditions and outcomes. As Lee Staples (1990, pp. 31–32) notes, "just as there is no final synthesis, there is no final state of empowerment. Rather, the empowerment process strengthens the ongoing capacity for successful action under changing circumstances". Hence, we define empowerment as a continuing process by which interventions facilitate or impede where and when women are able to balance the dialectic of constraints versus autonomy increasingly in their favour. Our perspective acknowledges that empowerment is a dynamic and continuing process which connects the individual strengths, competences and proactive behaviors of women with the real (and changing) social and other conditions they face, including the impact of law and social policies and the possibilities or impediments they create for transformative social change in the lives of women survivors.

For women who experience domestic violence and trafficking for sexual exploitation, the process of rebuilding their lives free of violence is often long and complex. The following sections examine legal and social intervention approaches in the four CEINAV countries and the ways in which their implementation may facilitate or create barriers to women's empowerment. In our analysis we highlight three dimensions of empowerment. In doing so, we aim to take account of the importance of both individual and collective aspects of empowerment, as well as the structural conditions that aid or impede survivors' empowerment. These dimensions are:

- Critical consciousness raising (individual);
- Voice, participation and agency;
- Democratisation (encouraging, facilitating and enabling women's access to their rights) including material and symbolic resources improvement.

In promoting critical consciousness raising, the importance of individual empowerment will be considered as a means of extending our understanding of the social power relations

that are embedded in domestic violence and trafficking as well as in the social system that provides support and assistance services. Here we are concerned with those aspects of professional intervention that contribute to women’s capacities to counter the negative impacts of violence.

Voice, participation and agency is a group or collective dimension where women are heard and participate in the strategies, decisions and actions to improve their own lives. It includes breaking isolation and forming coalitions with other women with whom they might share common experiences and exercise agency to enable social change. Active listening by professionals is key, reinforcing women’s right to be heard and to express their needs. Voice, participation and agency is one of the first steps in a collective and interactive process.

Democratisation involves respecting and fulfilling women’s rights, for example, to safety, protection and confidentiality, as well as rights to housing, access to training, health facilities and assistance in regularisation of residence status (Websdale & Johnson 2013). It also involves support for women through the availability of adequate material and symbolic resources. Hence, it will be considered in the context of policy decisions and their impact on service provision.

While professionals may thus contribute to women’s empowerment, the judiciary, governmental and non-governmental organisations may also act in ways which impede empowerment. Again, we focus on three aspects of interventions that are experienced as disempowering, namely:

- Reinforcing prejudices, racism and discrimination;
- Silencing women (failing to listen to women’s voice(s)) and (institutional) blocking of their agency;
- State failure in respecting women’s rights and lack of resources (to support women).

Interventions that reinforce or fail to challenge prejudices, racism and discrimination add to the exclusion of marginalised social groups and promote stereotypes about deserving and undeserving victims and survivors, thus reinforcing the disempowerment engendered by the behaviour of perpetrators. Similarly, in silencing women and blocking their agency little account is taken of women’s needs and wishes as expressed in their own voices. That happens when professionals assume that they know best. Finally, the failure of States to provide adequate resources to support survivors undermines respect for, and fulfillment of, women’s rights and obstructs their journeys to a life free of violence.

What institutions and/or NGOs can do:

Promote empowerment	Intensify disempowerment
Critical consciousness raising (individual)	Victim blaming, prejudices, racism
Voice, participation and agency	Silencing women and (institutional) blocking of their agency
Democratisation (fulfillment of the woman’s rights) including material and symbolic resources	Failure in respecting women’s rights and lack of resources (to support women)

In this chapter, the voices of both survivors and professionals will be presented to provide a fuller picture of the support system. Women’s stories of how they experienced intervention show the crucial importance of support on all three levels as well as the obstacles they encounter. Professionals reflect on their dilemmas and concerns, and talk about a support system that is not always reliable and organised.

The excerpts cited below paint a complex picture of both empowering and disempowering interventions. This is illustrated as the following sections address each of the above dimensions in light of women’s experiences, bearing in mind the frequent overlaps among them.

## 2 Empowerment in the women's experiences

The following analysis of empowering intervention processes encompasses the experiences of survivors of both domestic violence and trafficking, and aims to highlight the specificities as well as the similarities between interventions against these two forms of violence against women<sup>2</sup>.

### 2.1 Critical consciousness raising (individual)

Critical consciousness raising processes are often explicit in women's narratives and in their responses to interventions. It may be the naming of abuse by professionals that marks the beginning of women's escape from violence.

*But the problem was I didn't realize my husband had raped me. I thought rape was being dragged down the back of an alley, you know. I needed someone from the NGO there to explain to me what rape was. (Lanika, DV-5, England/Wales)*

For another survivor acknowledgement by professionals was less about naming than about confirming that the violence was wrong.

*I actually did not quite know what was happening to me until they [NGO] said that it was not right what he was doing to me, that violence should be stopped. (Marija, DV-3, Slovenia)*

Critical consciousness raising processes also manifest themselves in a range of interrelated or overlapping dimensions, notably a) time to think about and for themselves (vs. femininity altruism); b) a rebuilding of the self and self confidence; c) a sharper and wider perspective on the (patriarchal) social system and an understanding of violence as a social problem (vs. individual); and d) a critical view of their communities of origin, although this latter aspect was more particularly evident among survivors of trafficking. Domestic violence survivors were more inclined to understand male violence as ubiquitous, in part no doubt because they often shared shelters with women from the majority population.

Many women expressed the ways in which they experienced progressive empowerment, facilitated by interventions that paved the way for them to focus more on themselves.

*The most important thing they told me at the NGO was that I had to love myself. First of all, love myself. They told me my homework was to take care of myself. It was a way to make me understand that I had to look after myself and I could waste time on myself. (Olivia, DV-8, Portugal)*

The process of rebuilding and gaining self-confidence can also be difficult and gradual but is similarly facilitated by interventions that afford women time and opportunities to understand and share their experiences, and to gain independence.

*I am better now because of all the help and everything. At the beginning they (NGO) did so much because I could not ... I went to the domestic violence group and this helped because before I had no confidence but they teach you how to become more confident and to learn how to do things on your own and slowly, slowly I have been learning. (Hakima, DV-4, England/Wales)*

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<sup>2</sup> In this Chapter the quotes from interviews are labelled with the pseudonyms invented for the publication of an anthology of stories (Hagemann-White & Grafe 2016).



*Before I was thinking "I'd rather not live anymore". And then I went to this counsellor and will never forget her, she completely built me up again. (Mary, DV-10, Germany)*

Critical consciousness-raising was also apparent in many of the narratives of women survivors of trafficking. As with survivors of domestic violence, it is rarely a linear or quick process but one which is aided when women are able to share their experiences with other survivors and receive appropriate support from intervention agencies.

*My case worker at the NGO helps me and I am becoming independent ... I get support here and I have friends. Friends are very important and stop me feeling very lonely ... they share with me same situation. (Ciwana, TSE-2, England/Wales)*

Some women also expressed views on the gendered nature of social power relations which they clearly understood to be related to patriarchal norms. These in turn, were sometimes perceived as stronger and more oppressive in their countries of origin. They begin to dare to express an opinion which can be different from that of others.

*I'm proud of my birth country but I'm not proud of those deep rooted customs. I would never want my daughter to return there, to live such a life. (...) Now there is slowly some progress, but our generation has suffered a lot. These customs should be abandoned. (...) the tradition is something else. Who wants to live with a violent person? It is something that should be rooted out, whatever people say. (Ljiljana, DV-2, Slovenia)*

*In my home country, the men, they treat us very bad. Why? Because that is our culture. You have no authority to doubt that, what ever you are facing in a relationship, you have to submit to that because you are a woman. (Victoria, TSE-7, England/Wales)*

While some women became more critical through the help of professionals, others were able to draw directly on their experiences in refuges to understand that male violence against women was not culture-specific and, indeed, rejected a stereotypical view of their and other cultures.

*In the women's refuge, I never felt that I was treated differently because of my origin, because there were so many women from everywhere. But I had never thought that so many German women – I must say it now, because I don't see any difference there, women are the same everywhere, and men are the same everywhere – but I had never thought that so many German men do this so often, too. In those women's refuges, I saw there were so many of them. That was a disappointment to me. Well, so I really said, men are men, the same everywhere. Well, no difference. (Leyla, DV-9, Germany)*

Culture presented a complex picture. Some women recognised that male violence is not only present in *some* cultures but everywhere (see chapter 9 on the concept of culture), while others continued to feel that certain cultures or traditions left them more vulnerable to violence.

From the above it can be seen that critical consciousness-raising can be one of the stepping stones to facilitate women's empowerment in their journeys towards a life free of violence. Professionals can assist in creating the conditions that enable women to contextualise their personal experiences, to start building new lives, and to gain confidence and independence.

## 2.2 Voice, participation and agency

One recurring theme is related to women's voices, be it voicing needs, wishes and requests, expressing themselves without language barriers, or using their voice as a tool for social change. It is central to women's participation and agency as decision-makers and experts in their own lives, individually and collectively, and is key to breaking the isolation that violence creates, more so when their marginal or minority status renders them particularly vulnerable.

Voice, participation and agency are among the first steps in a collective and interactive process. Professionals who created spaces in which women felt they were being listened to helped to counter the isolation and laid the foundations from which they could begin to rebuild trust in relationships. This, in turn, facilitated a process of empowerment that enabled women to take more control of their lives.

*(...) the most important thing I heard was 'we are here for you, you can count on us'. It is very important to hear this from someone because I was alone in this country; I had nobody, I had no friendships. (Maria, DV-7, Portugal)*

*(...) and she was careful with me, I think it took two years or so, and I was growing along with this "What is it that you want?" The more often we met, the more I was also disclosing from myself. And there was something that attracted me to her so much, she listened to me, and at the same time, I found myself and saw the way ahead. That was an amazing experience for me. (Sonja, DV-13, Germany)*

The following illustrates the importance of affording women time and continuing support to create a strong base from which they are able to participate in decisions, to reflect, to plan, and to consider their future.

*She gave me more than one hour of her time. She helped me to calm down and gave me the feeling that I had all the time in the world to talk about my problems with her and to find the focal points. And, as I just said, I felt surprisingly comfortable with her right from the start; (...) that showed me that they really wanted to help me. (Gabriela, DV-3, Germany)*

Continuity of support was important, underlining the process character of empowerment.

*She [counsellor] still helps me with legal matters and life in Germany in general. It is important to me to be supported and advised by her, while having the freedom to decide for myself. (Rose, TSE-5, Germany)*

Where women are afforded a voice and enabled to participate, their capacities for transformative change are also increased, both personally and collectively to act not just on behalf of themselves but also others.

Women feel stronger, more confident and know their voice and action can be important for others. As such, some express the willingness to protest, while others want to give back by helping those in the same situation.

*So now I can say, even though I have been trafficked, I have controlled that situation and now I want to speak out, I want to be able to help more women in that situation. (Patricia, TSE-6, England/Wales)*

*I don't understand why this is so unfair and I am outraged, if need be I will tell anybody that I will protest. I feel that the organisations fight but they also have many challenges, I know the challenges that they have. Things are getting very difficult. (Adelina, DV-1, Portugal)*

Being listened to and being heard, and being enabled to participate in decisions affecting their futures are important aspects of survivors' empowerment, validating their experiences and underpinned by continuity of support tailored to their needs. It is similarly important that women's rights are respected and that they are encouraged, facilitated and enabled to access those rights.

### **2.3 Democratisation (full access to rights) and material and symbolic resources improvement**

Respect for, and the fulfillment of, women's rights are important components of empowerment and decision-making processes in developing and implementing policies and services for survivors. This goes beyond rights on the books and means ensuring that women know they have actual and concrete rights which, in turn, enables them to build confidence and enhances their capacity for self-determination, including the right to say "yes" or "no" to proposed help. This is clearly illustrated in the words of one survivor.

*We have the rights. We've got rights to say, when I need help, you can help us. We've got rights. That's why our confidence is built. (Sabina, DV-7, England/Wales)*

This section will focus on rights whose importance emerged in the narratives of survivors, namely, women's rights a) to confidentiality, b) to information, for example, about legal processes, c) to access general support services such as health care, d) and the right to redress, including compensation. Here, women's experiences were mixed, often reflecting differences in the agencies acting as guarantors of those rights.

In the early stages of intervention, being assured of confidentiality was instrumental in women's sense of personal security and in enabling them to make often difficult and painful disclosures of matters they had kept to themselves, sometimes for long periods.

*And when I tell my inside feelings to my support worker, she has not shared this with another person and that is a good thing. It is good because they don't share and so my family, they don't know where I live. (Marah, DV-6, England/Wales)*

*They guaranteed that the NGO was 100% confidential and that was extremely important to me. It was as if I was in a confession booth. I was like a clam before. I was so closed off! (Maria dos Anjos, DV-6, Portugal)*

Yet these views were not common to all survivors. One woman in particular drew attention to the harmful effects of maintaining absolute confidentiality.

*I don't like being asked all the time about what happened to me. I remember that at the beginning all the time they say, tell me what happened to you, what happened, and all the time I cry, it's like you have a cut on your hand and it is making all the time again a new cut. I would prefer that they ask only once and then send information to each other, not ask all the time. (Ciwana, TSE-2, England/Wales)*

Such comments serve as a salutary reminder to professionals to approach women, not only as victims and survivors, but also as individuals, even when it seems a matter of principle.

With respect to information, there was broad consensus among women that this was vital throughout the intervention process. For citizens and non-citizens alike it was deemed a necessary prerequisite to embarking on lives free from violence. Yet for non-citizens, marginalised and minority women it was particularly important as they were less likely to be familiar with the ways and laws of the country in which they found themselves:

*As for the lawyers, yes, they are really positive because they have been very encouraging and because I had very little knowledge of the law and British laws and everything. So they have been guiding me all along. (Aafia, DV-1, England/Wales)*

Non-governmental organisations were often instrumental in affording women access to legal and other services. Without such assistance many women are unable to navigate complex welfare and health systems or fear the consequences of doing so.

*During the first years when I was illegal I never went to the doctor. I needed it but never went. It was just because I could be denounced, it is also because the fees are as high as in a private hospital ... I just really went to a doctor when I was legal. (Letitia, TSE-3, Portugal)*

*And we found a school, and they helped me get income support. Later they helped me apply for the child subsidy, that's a bit difficult to get here, and I didn't speak much German yet then. The women's counselling centre put me in touch with a good lawyer, and then they had him write letters to get me out of the joint rental contract with my ex-husband so that I could rent a flat of my own. (Daniela, DV-1, Germany)*

The right to redress is a more complex issue. While rights to confidentiality, information and certain services are often guaranteed and accessed through non-statutory agencies during earlier intervention periods, the right to redress is more typically linked to statutory, that is, government agencies insofar as it requires the provision of symbolic and, more particularly, material resources. As such it is often not regarded as a stand-alone right and tends to be more hidden. Affording women access to longer-term housing, training and education and child support often stretches the resources of non-governmental organisations, while the right to compensation and levels of compensation lies in the hands of the judiciary and government policy decisions; and for non-citizen survivors of trafficking in particular, accessing rights often depends on their residency status, which is entirely dependent on government bodies.

Thus, empowerment of women survivors of domestic violence and trafficking can be facilitated through interventions focused on a rights-based approach. Where professionals create the conditions for critical consciousness-raising, where they actively listen to women and facilitate their participation and agency, and promote the democratisation of their rights, backed by adequate provision of material and symbolic resources, women are enabled to begin the process of self-determination and in degrees achieve transformative change. Conversely, interventions which fail to do so impede women's empowerment and often reinforce the harms of violence, as the following section illustrates.

## 2.4 Disempowerment in women's words

Based on women's intervention stories we again focus on three dimensions, identifying and detailing a range of failures: a) reinforcing prejudices and discrimination against women; b) silencing women (failing to listen women's voice(s)) and blocking women's agency; c) failure to respect, ensure women's rights (the opposite of democratisation) and lack of resources. These various dimensions often overlap but provide a useful basis for analysis.

### (Reinforcing) prejudices against women and discrimination

Some women described disempowering experiences with professionals in the intervention system when they felt they were not recognised as a victim or were denied credibility and respect. This, arguably, could have been attributable to preconceived notions of the "ideal victim" (see, for example, Segrave et al. 2009).

*In the emergency accommodation I could not get a place to sleep, although I told them about my situation. I think the reason was again that I didn't look enough like I needed help. (Fatma, DV-2, Germany)*

Other women similarly described experiences of discriminatory practices that adversely impacted their sense of well-being and capacity for self-determination.

*I was very upset and when I was ill they accused me of acting, it was just like before ... I was too upset. I felt treated differently to the other girls there. (Lisa, TSE-4, England/Wales)*

*But I think in general people who are placed in the foreigners' office are hard-hearted, without pity, and racist towards blacks. They will not ask you what they do with you, because they feel it is their country and they will decide if you stay or not. The worst part is, they say "We give you three months, stay in this building, don't go out, don't go to City N, not even City D." You cannot work, you cannot go to school, you cannot do anything. We are just a different color, same eye, body, it's not so different. So treat me like a human being, not like an animal you keep. (Grace, TSE-4, Germany)*

A particular manifestation of racism is the sexualisation of black women. Such racism can be seen to intersect with sexism and the assertion of patriarchal norms and attitudes that further undermine women from marginalised groups. Moreover, sexualisation of immigrant (black) women can be seen as a trace of coloniality (Segato 2012). This connection emerged in some interviews.

*The police officer said, "he is in his country and in his home, if you are not well, go back to your country." The police officer also treated me as if I was a prostitute. The justice system here is very racist. (Beatriz, DV-2, Portugal)*

Some non-governmental organisations also expressed prejudices, as shown in the restrictions imposed on a Roma woman when given accommodation in a shelter.

*I had a social worker from social security and so I opened up to her. I told her I could not stand it anymore. I told her about what happened at school. She told me to meet with the staff of a shelter. When I went there they informed me of my rights and the assistance they could give me. However, my children had to stay behind. They advised me not to bring my children because they had had a Roma lady with her 10 and 12-year-old children and they called their father and the entire family went there. (Carmen, DV-3, Portugal)*

While it must be borne in mind that intervention practices vary and change over time, the above excerpts from women's narratives throw light on how failures in the intervention system can undermine or even directly impede efforts to escape from abuse and build lives free of male violence. Far from facilitating and creating the conditions necessary for women's empowerment, they serve to erect further barriers and reinforce the harms of violence.

### Silencing women (failing to listen women's voice(s)) and blocking their agency

Silencing is part of objectification. The failure to listen to and hear the voices of survivors, particularly those from subaltern groups, simultaneously reinforces a position of powerlessness and underpins a dominant male discourse. This may take various forms, such as failing to respond at all to women's concerns, or failing to recognise women as "knowers" in a world where only the professionals "know best".

Several women spoke of experiences in which professionals failed to listen to their concerns or denied them a voice altogether.

*I called the police on his account already in the other country. But they never investigated. It was like just another case. It happened really often that we were not heard at the time it happened, and then it was too late. I don't need help when I'm dead so take action before it's too late. (Katharina, DV-6, Germany)*

*About the judge I was disappointed too. I drew up a text about years of our common life together. Somehow I wanted the judge to read this before him, because I did not dare to tell him that what he did to me was wrong. The judge said, "What are you doing, what letters, what did you write? What are you thinking?" (Marija, DV-3, Slovenia)*

Elsewhere women described how their accounts were discredited, sometimes in favour of the account of a violent man, or how they were prevented from exposing their suffering.

*When the police came (sometimes after one hour), they were rude, offensive, sarcastic, lazy, indifferent, smart. Statement like, "I don't know, ma'am, it seems weird to me that your bruises are not visible!" Or, "yeah, you know, see, this is no witness because she is your mother". Then, "Madam, he only wants to talk with you, he would like to solve things." (Amelia, DV-1, Slovenia)*

*I had like a small interview. Then I had to wait for the afternoon to have another interview. In the second interview, there was an interpreter. I tried to show the woman my scars but she told me, don't do that in here, like it's not proper. (Mirela, TSE-4, England/Wales)*

Other women again drew attention to interventions which failed to respect them as "knowers" and which seemed to prioritise the system and professional knowledge.

*The observation by the authorities was stressing me out and I felt helpless, because I had to tell them about every aspect of my life and was not allowed to make my own decisions. And they question you, it's like you are a prisoner, a slave. This was slavery, you can't walk, you can't do anything, you have to depend. (Lina, TSE-5, Germany)*

*As for interventions, at the beginning they all wanted me to report ... to give a statement ... But I did not want this at all ... If there was a Roma woman there instead of that guy ... I would go. It's completely different if you have one of your own people, who understands and knows exactly what life is like, and how it will look afterwards. But not these empty promises. (Natasa, TSE-1, Slovenia)*

In some instances, the effects of such failures may be to prevent women from pursuing access to vital support and assistance.

*They accompanied me to an IPSS. However, when we started to tell our situation, they immediately said that they had to inform the authorities. I immediately gave up. I am absolutely sure that if I pursued a divorce he would kill me, I am certain of that. We see situations like that on the TV all the time. (Maria dos Anjos, DV-6, Portugal)*

The above excerpts illustrate the ways in which, at different stages of intervention, professionals may act to silence the voices of women. Such actions serve to reinforce a sense of helplessness and to effectively block their agency. These harms become more potent where interventions fail to respect and promote women's rights.

#### Failure to respect, ensure women's rights (the opposite to democratisation) and lack of resources

Interventions which discriminate against women, which silence their voices and deny them agency depart from a right-based approach and fail to facilitate women's empowerment. Where professionals do not inform women effectively of their rights, where they breach confidentiality, or restrict access to wider services and redress, the effect is to further disempower women. Sex trafficking and domestic violence are also recognised internationally as forms of gender based violence obligating States, inter alia, to protect women. In some instances, the failure to protect appeared to stem from a failure, or refusal, to recognise women as victims.

*And then one guy from the public prosecutor's once told me I wasn't the victim, but my husband. And "we just go by the police notes and only that is decisive for us." And in our village it's generally known that the responsibilities changed constantly, my counsellor figured that out, and they do not take action. (Jenny, DV-5, Germany)*

*During those 15 years I called the police and went to the station several times but when I got home I was already afraid because I knew I was going to get beaten up even more. I would ask myself why I even bothered seeking their help. The neighbours also called the police a few times. The police would get to the house and I would hear them talking and laughing downstairs. They didn't even check if I was dead or alive. (Adelina, DV-1, Portugal)*

Sometimes, the disrespect for women's rights is due to the perception of professionals that domestic violence in particular is not a crime, but something "normal" between spouses:

*I reported this to the police, but the public prosecutor brushed it off, allegedly because it is a marital dispute. Always "because of marital dispute", if it weren't a marital dispute, they would evaluate it very differently. But since it is a "marital dispute in a family" they always drop all charges. (domestic violence (Jenny, DV-5, Germany)*

With respect to trafficking it is similarly clear that professionals missed opportunities to identify a number of victims, sometimes on more than one occasion, which also resulted in a failure to inform women of their rights.

*Rights! Did we have rights? We didn't know our rights ... Nobody told me anything about my rights ... (Alexandra, TSE-1, Portugal)*

In the previous section, it became clear that, once in the intervention system, confidentiality was highly valued by most women. Conversely, breaches of confidentiality can serve to undermine women's trust and leave them feeling discredited.

*And there have been other problems, like when I became aware that my case worker was going to a meeting where all the professionals were going to discuss my situation. I would have been alright with that, if it had protected me and the kids to some extent. But my ex-husband managed to convince some of the people that he'd done nothing wrong and really it was all to do with me. The only way I could figure that they'd all spoken to each other was through that meeting. And that's what really got me; all these people who initially were so supportive ended up believing him. (Lanika, DV-5, England/Wales)*

Another common theme to emerge from the data concerns the adequacy of resources and, for trafficked women in particular, the delay in resolving immigration and residence issues. Most typically, the inadequacy of resources was apparent at the outset. Women had reached the often difficult decision to seek help only to find that places in shelters were not available.

*I had in mind the number of the NGO that my friend had given me. I thought I could always try and speak with them and ask them for help also and I did this. I was given an appointment to come and see someone. I told her about my situation. At that time there was no accommodation available and she said if I can wait they will contact me. (Aafia, DV-1, England/Wales)*

*He abused me physically, psychologically, also economically, and through the children. In 2011 me and my daughter finally decided to leave, but there was nowhere we could go. We called a safe house, but they did not have places, it was full. The problem was that I did not want to go without my daughter, but both of us could not be there. (Ljiljana, DV-2, Slovenia)*

Other women were concerned about the lack of access to wider services which were so important to their sense of well-being.

*I wanted to have counselling but the counselor was too busy ... This organisation, they have events but it would be better if they had more events. It's better because I forget about things and if I could go to school, spend at least half a day at school and then I wouldn't be so upset and lonely. (Ardita, TSE-1, England/Wales)*

As previously indicated, the uncertainty over residence rights was a key concern of trafficked women. The fear of deportation and excessive delays in decision-making adversely impacted women's health and well-being, and undermined their capacity for agency and self-determination.

*My immigration solicitor is a very clever woman but I am worried that ... she can't help me stay in the UK. The Home Office (...) gave me a temporary visa which was extended. But I have not been granted indefinite leave to remain in the UK and I don't understand why. I can't imagine going back to my country. I know what's waiting for me there. My family wants killing me for honour and here the family of my husband wants killing me too. The Home Office people know I can be killed, and I am in danger so why is the decision taking so long? (Cirwana, TSE-2, England/Wales)*

*I had to wait for the decision for four years altogether and I found this time to be terrible. I suffered from hypertension, panic attacks, strong headaches and even had a stroke. (Rose, TSE-5, Germany)*



The above excerpts are clear examples of how justice delayed is justice denied with serious consequences for the women concerned. While there may not be a legal right to a decision regarding residence status within a specified time, all CEINAV countries have policies and legally binding guidelines on these decision-making processes and they form part of States' obligations to protect women and prevent violence. Similarly, it is the State which has a duty to guarantee the provision of sufficient resources to ensure women's rights to support services and redress. Failure to do so undermines respect for women's rights and, far from empowering them, serves to reinforce the harms of violence.

## 2.5 The possible dialogue between women's experiences and professionals' discourses

Interventions against domestic violence and trafficking often occur in different and complex situations. In order to portray this complexity, we draw on the metaphors of tuning, dissonance and noise to illustrate how at times the voices of both survivors and professionals are attuned, at other moments and places they are in counterpoint, that is, each with their objectives but still achieving a final harmony, and, at other times they clash so that the counterpoint is not resolved in favour of women's rights and needs.

First, it is important to note that intervention actors, when dealing with violence, are constantly called upon to make decisions based on their personal assessment of the situation. Thus, it is important to remember that the professionals who participated in the CEINAV research are not the same individuals as the professionals that the survivors referred to when they told us about their intervention experiences. When we bring together the perspectives of the two groups in the following section, we are exploring a realm of possibilities showing how they may intersect productively or unproductively or fail to meet at all.

Thus, this section aims to highlight some of the experiences told to us that occurred at different points in time, while also drawing attention to practices that are not deemed helpful. We focus on three aspects, namely i) democratisation and respecting women's rights, in which we will emphasise where and when professionals contribute to empowering women throughout the intervention process; ii) absence of, or support for recognising women's agency in the professionals' discourses, featuring actions that empower women's agency and those that can block it, even unconsciously, sometimes tangentially approaching epistemic violence (Spivak 1988); and iii) cultural encounters and women's empowerment, to make explicit how the process of combating these two forms of violence against women from diverse cultural backgrounds frames an intercultural dialogue, or runs the risk of reproducing prejudices against subaltern women through epistemic and symbolic violence.

### Democratization and respecting victim's rights

Professionals and survivors are positioned in different dimensions of hegemonic and symbolic power.

An important aspect of fully respecting the rights of women survivors of domestic violence and trafficking consists in the recognition by relevant professionals of the perpetrators' acts as crimes. This is less of an issue with respect to trafficking but, as was seen the previous section, there can be reluctance among law enforcement and judicial officers to recognise domestic violence as an offence rather than "an argument" or a family conflict. This point was raised by several professionals who shared with us that the statutory agencies still need some changes to consider women's rights *vis à vis* the violence committed against them, as one professional stated.

*First, for me, in this matter, a problem is raised when domestic violence is not perceived as a crime committed against women but as a conflict. In the Courts, domestic violence is still perceived as a family conflict. In my interpretation, Court decisions show that is a crime committed against a woman because she is a woman, but this violence perpetrated against her is very much overshadowed and it is not acknowledged. The substance of the crime was changed into a crime in the family context, in a family relationship, violence inside home that happens in family context. The fact that it is violence by a man is the assertion of power, violently against a woman is not usually taken into account. (Magistrate, DV, Portugal)*

Many professionals were also alert to effects of violence on survivors and the need to actively listen to women, particularly in the early stages of intervention.

*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. (intervention centre, DV, Germany)*

Other professionals highlighted the need to acknowledge women as experts in their own lives and to ensure their participation in decisions and plans for their future.

*(...) any intervention plan has to be done according to the woman's will. Because, in the end, we realise that women are the experts of their own risk, of the risk they are living. One woman who is beaten for 20 years and lives 20 years in permanent violence and comes to us, she considers that she can live and survive to that situation even if she made a complaint. She doesn't want to leave immediately and if there is not a restraining order for the offender, if they [the husbands] are still there in the family home, we have to be very cautious and do the risk assessment, and a safety plan (...) We wait that the victim does the complaint herself. (NGO women's centre, DV, Portugal)*

Other professionals again described the dilemma in particular for minority or marginalised women who may not have full, or any command, of the language of the country in which they are seeking assistance.

*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 anymore, they live with the feeling "I have no clue what just happened." (women's shelter, DV, Germany)*

Here, survivors appear to have to cede agency and control to another in return for the support they require. In England/Wales language was less of a barrier, perhaps because of the existence of dedicated support services for minority women in which many service providers spoke the language of the survivor. Even so, an understanding on the part of professionals of the problems language barriers can pose may in itself lead to a more sensitized service delivery which takes better account of some of the contradictions and difficulties survivors can face.

This is further reflected in the view expressed by another professional who acknowledges that marginalised and minority women may not only have less awareness of their rights but may also feel less able to claim them.

*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, more likely accepts it and has to be supported to make use of her right to self-determination, to recognise it. There is much more to transport; you have rights here, you don't have to do this and that. (lawyer, DV, Germany)*

Several professionals also drew attention to discrepancies in how the intervention system responds to women survivors, on the one hand, and perpetrators on the other.

*(...) it turns out that she (the victim) has been subjected to scrutiny much more than her partner, so in the reports you try to find good things and you also see the bad ones, and the bad ones are not left out, so in the end ... While the father was never under such scrutiny. And, in the end, you sometimes find it really hard to submit the report about the woman because you know that there will be no such report on the other side – but you can't leave out what the mother did wrong. So ... I think ... in the end, it seems that in our procedures they find themselves in a worse position than the perpetrators, who are seen only every so often. (safehouse representative, DV, Slovenia)*

*What you've [safehouse representative] pointed out is true. Every procedure then goes in the direction of discrediting the victim. And then you invest a lot of energy in refuting such claims, which are most often false, but you have to refute them – and you collect such reports to refute them. (...) The procedures really are unfair, but unfortunately the victim is still much less protected than the accused. (judge, DV, Slovenia)*

Democratisation, then, means that survivors not only have rights, but that professionals ensure they are informed of those rights and enable women to claim and make use of them. Many of the professionals who participated in the CEINAV project were acutely aware of shortfalls and contradictions in the intervention system. In part this was attributable to the financial pressures placed particularly on non-statutory agencies due to “austerity measures” imposed by some governments, notably England and Wales. Yet many professionals also acknowledged inherent contradictions as they sought to balance tensions between the different parts of the intervention system.

#### Absence of, or support for recognising women's agency

Many of the survivors who participated in the CEINAV research came to the attention of police or other agencies through their own volition. This was the case with respect to domestic violence but also, in particular, with respect to trafficked women who exercised such agency as they had to escape their abusers, rather than being ‘rescued’ by the authorities. This is consistent with other research. While women were undoubtedly aware of the harms they had experienced and the difficulties and dangers they faced, they did not necessarily see themselves as disempowered victims. This sometimes set them at odds with intervenors. Here, a number of professionals expressed the view that it was incumbent on women to acknowledge their victimhood, to identify as victims and thereby enable practitioners to help them. It will be recalled that in two countries, England/Wales and Portugal, this requirement is formalised through national referral mechanisms (NRM). Under the NRM women must self-identify as victims of trafficking as a pre-condition to accessing any level of support and assistance. Yet even in countries without a formal NRM, some professionals felt it was key that women should come to share that understanding of themselves as victims.

*Basically, we can only work through awareness-raising. She has to have a victim consciousness (...) This divergence, that we see her as a victim and she doesn't see herself as one, cannot be overcome.*

*It has to come from her (...). She has to cooperate with us and tell us what she has experienced and who is doing what to her and why. And then see herself as a victim, that is the essential thing. (public prosecutor, TSE, Germany)*

Similarly, in Slovenia, professionals felt they could only progress with their work and assist women if they acknowledged their victimhood.

*We do ... as much as we can but there's a problem regarding proof (...) There's enough of evidence if she speaks to us, in fifteen minutes I know enough, who is and who isn't [a victim of trafficking]. But only if she's speaking. If she doesn't want to speak about anything that's related to it, then it's really hard to infer something or guess. (police, TSE, Slovenian)*

Examples such as these illustrate the complexities facing both survivors and those working in the intervention system. It is not enough to know that women need and want assistance, they must first meet the requirements of the system to gain access to support services; and where these respective needs are in tension, it is the system which often prevails.

When professionals cannot reach some women to offer help, they may see “other cultures” in countries of origin as a barrier to intervention (see chapter 8). As Susan Brison writes from her own experience, narratives of trauma can “inadvertently perpetuate stereotypes of one’s group as weak and helpless”. Thus it is vital to reject “the dichotomy between victimization and agency” (Brison 2002, p. 35). Although observations of different customs in countries of origin can draw professionals’ attention to the structural factors that contextualise systemic disempowerment, it is also apparent that women do develop strategies of resistance that enable them to exercise agency, however circumscribed their choices.

Among these many structural and other factors are intervention processes themselves which derive from the laws and policies of the State in question. Many professionals acknowledged the ways in which these constrain not only the agency of women, but similarly impact their own abilities to facilitate women’s agency and empowerment. They drew attention to interventions, for instance, against domestic violence where, with the exception of Germany, it is typically the woman who is required to leave the residence and enter a shelter, irrespective of how disruptive this might be for her and any children. They further highlighted how interventions exclusively focused on women (and children) may in fact further victimise survivors.

*The woman is victimised by the perpetrator then victimised by every agency by having to leave her home. (health visitor, DV, England/Wales)*

*But I'd like to point out that I see the victim here as a victim of institutions. This mother is alone now, the husband withdrew, nobody follows him anymore, but we follow the mother with her children and we expect her to ensure housing for herself and her children, to ensure that the children do their schoolwork, that they're healthy. So here the story somehow extends from the physical violence to the violence of the institutions that put pressure on her – we expect her ... the teams, too. In the teams, we always deal with the problem of ... mothers without housing with children who are doing badly at school, mothers without housing with sick children, and so we put pressure on her and expect all kinds of things from her. (housing fund representative, DV, Slovenia)*

Thus, while the views and actions of some professionals are in tune with women’s needs and the conditions that facilitate their empowerment, on occasion intervention processes appear more as noises, incapable of achieving any harmonisation of the two. Sometimes this is the result of the actions of individual practitioners, but is also attributable to con-

traditions and tensions in the intervention system itself. Some professionals do recognise women's agency and seek to provide counterpoints and work with women's strategies of resistance to dismantle conditions, at least of individual disempowerment.

### Women's empowerment and cultural encounters

"Cultural encounters" was the central theme of the CEINAV research to understand how women from different cultural backgrounds experience intervention, as expressed in our initial proposal: "In a doubly comparative approach (within and between countries), the project will examine the methods and procedures of intervention employed to protect against violence under the 'magnifying glass' of their application to selected minority groups and situations of relative social exclusion, as paradigmatic test on which the thorny issues of ethics, legal philosophy, culture, and human rights theory can be studied."

As we have seen, the experiences and perspectives of both survivors and professionals in the intervention system are diverse. Here, we focus more specifically on aspects of culture as perceived primarily by professionals and how such perceptions influence their approaches to empowerment and disempowerment with respect to marginalised and minority women. In some instances, "culture" is clearly foregrounded in the discourses of professionals as meaning women from various ethnic or national origins other than those of the dominant group within any of the four CEINAV countries. In other instances it may manifest itself in more subtle ways as implicit in a range of assumptions and oversights in intervention processes. In many of the excerpts below, it will be seen that these two aspects are also often intertwined.

There is ample evidence in the CEINAV data of the multiple ways in which the dominant discourse can drown out and silence women's voices. Here, several practitioners expressed some frustration where women "*failed*" to make the "*right choice*" (by not leaving a violent man) and some even regretted not having legal power to force these victims into making "*the right choice*" (Coy 2015; see also chapter 10 on responsabilisation). In such circumstances, it was not unusual for professionals to find ways of putting pressure on women, typically through their children and the threat of removing them from the mother's care, to coerce them into taking action the professional approved of.

*From a nursing point of view, in an emergency department, what would lead me to try and find out if it's domestic violence due to the children involved, so it's a safeguarding issue. As a nurse my hands are pretty much tied with regards to the woman, but for the children I could go down that avenue. (emergency nurse, DV, England/Wales)*

While this may typify the "risk" approach prevalent particularly in England/Wales and relate more specifically to professional obligations under child protection laws, the question of domestic violence and the woman's safety has quickly receded into the background together with any consideration of her views and choices, thereby disempowering her and undermining her capacity for self-determination.

However knowingly or unwittingly professionals may act, such processes of disempowerment can be linked to epistemic injustice. The concept can be traced through the historical process of modernity, when a division was established between knowers (academics, scientists and other experts) and not knowers. Drawing on the work of Michel Foucault (1987), Gayatri Spivak (1988) identified it as harm inflicted through the marginalisation of subaltern voices specifically in Western discourse. Those who fall under the category of knowers have the power to select who the not knowers are, and the privilege and entitlement of deciding what is best for them. This may be reflected in the practices of many service providers, such as health, support and assistance and other social services. It in-

volves the silencing of other types of know-how and wisdom and there is an absence of reciprocity between those who are being cared for and those who are doing the caring, a dichotomy between scientific knowledge and “ignorance”. Pierre Bourdieu (1991) talks about violence through the belittling and delegitimisation of knowledge of those we work with/for; subaltern groups are perceived as less or as incapable and, to some degree, to blame for their individual failures. Ultimately, epistemic violence can be expressed through symbolic violence, the imposition of the “rightful” knowledge of institutions.

*I think (the NGO specialist) is right, lots of these people that we deal with do not understand that what they have been subjected to is domestic abuse for years if not decades. So a lot of the time those questions are asked, the answers they will give may not be what we would perceive as the correct ones because they do not understand. They've been subjugated for years, treated poorly for years and perhaps we don't as professionals deal with it the correct way. I don't think we should be relying on the engagement of survivors. I know it's easier with engagement but if you don't have it you don't have it. It's a bonus if you do have it, but we should be looking at what other information is there available to us as professionals to intervene, to protect not just her but the children. (prosecutor, DV, England/Wales)*

In some cases the epistemic injustice of intervention systems is visible. Minority women are pressured into situations in which difference can be erased, as if this *difference* was abject (Kristeva 1982; see also Butler 1993), as the following excerpt illustrates.

*We had a girl who had been temporarily removed, because she was going to have surgery and there were no conditions for her to recover at home, since the house had no conditions. And she was removed, temporarily. The mother came with the technician of the institution and with her to the appointment. And it was so curious! [The girl] no longer looked “Gypsy”. It was so curious, she changed, changed, she looked like another person [almost in tears]. She was very satisfied with the institutional care. She was very happy. We could notice an impressive jump in her development! (physician, DV, Portugal)*

Alternatively, women are either pressured to *be different but not too different* or are completely marginalised (Magalhães et al. 2015). The risk discourse in England and Wales, referred to above, may be said to exemplify such approaches, in that it appears to push professionals into this paradigm, as the almost exclusive factor in intervention decisions.

Epistemic injustice can also be seen in the culturalisation of violence when professionals, implicitly or explicitly, assume that violence against women is specific to, or normalised in certain cultures such that women fail to recognise it or simply accept it (see chapter 8).

*(...) there are cultures where violence against women and girls is more accepted than here. There are trainings at this school and the girls with headscarf also have to go and are trained a whole week and are told that they have a right not to be assaulted. It's very important to start early to explain them these are your rights and they work for you. It's a positive thing to live without violence. I think many of them don't know this. They are used to the violence and the mother was beaten up by the father and they don't know it differently. (judge, DV, Germany)*

The culturalisation of violence by some professionals can be contrasted with a much more nuanced perspective on culture in the discourses of survivors of both trafficking and domestic violence. Here, culture was not raised as a barrier to their recognition of violence. Instead, culture was perceived through the lens of gender and patriarchy as privileging men, both generally and specifically within intervention processes. Particularly with re-

spect to domestic violence, this was something several minority women recognised they shared in common with women from majority cultures. Yet intersections of race, ethnicity and gender can operate to further disempower minority and marginalised women and render them more vulnerable to epistemic injustice.

Explicit values and beliefs or implicit assumptions about the lives of marginalised and minority women may devalue the harms of violence and impose a dominant discourse which undermines women's own knowledge and capacities for self-determination.

*If we look at the statistics, 90 or 95 % of Romani children do not finish primary school. That's the statistics. So ... How are we going to help these families? ... We have to be aware of the facts. Why don't they go to school, for example? Because in Romani families school is not a value. As they explained at the lecture, for Romani parents, school simply isn't such a value as it is for Slovenian parents. So they won't say to their child: "Go to school, you have to go, you need to go to do this and that and the other." What I want to say is that, as you've already mentioned, these cultural characteristics are definitively important if we consider how we can help these communities, how we can cohabitate with them. We have to be aware of this. (social worker, DV, Slovenia)*

Yet some professionals were aware of additional difficulties faced by marginalised and minority women which might impede their access to effective support and assistance and their concomitant responsibilities to seek ways to dismantle those barriers.

*I can't see what the issue is with right and wrong, isn't it just that people need information about to make choices that might be informed by whatever cultural issues/baggage they've got going on ... it's making adjustments that you make for anyone that's not able to access the service. It's about finding ways to enable them to access the service for their benefit. It's seeing where the barriers are in place, whether that be language or cultural issues, and removing those barriers. (NGO, DV, England/Wales)*

*Perhaps there's a difference between educating people on what the law is within a country, and about human rights, and the more subtle cultural beliefs, perhaps we shouldn't be seeking to change those, but I suppose just giving them as much information as possible to make their own decisions. (domestic violence co-ordinator, DV, England/Wales)*

Thus, issues of culture can be seen to play a significant role in intervention processes. Where professionals fail to acknowledge the impact of dominant cultures and fail to question assumptions about knowledge, they may, directly or inadvertently, reinforce the harms of violence. By contrast, in challenging prejudice and making explicit the many assumptions underlying interventions, professionals are better placed to begin a process of recognising and valuing women's own knowledge about their lives and of creating conditions that facilitate their empowerment.

### 3 The limits of liberal empowerment

This chapter has sought to illustrate the ways in which intervention processes may facilitate or impede the empowerment of women survivors of domestic violence and trafficking. Different dimensions of empowerment have been highlighted and contrasted with disempowering and even harmful practices. These sometimes result from difficulties in balancing tensions between different parts of the intervention system, or from inherent

contradictions and institutionalised racism within the system or, at times, from the prejudices of some professionals within both the statutory and non-statutory sectors.

The narratives of women survivors show us that professionals were able to facilitate their empowerment where they created conditions conducive to critical consciousness raising, particularly as a way of enabling women to contextualise their personal experiences within wider social power relations. Yet a close read of women's narratives confirms that, in general, this aspect of potential empowerment is approached from an individualistic perspective so that collective and structural aspects tend to be overlooked. This may be a result of a focus on "one-to-one" methods of helping survivors that, in turn, may be coupled with liberal ideology and notions of "choice".

Women also spoke of the importance of being heard by professionals and acknowledged in their capacities as knowers. This provided a basis from which they were more able to counter the harms of violence and paved the way for greater participation and agency in decisions and actions affecting their lives. Conversely, where intervention actors effectively silenced the voices of survivors by failing to acknowledge them as knowers, or by undermining their credibility as speakers, they reinforced the harms of violence and impeded women's capacity for self-determination. Sometimes this could be seen as responses to perceived cultural differences and assumptions that women from different cultural backgrounds become habituated to violence. Elsewhere it could be seen to stem from prejudices related to structural identity which served to obscure women's experiences from their collective understanding. Professionals were elevated to positions as exclusive knowers of what is best and right, often synonymous with dominant cultural norms and values. This contrasted with more nuanced observations of culture expressed by several women, particularly with respect to intersections with gender and patriarchies.

For many survivors, having knowledge of their rights and being supported in accessing and claiming those rights proved to be a turning point in their journeys. Yet, this can also lead to a focus on individualistic or liberal empowerment and sometimes a failure to promote a sense of collective or liberating empowerment that could address structural and systemic aspects of disempowerment. In some respects this may again be linked to the expansion of neoliberalism and may be contrasted with feminist-led support and assistance services more typically associated with the latter part of the last century, particularly in Germany and in England/Wales where strong and independent feminist movements had emerged. In England and Wales specialised services for black, minority and ethnic women have been a major achievement but they, in common with services generally there and in the other CEINAV countries, have been impacted by financial cuts and a depletion of resources. Even so, it is clear from the CEINAV data that women greatly value these specialised services. Many women were able to take more control of their own lives, to make a greater range of decisions on their own behalf and to enjoy a sense of freedom which some had never before experienced. In this sense, women's organizations were able to act as "facilitators" in an empowerment process (Batliwala 1994).

Nevertheless, perhaps in the dimension of rights more than elsewhere, tensions within the intervention system became apparent. For trafficked women in particular, prolonged uncertainty about their residence status impeded their capacities for self-determination and agency and often negatively impacted their physical and emotional well-being. Similarly, with respect to domestic violence, where many professionals may perceive women as rights-holders, as evidenced in this and other chapters in this volume, their rights are often trumped by the rights of men and the rights of children. While these may be taken as examples of how an inadequate legal environment may inhibit liberal empowerment, more specifically it points to the limits of liberal empowerment itself insofar as an individualistic and even rights-based approach is insufficient to challenge the deep-seated inequalities of power embedded in patriarchal gender orders.



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SECTION FOUR  
REFLECTIONS



## Chapter 12

# Intervention cultures: gender, family, and the state in responses to violence

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### 1 Introduction

This chapter reflects on the commonalities and differences in the four countries of our in-depth CEINAV study, asking if each country can be said to have an overall “intervention culture” that shapes their responses to different forms of gender- or generationally based violence. Of the three forms of violence examined in our study, this chapter focuses on intervention patterns in the fields of domestic or intimate partner violence against women and of physical abuse and neglect of children, reflecting on ways that intervention patterns overlap or diverge. Based on previous research, we then embed some of the differences in a wider European context, drawing on data from the 47 member states of the Council of Europe since 2004, provided by governments and/or by the work of transnational research networks and organisations that maintain online databases, as well as from a mapping of laws and institutions in the, at that time, 27 member states of the European Union in 2010, based on extensive reports from independent experts in each country. These data provided the background for the qualitative study of intervention frameworks and practice in England/Wales, Germany, Portugal, and Slovenia in CEINAV, enabling us to describe not only how the frameworks differ, but also the patterns and procedures of intervention and how they connect to, or are independent of the prevailing conceptual policy framings.

We begin by sketching how the concept of intervention in what had been considered the private sphere emerged, anchored in obligations of the state to provide for the welfare of citizens. Differing welfare state patterns and historical periods shape the context of intervention policies and institutions. The various existing welfare state typologies offer little insight in this area. With the more modest aim of understanding how interventions to stop domestic violence against women and those aimed to protect children from harm interrelate in different and country-specific ways, we then draw on our in-depth study in four countries. To contextualise these patterns more widely, we then give an overview of the diversity of laws, policies and institution across Europe with regard to domestic violence against women and/or violence in the family (see chapters 5 and 6), and ask how laws and policies frame the context and the rationale of state-led or state funded intervention. Our comparative study focuses on intervention against violence since the 1990s, when a series of increasingly detailed consensus decisions committed the Council of Europe to combatting violence against women, and the UN Convention on the Rights of the Child (1989) was ratified by all governments in Europe (by 1995). With the two levels of data collec-

tion – in-depth study of four countries and overall mapping across Europe – the following section discusses some key issues of intervention and seeks to understand why efforts to harmonise policies and practices encounter such persistent obstacles.

## 2 Legal and institutional frameworks of intervention across Europe

The privacy of the patriarchal family and the power vested both socially and legally in husbands and fathers over women and children began to be questioned in the late 18<sup>th</sup> and during the 19<sup>th</sup> century across Europe. Legal prohibitions of abuse sanctioned only extreme cruelty, and provided little or no protection, so that concepts of *intervention* as both legitimate and necessary emerged. While first initiated by voluntary organisations, often as charities under the aegis of churches, intervention to protect against maltreatment and harm has been increasingly understood to be an obligation of the state. However, the extent and the occasions that justify or require intervention have remained controversial up to the present, despite the codification of rights and duties in international and national law.

Our discussion in this section limits itself to the evolution of legal frameworks and agency responses in the context of European welfare states as they emerged after World War II, setting these against the background of evolving international law on fundamental rights in that period. The four countries in our research exemplify different traditions and cultures of how the institutions and regulatory power of the state is understood to ensure the welfare of citizens with regard to the potential harm that can result from violence, abuse or neglect.

While there is a body of literature describing and classifying different welfare states in Europe, the predominant approach is to measure few indicators in a great number of states, in order to build a typology that might explain different practices and policies. Mary Daly (2000) has argued cogently with regard to gender relations in different welfare states, and Hämäläinen et al. (2012) have argued in a similar vein concerning child protection and child welfare policies, that the “preoccupation with typologies” may not be fruitful, and they give preference to in-depth analysis of selected systems. Daly questions the assumption “that the complexity of individual welfare systems can be meaningfully categorised on the basis of a small number of general criteria” (p. 54), and Hämäläinen et al. underline that “in order to understand the particular nature of any individual tradition of child protection, attention must be paid to the characteristics of the country-specific social order in general” (p. 8).

Many of the differences to be found within Europe appear as a matter of degree, but they also arise out of differences in the role of social actors and in the temporal sequences of recognising and addressing issues of violence in the family. Policy in all European states follows the principle codified in various international human rights instruments that the family is to be protected. For a deeper understanding of how this plays out, Daly distinguishes between the family as an institution and the family as a set of relations, both of which are highly influenced by gender and marital norms. Family, in distinction to genealogical relationships, represents actual caring relationships (Jurczyk et al. 2010) and the so lived unit becomes an institution to be protected. As a set of relations “family” can be (and is) socially and politically constructed in different ways, shaped by norms for the private sphere as a location of solidarity and power, and these also change over time. Non-interference is more salient than protection in this perspective. Thus, the reference point of family policies can be, for example, marriage, mothers, parents, all household members,

or families at risk, and can frame provision of care as a private or a public obligation, or refer to norms of moral behavior with religious underpinnings. The deployment of “preserving the family” has been interconnected in various ways with political regimes and ideologies as well as with the role of organised religions in their coalitions with or oppositions to political power structures. The abstract ideal of preserving the family stands in tension not only with the concepts of liberty and self-determination of the individual, but also with the responsibility of the state to ensure the welfare and fundamental rights of the child. Approaches to intervention when there are grounds to suspect violence within the family can be seen as strategies to handle these tensions as will be discussed below.

## 2.1 Our comparative research – how we have explored intervention cultures

Sparked by the picture of diversity in practice underlying ostensibly agreed standards, our in-depth comparative research (in three projects from 2009 to 2016) has explored how the understandings of domestic violence against women and of child abuse and neglect shape not only policy and legal frameworks, but also the practices of intervention and the rationales that are given to make sense of what is or is not, should or should not be done. This research threw some light on how culture, history, and institutional traditions enter into the resulting patterns of intervention.

The Daphne project “Realising Rights?” (2009–2011) undertook in-depth mapping of legal and institutional frameworks for intervention on violence against women and violence against children in 38 European countries, developing and implementing a detailed questionnaire for regional experts in 2009. Analysis of the questionnaire data was suspended as the research team took on the task of a “Feasibility Study” completed for the European Commission in 2010, the purpose being to assess whether and in what respects legislation in the EU member states could be harmonised. The extensive data from 2009 were rechecked and augmented by (in most cases other) independent national experts in the 27 EU states (Croatia was not a member yet), resulting in a matrix describing the laws and institutions across the EU as well as a descriptive analysis for each form of violence (European Commission 2010).

After completion of the analysis and recommendations for the Commission, work on the Daphne project could be resumed. The overview of legislation and policy from the “Feasibility Study” was extended to cover the remaining states close to, but outside the EU, providing a matrix for mapping all 38 states. Aiming for better understanding of how intervention is framed, three multi-country case studies focused on the wider policy context and the social and institutional processes that define the practices covering national action plans on violence against women, child protection processes, and emergency protection for women confronted with domestic violence. The studies yielded initial insights on how and why the same principles and concepts lead in diverse directions or why diverse legal frameworks seem to achieve similar results in terms of implementation and understandings of women and children’s human rights (Kelly et al. 2011)<sup>1</sup>.

The following three-year CEINAV study (2013–2016) was designed to explore the implicit cultural premises of intervention in four countries, both with respect to its institutional regulation and to the practices of implementation generally and with minorities or disempowered groups. A further goal was to discover what ethical issues and dilemmas practitioners experience, and what grounds they adduce for dealing with such challenges. A context-sensitive, three-fold comparative approach (four countries, three forms of vio-

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<sup>1</sup> For these three case studies and the 38-country mapping of legislation see Kelly et al. 2011.



lence, majority and minority positions), listening to the voices of victims as well as the voices of intervention professionals and integrating creative art into the research process, revealed aspects of intervention culture while suggesting challenges for further research (see chapter 2).

## 2.2 Institutional context of intervention and history

Frameworks for intervention in the family to protect children from harm had already existed in many European states since the late 19<sup>th</sup> or early 20<sup>th</sup> century, while calls for intervention to stop domestic violence against women came later and may have triggered responses that harked back to pre-existing intervention concepts from child protection. Comparative studies of postwar welfare states in Europe illuminate how they have differently regulated the interfaces between the state and the family through social policies and services. As Mary Daly (2000, p. 2) has written, the 1980s represent a crucial point of change both for the established West European welfare states and for states in transition from state socialism after 1989.

For the four countries in the CEINAV project, the “baseline” for these changes differed. In both the United Kingdom and Germany the voluntary sector of civil society organisations (NGO) had an established and key role in service provision for protection and support. But while in the UK with its extensive sector of charities supporting children, the Local Authority Social Services Act in 1970 introduced the requirement to follow government-issued statutory guidance, in Germany the NGOs are constitutionally ensured freedom from regulation by state law, and by the principle of subsidiarity, NGO service provision has priority. While first established in the field of child and youth welfare, these diverging principles later influenced intervention responses to violence against women. Portugal had struggled with defining family policy through inconsistent and partial regulations since the end of the dictatorship in 1973, while Slovenia shared with the “newly independent states” of Central and Eastern Europe the need to fundamentally restructure the state-citizen as well as state-family interface. Both Portugal and Slovenia had to define the role of non-state and not-for-profit actors as a new component of welfare provision. In Portugal, child protection had been the responsibility of local authorities and semi-state institutions of social welfare, with patriarchal power in the family being reinforced by law as late as 1966, while in former Yugoslavia all civil society organisations were abolished in 1947, and Centers for Social Welfare were established in 1959 to deal with social problems such as child abuse and neglect. In all four countries, recognition of domestic violence against women was driven by feminist initiatives beginning in the 1970s, although local feminist organising against violence in Portugal and Slovenia did not emerge until the end of the 1980s.

While the British welfare state was shaped by a long tradition of poverty-oriented provision (historically prefigured by the Poor Laws), and the introduction of social insurance was primarily based on flat-rate contributions and minimal benefits, the German welfare system implemented an income- and status-based maintenance model of social security through social insurance, which was further shaped by the principle of subsidiarity (Daly 2000, pp.74–78). In the postwar period, UK provision was broadened to offer state-provided security “from the cradle to the grave” to a population that had stood together against the Nazi bombing; it was in this context that T. S. Marshall put forth his influential concept of “social citizenship”. In postwar Germany, the concern was to preclude any recurrence of radical mass movements by ensuring basic security of social status, while reverting to a long tradition of privileging local authorities through a constitutionally framed federal model of the state. This resulted in differential processes and outcomes; for exam-

ple, child-related cash payments in Britain have long been paid to the mother or caretaker of the child, while in Germany they go to the main earner in the household, primarily to fathers. While the British welfare system supports low-income families with children by cash transfers, in Germany progressive tax allowances and publicly subsidised or provided child care play a much greater role, benefiting middle- and higher income families more than those with lower incomes and thus maintaining societal hierarchy (ibid, pp. 78–82).

Both Portugal and Slovenia<sup>2</sup> have traversed deep (but very different) transformations following disruption of the state and its agencies and institutions in the decades from 1970 to 1990, impacting on both the role of statutory agencies of social control and on the relations between the state, the family, and the prevailing gender order (with strong regional differences within Portugal, as noted by González López & Solsona Pairó 2000). Although both countries each had a social welfare system under the previous political system, it is not easy to trace what elements of (non-)intervention against violence within the family or in personal relationships, and what aspects of organising service provision were carried over into the new democratic structures.

### 2.3 How history and culture shape intervention

The effects of these models on provision of support and protection can be illustrated by the differing approaches to support for women facing violence. In both Germany and England and Wales, social movement-based projects played a key role in generating new approaches, but the role of the state differed. UK advocates succeeded as early as 1977 in having women who leave their home due to violence recognised in the Housing Act as “homeless”, entitling them to minimum welfare benefits that include rental support, including a stay in a refuge. The German shelter movement emphasised autonomy and did not seek legislative measures until the late 1990s; funding was on a grant basis from the local authorities (and later, by reimbursement of costs per resident and day; see Schweigler 2018 on the current situation). The role of national government towards services for women was restricted to funding model projects for each type of service (beginning with the first shelter in Berlin that opened in 1976), always in cooperation with one of the 16 *Länder* and accompanied by evaluation research (see Hagemann-White 2017). In both countries, however, specialised services, in particular refuges and counselling centres, developed from the feminist initiatives and these organisations were a significant force in bringing about legislation for civil law remedies and models of multi-agency cooperation.

#### State and voluntary sectors: Germany and England and Wales

In Germany as well as in England and Wales reforms of the child and youth welfare system go back to the late 1960s, although they took somewhat different pathways, due in part to the decentralised structure of child welfare in Germany, which gave more scope to local initiatives. In Germany the students’ revolt of 1968 formed a coalition with juveniles in residential care and successfully brought about significant changes (Struck et al. 2003). In 1976 the first “Kinderschutz Zentrum” (child protection centre) was founded in Berlin, starting a movement towards prioritising a service orientation and the involvement of parents and children as co-producers of protection and help services (Wolff 2010). A long overdue reform of the child and youth welfare law was postponed several times due to ten-

<sup>2</sup> In the comparative research on welfare states Portugal receives only marginal attention, if at all mentioned, and the still rather scarce study of post-socialist welfare states rarely deals with the former Yugoslavia.

sions between the practice of social work and a conservative government which wanted to “keep child and youth welfare professionals out of the families’ living rooms” (Wiesner 2006). The paradigm shift came into force in 1990 (East Germany) / 1991 (West Germany), manifesting an evolution from a system of paternalistic care to a system which provides families with access and legal claims to state funded services (Wiesner 2011). A legal duty of independent NGO-based services to share the protection duty of the state and cooperate with statutory youth welfare agencies and family courts was only instituted, after prolonged controversy, in 2005.

In England and Wales, consecutive and constant reforms have aimed to improve the child protection system, often driven by high-profile reviews into children’s deaths (e. g. Laming 2003) and efforts to compensate for failures in practice (Munro 2010). A key recommendation from a report on the lessons to be learned from research (Department of Health 1995) was to refocus and prioritise the support for “children in need” rather than concentrating on forensic investigation of abuse as outlined in previous “Working Together” policy documents (Home Office et al. 1991; Department of Health et al. 1999). The approach was manifested by the Every Child Matters initiative, launched in 2003 (HM Government 2008; Parton & Berridge 2011). The Munro Review (Munro 2011), again initiated in course of the review of a very high-profile case, led to implementation of rather halfhearted measures to overcome an over-bureaucratized and compliance-focused system towards a system that values and develops professional expertise while balancing the safety and welfare of children. The orientation to guidelines and rules has not shifted significantly (Parton 2017). More recently, the principle that NGOs should follow government policy guidance has carried over to safeguarding adults (HM Government 2015); with the leverage of increasingly scarce funding, this influences services for domestic violence, as referral mechanisms and MARAC foster a guideline-dominated approach similar to that in child protection.

## Portugal

In Portugal under the Salazar regime, child protection was limited and primarily a task for courts, with a gradual recognition of a role for social work assistants. Until 1974 a husband had full marital power over the wife and paternal power over the children, so that intervention could not respond to abuse within the family. Semi-state private Institutions of Social Solidarity implemented residential care or other interventions for children. After reform of the Civil Code in 1977, which established rights of children and of women within the family, local authorities became responsible for establishing child protection commissions to deal with children in danger of harm. “Historically, the tradition of social intervention follows a supportive paradigm. The Catholic Church and secondly the State have the responsibility of caring for the most vulnerable, replacing the families and the community” (Carvalho et al. 2018, p. 5). Overwhelmingly, out-of-family placement in Portugal even today takes the form of residential care, and the preference for institutionalisation seems even to be increasing (ibid). In a period of internal stresses to the welfare system during social transformation, a number of changes in legal frameworks and procedures have occurred (Ferreira 2012).

In 1992, the Association of Women Against violence was founded and opened the first specialised refuge for women and children in situations of violence. Nonetheless, among the old EU member states, Portugal was the last to establish state-supported refuges, only after the law on domestic violence in 2009. Legal frameworks to address violence against a spouse or violence in the family more generally were introduced from 1982 on and revised repeatedly until 2009 (the status of domestic violence as a public interest or as a private crime has shifted back and forth), leading to considerable uncertainty among profes-

sionals. After 1974, the principle was established that police may only intervene after the authorisation of – at least – a magistrate (Public Prosecutor), unless it can be proven, in court, that there was an imminent danger for life or State security; this can be seen as a reaction to the role of the secret police in the Salazar regime. Thus, Portugal has no emergency intervention measures for police, and no protection orders that can keep a violent husband at a distance. Even seeking safety in a refuge requires a referral by a competent agency.

### Slovenia

In the state socialist regime of the former Yugoslavia, there was no officially recognised voluntary sector. The first Centre for Social Work was established in 1959, and then across the country numerous children's homes were established, and the standard response to endangerment here, as in Portugal, was institutionalisation. Slovenia was in 1991 the first of the former Yugoslav regions to declare itself an independent state and manage the transition to multiparty democracy and a market economy, and a corresponding social welfare system was instituted in 1992. Non-governmental activities to place violence on the public agenda began earlier in Slovenia than in any of the other 2004 EU accession countries, with activists organising the First Yugoslav Feminist Meeting in Ljubljana in 1987 that put forth demands concerning legislation against violence against women and children and services for victims (Gaber et al. 2009). While services run by NGOs are funded, the statutory Centres for Social Work, run by the regional government, are legally responsible for intervention in all forms of violence in the family – professionals are obligated to report knowledge of domestic violence or child abuse to them – and they are the main providers of services, both for children and for women facing violence.

## 3 European diversity: the case of domestic violence

Controversy over the concepts “violence against women” and “family violence” existed in sociology and in political debates since the issues of rape, battering and multiple other forms of men's violence against women were placed on the agenda by feminist activism in the 1970s. The transition to the concept of “gender based violence”, while allowing the inclusion of men and of children as victims and a broader perspective on violence seen through the lens of gender (see Fawcett et al. 1996) did not resolve the issue. The concepts partly include or exclude transgenerational violence. It is, however, not always clear why the one or the other concept is chosen for policy frameworks and what this means for intervention practice. The diversity of legal, historical and institutional frameworks that co-exist in Europe with putative agreement on overarching principles and standards for intervention, articulated in European and/or UN Conventions, offer a promising field for exploring the factors at play in the use of key concepts and their practical implications.

The year 1993, when both the UN (Vienna Declaration) and the Council of Europe (Ministerial Conference in Rome) declared it a human rights obligation to combat violence against women, can be seen as a watershed in Europe. There had been recommendations and seminars on social measures and good practice concerning violence within the family as well as sexual violence in the years before, but the Council of Europe, an inter-governmental organisation established in 1949 to promote democracy, human rights and the rule of law in post WW II Europe, was now placing violence exercised against women because they are women, or disproportionately affecting women, at the core of the com-

mitment of member states to its central goals. Member states have been asked to report on the relevant legislation, to implement “recommendations on the protection of women against violence” (2002), to participate in a “campaign to combat violence against women, including domestic violence”, and to negotiate and agree on a Convention that – since 2011 – is legally binding on each state after ratification.

The impact of translating a social issue into a human rights obligation of states can be seen by tracing how laws and policies have evolved since the development of recommendations began in 1998. At that time, only a few member states had legal frameworks addressing domestic violence against women. Today, all but three<sup>3</sup> of the 47 member states in the Council of Europe have passed laws dealing with domestic violence, and many have passed two or more laws or amended and updated their laws during this 20-year period<sup>4</sup>. Their policy responses have been monitored and the data analysed (published in 5 analytical reports from 2006, see Hagemann-White 2014), and the Convention itself established an in-depth monitoring mechanism that proceeds country-by-country.

While legal systems and concepts vary, making direct comparison difficult, it can be said that slightly less than half of these laws have “violence in the family” as their primary focus or legal concept, while the remainder either use the term “domestic violence” with an implicit or explicit focus on women as victims, or frame their law and policy on intimate partner violence, on all forms of violence against women, or on gender-based violence. Use of concepts such as “violence in family relations”, domestic violence against a family member, or family violence sometimes but not always includes transgenerational violence. Generally, the framing calls for a definition of who can be considered family in the meaning of the law, while domestic violence provisions tend to focus on aggression by an intimate partner, giving less attention to the complexities of child abuse and neglect.

Interestingly, the “family violence” legal frameworks are predominant in countries that acceded to the EU after 2004 or are not in the EU<sup>5</sup>, while the laws explicitly referencing gender-based violence, violence against women or intimate partner violence are almost all to be found in Western Europe. Domestic violence is a framing that can go either way. There is also a range of approaches as to using criminal law, civil law, administrative law or an interdisciplinary legal mix to address the problem. Somewhat over half of the 44 states with such laws have anchored a provision criminalising domestic violence as a specific offence in their penal codes. Since acts of violence can also fall under other provisions, about half of the legal frameworks also define the domestic or close relationship context as an aggravating circumstance; some have only declared it an aggravating circumstance. However, many of the laws related to domestic violence only provide for civil or administrative measures: expulsion and restraining orders, protection measures, provision of support and services to victims, and obligations of various professionals and officials. It seems that in legal systems that adopt a gender-based understanding of domestic violence, mainly the Western European countries, there is often a reluctance to anchor this in criminal law, with the possible implication that criminal sanctions might differ according to gender (a consequence that was, indeed, drawn in Spain).

<sup>3</sup> Exceptions are Armenia, Estonia and the Russian Federation.

<sup>4</sup> Sources were national reports from our own research in 2010 and 2011 (European Commission 2011; Kelly et al. 2011), updated in June 2018 with databases <http://evaw-global-database.unwomen.org> and [www.stopvaw.org/Stop\\_Violence\\_Against\\_Women](http://www.stopvaw.org/Stop_Violence_Against_Women) (both 31 May 2019), as well as the first monitoring reports to the Istanbul Convention and direct online searches for missing information. For the emerging patterns in this section we do not give exact numbers due to a small but varying number of cases that could not be fully clarified.

<sup>5</sup> With the exception of Belgium and Italy, the latter having an old criminal law provision on maltreatment of a family member.

The 2011 Council of Europe Convention “on preventing and combating violence against women and domestic violence” reflects the ambivalence between a focus on gender and a focus on protecting the family or household from violence. Prolonged controversy on which concept should be at the center of the projected Convention ended with a compromise: On the one hand, the Convention targets all forms of gender-based violence against women including girls; its scope explicitly names domestic violence, while specifically stating that it affects women disproportionately. On the other hand, the Convention recognises that men may also be victims of domestic violence, that children are also victims through witnessing violence in the family and are to be included in the protection of and services for their mothers. While a wide range of obligations concerning violence against women are spelled out in 81 articles, state parties are obliged to apply the convention to all forms of violence against women but, only “encouraged”, not obliged, to apply it to all victims of domestic violence in the broader understanding that includes transgenerational and other forms in addition to intimate partner violence (article 2).

These variations already suggest that traditions, culture and history in the diverse countries of Europe influence how the explicit Council of Europe consensus recognising gender-based violence as a fundamental violation of women’s human rights is implemented in practical policy and legislation. In this chapter, we look more closely at how this diversity plays out.

## 4 How patterns and procedures of intervention differ

In much of Western Europe, for example in the UK and Germany, placing violence against women as an issue in the public eye began in the mid-1970s with feminist advocates organising practical support “by women for women”. Shelters, where women could find safety and be heard, were a crucial means of claiming the obligation of the welfare state to direct resources towards autonomy and empowerment of women. As women began speaking out about being refused help or redress by police, social welfare agencies and courts, an issue of equal importance emerged: ending the impunity routinely and even legally accorded men who had terrorised, beaten or raped women on the grounds that it was their right within the family or as the husband. With the establishment of women’s formal democratic rights in public life, the violence that took place unchecked in the private sphere became symbolic of women’s continued oppression. With the collapse of state socialism after 1989, the issue of domestic violence came to the fore in Central and Eastern Europe, and shelters and services were created there as well, albeit much less widely spread.

Within the (differing) contexts of Western European welfare states, activists working to end violence against women very soon undertook to educate and change the understanding of and responses to domestic violence within state institutions. In doing so, they both challenged and worked from the institutional and normative arrangements that constituted, in their country, the practices by which the state took responsibility for welfare more generally, and for families in particular.

### Germany and United Kingdom

Germany shows the greatest continuity both in the framing of domestic violence and in the central role of non-governmental organisations, and also in the orientation to empowerment; confidentiality and respect for women’s decisions are paramount. In principle, the woman decides if and when she goes to a shelter – there is no referral or formal proof of

entitlement required, although many shelters try to meet with her in advance to assess her needs. Women and children are expected to manage their lives in a shelter. The reluctance of NGOs to cooperate with statutory agencies in the early years has today given way to local and regional cooperation bodies (round tables); sparked by a federally funded model project in Berlin, this approach was widely implemented but shaped in each case by local preferences and experiences (Hagemann-White 2017). Including services for children in women's shelters developed significantly (Helfferich et al. 2012). The links to child and youth welfare services are, more or less, established locally and developed at round tables which, conceptually, are not intended to discuss specific cases.

In England and Wales, Women's Aid maintains the principle of helping any woman who feels threatened or in need of a shelter to find a place on the same day, but entitlement to housing benefits plays an important part in how long she can stay. In 2003, Multi-Agency Risk Assessment Conferences (MARACs), first developed in South Wales, became part of the policy agenda, from 2006 on as part of the Co-ordinated Community Response (CCR) to domestic violence. With this approach, risk assessment was established as the key to allocation of resources by defining the degree of danger of lethal violence as the measure of entitlement to services. Along with the development and institutional anchoring of these procedures, rules for information sharing between agencies and professionals were established, and NGOs are expected to proceed according to regulations and guidelines formulated in national policy, although not all agree to participate. A prolonged austerity regime has been substantially reducing the funding available for specialised services of all kinds (Towers & Walby 2012). Doubts are raised that the dominance of a risk-adverse system with a defensive, blaming culture has altered (Parton 2017; Meysen & Kelly 2017).

## Portugal

In Portugal, a cautious approach to police intervention was linked with the issue of *flagrant delictum*<sup>6</sup>, which as late as 2007 was introduced for all crimes, making domestic violence intervention difficult. This wavering approach to framing institutional response can be understood as part of the process of overcoming the experience of a dictatorship, which had reinforced ideologically and legally a traditional model of the family explicitly framed as a tenet of Catholic faith, granting husbands and father legal power over women and children within the family. This may explain in part the extremely slow progress of rights for women suffering violence. While the 2009 law lifted the restrictions to intervention, established the status of a victim, and guaranteed specific rights, including shelter services, housing, mobility in the workplace, legal aid, children facilities, psychological support and free access to the public health system, stereotypes blaming the woman have persisted, and breaking out of a marriage carries the stigma of women's sin. Portugal thus has quite a weak NGO sector in the area of violence intervention, due in part to a fragile women's movement (Magalhães et al. 2012; see also chapter 6). Domestic violence, until 2007 named "marital abuse", is defined in criminal law as violence against a partner or ex-partner or abuse of a vulnerable person, and is now considered a crime against the state, as is child abuse.<sup>7</sup> Professionals have a legal duty to report to the police, who attest the "status of a victim".

<sup>6</sup> Requiring that the police must witness the crime being committed, rarely the case with domestic violence.

<sup>7</sup> Article 152 CC also states the penalty for committing domestic violence against a minor or in the presence of a minor in the residence of the victim. Child abuse was dealt with in the 1999 Child Protection Law, but the reform of the Criminal Code in 2007 also penalised corporal punishment as domestic violence.

## Slovenia

Slovenia presents a picture of strong women's advocacy with a lesser role in provision of services. The association SOS Help Line (Društvo SOS telefon), one of the most well-known NGOs in this field, was established in 1989, and it cooperated with other help lines across former Yugoslavia; after independence other organisations followed. While this is comparable to a degree to the feminist initiatives in Western Europe two decades earlier, the feminists in the Central and Eastern European countries, while struggling to have domestic violence recognised as gender-based within the structural oppression of women, also had to "fight the fear of a return to excessive state regulations and interference in private lives and the new conservative ideology" (Gaber et al. 2009, p. 21). This resulted in prolonged and difficult negotiation of how violence against women could be named, and in the end "in the 2004 accession countries the majority of organisations in the field have gender-neutral names" (ibid). In this process of making gender-based domestic violence visible and naming it for policy, the efforts in the accession countries to prove themselves "good Europeans" (Kriszan & Popa 2014) was a powerful motive that lost its purchase to some extent a decade later, so that even naming the violence as a gender issue has been challenged.

Unlike early feminist activists in England and Wales and Germany, however, in Slovenia organising support for women by women was accompanied almost immediately by a strong demand for the state to legislate against domestic violence against women and take responsibility for provision of specific services and shelters. Penalisation moved more quickly than provision of services. Slovenian criminal law has never had a provision that the relationship between perpetrator and victim could excuse violence, an amendment to the criminal code in 1999 doubled the penalty for minor forms of domestic violence from one to two years, and this was raised to 5 years in 2008, reflecting a policy conviction that heavy penalties are an effective deterrent (Filipčič 2009). Protection orders (called restraining orders) were first introduced by the 2003 Police Act, and protection orders available to the victim in civil court were added in 2008. The 2008 Family Violence Act set forth the first legal definition of domestic violence, comprising violence against any family member, but also explicitly stating that a child is also a victim when it lives in a family where there is violence against other family members. The act does not foresee specialised support services, but places responsibility with the existing centres of social work, including guidance and standards for services, and obligates all relevant statutory and voluntary agencies to cooperate; it also established mandatory reporting to social services or to the police by professionals in health and education. Thus, the role of voluntary organisations in the field of violence against women in Slovenia is predominantly that of considerable and sustained activity in awareness raising, while their part in provision of support services is limited.

## 5 Cultural differences in approaches to intervention

### 5.1 Approaches to violence

One main dimension that seems to characterise overall intervention cultures is the hope or expectation that penalisation of violent acts within the family or in close relationships, or arising from the use of gender-based power differentials, will act as a deterrent both generally and specifically. This belief in the potential of punishing wrongdoers to reduce violence is linked with strong feelings about bringing perpetrators to justice, and seldom



rests on a solid empirical basis. It is also by no means the only approach to overcoming gender-based violence and violence in close personal relationships. In the various countries of Europe, phases of primary belief in the power of criminal prosecution have alternated with beliefs in the relatively greater potential of social and pedagogical intervention to change behaviour that harms self and others in the sphere of personal life.

Well into the 20<sup>th</sup> century and to some extent even today, recourse to the law for abusive treatment was explicitly limited in cases of harmful or wrongful acts within the family. Explicit exemptions permitting husbands or parents to use force have been being lifted bit by bit, but the attitudes they shaped have not disappeared. In addition, family and other intimate relationships are rooted in emotional and material bonds and values that often stand in the way of recourse to the legal system, especially since penalties for wrongdoing may lay burdens on the victims as well. In all four countries, professionals described considerable obstacles to imposing sanctions on perpetrators of domestic violence. The goal of legal changes is symbolic (as declaring fundamental rights to be the same for all) as much as practical, so that some variation can be observed in the importance attached to actual criminal sanctions.

Among our four countries, Slovenia represents the strongest orientation to punishing wrongs done in the past, both to women and to children; and this orientation is to be found in the field of violence against women (but not for child abuse) in England and Wales as well. Germany is at the other end of the spectrum, having moved away from the preference for punitive and repressive responses, so much so, that feminist activism challenging gender-based violence has never demanded that it should be a specific criminal offence. While Portugal has legally framed domestic violence as a crime and instituted mandatory reporting both with regard to children and to women, professionals share much of the skepticism that prevails in Germany as to the usefulness of pursuing sanctions when the victim is unwilling. This could be attributed to the gradual social process of changing the repressive image and the masculinist internal culture of a police force after the ending of a dictatorship, and depends as well on the struggle within society to overcome authoritarian habits of thinking and reacting. In Western Germany it was not until the 1990s (four decades after the end of the Nazi regime) that police became valued partners in community intervention projects looking for better ways to respond to violence against women.

## 5.2 Complexity of intervention in the private sphere

A major achievement of fundamental rights is providing citizens with freedom from state interventions into the private sphere. The dependency of children already suggests a triangulation between children, parents, and a state responsibility to watch over the up-bringing of children. In the field of domestic violence the notion that it is not only a private matter wherever violence occurs, especially or even if in intimate partner relationships, is increasingly recognised and a legal consensus. Balancing the freedom from state surveillance and intervention in the private sphere of family life and the need to help and protect in case of violence faces complex challenges. When entering the life of families, professionals representing the state or service providers always know only parts of what is going on. They collect information. By doing so they learn more about the persons involved than is needed to assess the situation, and they have to select what is relevant to the need for protection and help (Ackermann 2017). Uncertainties about what happened in the past remain inherent in this process. The goal of preventing further violence adds to the complexity with a set of prognostic tasks and its ambiguities, especially in the context of child protection (Bode & Turba 2014). Therefore, to enter the arena of domestic violence and the private sphere of families is to encounter complex intersections of power relations with

respect to gender, generation, race/ethnicity, nationality and faith: a matrix of rights and responsibilities which professionals have to navigate (Kelly & Meysen 2016). “Information sharing” among the different agencies and professions that may have contact with the family seems to reduce the emotional burden of uncertainty, regardless of whether or not it actually contributes to better intervention (see also chapter 9).

In most countries, in the 1960s women who disclosed abuse were pressured to make every effort to preserve the family; abuse of children tended to be denied, but if recognised the tendency was punitive towards the parent/mother and removal of the child from an abusive family. Today, in a number of EU countries, women who disclose domestic violence are strongly advised to leave the abusive man, especially if there are children, while indications of child endangerment are met in many countries by a preference for working with the family to enable them to practice non-violent childrearing. This creates not only some tensions within intervention approaches, but can also pose a dilemma when professionals have to decide whether there is a situation of violence that calls for or justifies intervention at all, and in particular for actions against the wishes of the victims or their families.

In the multi-professional group discussions of possibilities and difficulties of intervention in the CEINAV project, initiated with the same phased stories for each form of violence used in all four countries, some very basic challenges and dilemmas were articulated both in the fields of domestic violence and child physical abuse and neglect. The consequences that they drew from their perception of difficult situations differed, though, both by professional background and by the country frameworks within which they dealt with the problems. Confronted with a situation in which the presence and nature of violence was unclear, professionals in Germany and Portugal, despite their differing legal frameworks, shared an aversion to intervening in the family without gathering further information and if possible building a relationship of trust. This is a dilemma in Portugal not only because of the legal duty to report, but also because no civil protection orders are available to women seeking safety from violence. The difficult balance between indications of possible domestic violence and acting with caution (“moving in slippers” in the Portuguese phrase) has been made easier for the police in Germany after adopting the Austrian model of an emergency barring order, obliging the “person posing a danger” to leave the household and not return or make contact for a set period of time (usually 10 days to two weeks); the victim of violence is put in touch with a specialised support service and can request an extended civil protection order to ensure that the abuser will not return. With this model, the police can act to avert a possible danger and leave it to the support services to assess the situation.

In England and Wales, there was less concern with non-interference in family life, but the pathway for intervention in cases of domestic violence against women is pre-structured by the obligation to carry out a risk assessment. In Slovenia, any suspicion of violence in the family calls for reporting at least to the Center for Social Work, and if the suspicion is confirmed, to the police, and intervening in the family was not seen as a problem in situations of domestic violence. In all four countries, however, the presence of children in a situation of domestic violence against a woman triggers reporting or, in Germany, at least a team reflection on reporting to the child welfare authorities, but in Slovenia and in England and Wales it seems more likely to lead to measures without consent of the parents ranging from supervision measures to the removal of children.

Over the past two decades, there has been a shift from formulating rights as principles to specifying the obligations of states, and increasingly, towards setting standards for good practice. During this process, (at least) two key dilemmas, both with a long history within social work, have become more and more salient.

1. The tension between cultivating and trusting the professional judgement of the intervention actors and laying down mandatory guidelines, checklists and procedures for responding to indications of violence, which may also narrow the space for self-determination and choices of the persons whose lives are involved; and
2. The tension between help/support and social control, in this case, between empowerment and respect for the needs, wishes and choices of the woman or the child (and the parent) and intervention without consent or against the expressed wishes of a victim facing violence.

In our comparative research, it could be seen that across Europe, the agencies and professionals that respond to domestic violence or to child abuse and neglect have been moving (or being pushed) towards more standard procedures which leave little or no room for the woman or the child to participate in decisions, much less consent to or reject proposed measures “for their own good”. Facilitating cooperation between professionals and institutions by sharing information among agencies has been framed as always “in the interest of women” or “preventing harm to children”; this can result in dispensing with transparency and consent in the name of safety. The feminist impetus to empower women has thus been gradually overlaid by a paternalist desire to end the violence, generating a tendency to guide or pressure women to make what professionals see as the “*right choices*” (see chapter 11). Rebuilding social connections and a life beyond violence takes more than ending the violent relationship, though, and when there are children or other social or emotional bonds, relationships and attachment persist apart from ongoing or suspended contact. They call for attention to and respect for needs and choices alongside protective measures for children and their mothers during continuing support.

While there is a long tradition of regarding children as lacking the competence to decide what is in their own best interests, and the widespread failure to implement the CRC provision that a child must be heard in all decisions that concern her or his life could be seen as a “cultural lag”, paternalistic intervention with women victims of domestic violence actually falls behind a stage of understanding and respect that is generally thought to have been established. Several discursive developments seem to contribute to this. Violence has time and again been internationally framed as an “epidemic” in policy or even research, and by this token it is not only framed as a disease, but also one which is down-right transmitted to or harms the next generation, instead of being understood as a potential risk in the sense of a burden that is not always easy to shake off (Kavemann 2018; Kindler 2018). This positions the state as under an obligation to protect the family regardless of what individuals may want or need, since stopping domestic violence becomes a public health issue. While actually prosecuting women for exposing children to the domestic violence of their abusers is an extreme that may only be typical of some parts of the US, the epidemic metaphor does seem to result in bracketing women victims of violence with children as being similarly unable to recognise what is good for them. Autonomy and participation, and thereby questions of consent and empowerment, may thus become irrelevant.

### **5.3 Perception of victims and of perpetrators and their choices, rights, and self-determination**

During the 1980s, international organisations moved towards codifying both the rights of the child and the rights of women to protection from violence, and calling on states to exercise due diligence in securing these rights (see above 3). States now have a duty to prevent and protect both children and women from harmful treatment within the family. The rationale behind this duty is the recognition of a power differential that can be abused. At the

same time, children have a fundamental right to grow up in a family environment where they will be safe from harm, and women have the right to make autonomous decisions about their own lives and relationships. This inherent tension among fundamental rights has become more acute with a growing body of knowledge about the harm that children may suffer from witnessing violence.

Rising awareness of the impact of witnessing violence on children needs to be connected with the growing body of research on resiliency, offering evidence that difficult and painful childhood experiences may also be overcome or integrated into personality development, especially when children have a trusted adult who believes them, or experience their own agency in non-violent responses to aggression. There is substantial research evidence that most women subjected to domestic violence make great efforts to protect the children from exposure to the violence, and that, too, can be a significant factor in how children understand and come to terms with distressful experiences. But the harms of violence at the same time can have effects on the capacity for parenting. Hence, a focus on the role as mother in relation to intimate partner violence partly provides for access to help and protection and partly needs to be reflected to not reformulate intimate partner violence as child protection matter (Hester 2011). When intervention narrows the field of vision and sees the woman only as a mother responsible for the child's best interests, the intervention itself can become a form of coercive control, blocking out her own right to protection and self-determination. Among policy-makers and practitioners (in Europe) however, such tendencies to reshape domestic violence as a child protection issue in cases where children are involved can coexist with strong feminist convictions that gender-based violence can only be overcome by empowerment, supporting and restoring women's agency (see chapter 11). Approaches that include both the perspectives and cultures seem not to be coherently achieved.

In the countries we have studied, there are chronic conflicts of both aims and means between the intervention systems intended to ensure protection from domestic violence, providing services and support that should empower women, and the intervention systems designed to protect children from harm and to secure their right to grow up in a context that enables them to flourish. These institutional frameworks of intervention are systemically embedded in the transgenerational family context. Therefore, persisting tensions and varying triggers for them to resurface could be found in all countries studied. There have been long periods when the two systems did not share a common discourse or agreement on rules and procedures for handling cases in which both issues were at stake. This has meant, at times, that either for women or for children the danger of serious harm and the right to liberty and self-determination were simply not fully taken into account. Today, the interface between harm to women and harm to children can no longer be ignored, but the question is rather: What happens when the rules intended to provide safety and well-being for the one, contravene what is necessary to the safety and well-being of the other? Are the two systems able to communicate and seek a solution cooperatively, or are they seemingly united under a bureaucratic "roof" called "protecting the family"? The former may lead to compromises that can be ineffective or less than honest, the latter may prolong the pattern of coercion and subjection into the relationship of the victims of violence to the intervention professionals.

Although these tensions may not be explicitly addressed they still exist and even when they are latent they have effects. Policies can proclaim a norm of non-violence within the family (demonstrably the site where both women and children suffer the most violence) without addressing issues of (abuse of) power or hierarchy. We propose that a failure to bridge the gap between the discourse on violence against women and that on child protection has created space for intellectual confusion.

## 6 Reflections and Conclusions

From the 1970s, the feminist movement framed men's violence against women in general and domestic violence and rape in particular as patriarchal crimes, the family as the enabling location. The child protection movement from the 1970s onward questioned the repressive tradition of blaming incompetent parenting and foregrounding removal of the child; the new paradigm called for working constructively with the family to overcome elements of violence in their childrearing whenever possible. It is thus hardly surprising that dialogue between the two movements and their organisations was difficult for many years; we have found this to be true in a number of European countries despite considerable differences in their social care systems.

It is often suggested that there has been a substitution of "family violence" for "gender-based violence", and that this development "degenders" forms of violence that in reality are deeply gendered. In the overview of legal frameworks above we have seen that framing the issue as "family violence" has often been the choice of policy-makers in countries where non-governmental activism with experience in practical intervention was relatively weak or recent, and may thus be seen as opening the door to making privately exercised violence a public concern. The framing offers a compromise between the international demand on states to combat violence against women and conservative values centering on the family. More recently, however, policy framing is increasingly allied with fears that explicit emphasis on gender could endanger these values, and the concept of gender is itself under attack. Thus, a framing that often helped to enable practical cooperation between older and newer ways of thinking about a problem is now beginning to be a vehicle for denial of the very problem of gender-based violence that laws and policies were intended to address.

To some extent, the concept of domestic violence was a similar compromise between campaigns against the abuse of women by intimate partners and a broader understanding of violence against women in its multiple forms as well as holistic approach including child abuse and neglect within the family /household. A number of laws and policies speaking to "domestic violence" explicitly limit their scope to persons living in the same household, or alternatively, persons related by kinship, blood or marriage, thus leaving out all relationships of intimacy that are not formalised. Meanwhile, however, in most European countries, partners or ex-partners are included in the concept of "domestic violence". But this does not resolve the issue entirely. When laws define the relationship within which violence should not occur or is particularly reprehensible, these definitions almost always exclude some women facing gender-based violence. Thus, the Spanish law refers to a "relationship analogous to marriage", but if the relationship qualifies the violence as wrong or harmful, not only does this authorise the state to define what constitutes a legitimate and protected relationship, it also can imply that the same acts causing pain and distress, harm and threat are less wrong if done to a woman who is not in a recognised relationship. In addition to the pitfalls involved in defining the context, the attempts to encompass child abuse and neglect and all other family relationships along with gender-based violence in a single framework would seem to exacerbate the tensions between the tasks of intervention systems rather than resolving them.

While the concept of gender-based violence avoids the dilemmas of defining "relationship", it has proven quite difficult to establish a legal concept for redress or sanctions specifically focused on the gender of the wrongdoer or of the person suffering harm. Workable solutions seem to need loose and flexible understandings of the violence related to being or having been an intimate partner, as well as being sensitive to forms of abuse and/or coercive control that may not fall under the concept "partner" at all. It is a double task

and challenge: policies need to deliver measures that reduce the gender-based as well as the generational power differential while responding to abuse of that power.

This suggests that none of the prevailing conceptual categories integrates an adequate understanding of the impact of domestic violence on children, and that the recurring difficulties in reconciling the human rights of women and those of children are one key to persisting ambiguity in naming and framing issues.

Our cooperation across countries and across disciplines has convinced us that this dialogue is not only possible but very productive. For the issues discussed here, there is an urgent need to reflect on and redefine concepts such as autonomy and empowerment, taking into account that the limits to the capacity to make autonomous decisions are constituted differently for women entrapped in domestic violence and for children according to their development. This is a discussion that calls for deeper reflection in ethical theory.

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## Chapter 13

### Working with voice in research

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In research on violence and intervention the concept of voice is not at all new. In Liz Kelly's (1988) study *Surviving Sexual Violence* the explicit intent was to give voice to a woman's experience and understanding. This described the way in which the interviews with women were conducted, analysed and presented. Women were encouraged to tell their story and were cited authentically. Methodologically working with voice means to see survivors as experts of their own life and evaluate interviews like expert interviews rather than analysing them in depth. Gill Hague, Audrey Mullender & Rosemary Aris (2004) interviewed 112 domestic violence survivors and 83 professionals to find out if and how far the views of survivors on intervention services are taken seriously, in particular whether feedback of survivors was heard and had an impact on practice. Research by Cornelia Helfferich et al. (2004) and Katrin Lehmann (2016) on the German police ban set voices of survivors and of professionals in relation to each other. The authors ask if the actions of professionals and the models of reasoning they use fit the needs of the survivors. The researchers around Carol Gilligan have methodologically developed and theoretically elaborated the concept of voice in psychology (Brown & Gilligan 1993). A differentiated analysis of communications looks at what happens to voice by listening very closely to how someone is speaking. Voice is changeable and communicates the inner attitude of the person to what is being said. Madeleine Arnot and Diane Reay outline an alternative theorisation of student voice and suggest that pedagogies construct the voice or message which teachers and researchers hear (2007). Also Sirkka Komulainen argues that the notion of the child's 'voice' is, despite being a powerful rhetorical device, socially constructed. The concept of voice is often understood as citizen voice or giving the opportunity of participation, for example an institution's ability to allow clients to give feedback, but voice can be reduced to choice as Ruth Benschop et al. criticise (2003). In general giving voice in research means to listen to groups of people who are seldom heard or seldom able to speak out. In CEINAV victim survivors as well as professionals in intervention were invited to reflect on the intervention process, what helped and hindered it and what they found important to be heard.

# 1 Voices of victim-survivors in CEINAV

Miranda Fricker (2007) argues that women and minority groups, in addition to social or political injustices, can face epistemic injustice as well, differentiating testimonial and hermeneutical injustice (see chapter 4). They describe the act of wronging someone “in their capacity as a knower”. CEINAV sought to give space to the disempowered voices of women and children who have travelled through a personal history of violence and of social interventions and who belonged to a minority. The first section of this chapter draws on voices of women and young people with reference to all three forms of violence in all four countries (see chapter 2 on methodology), and focuses on what responses made victim-survivors feel stronger, gave them hope or in contrast made them feel more helpless or discouraged. How does the feeling of being listened to and understood or on the contrary the feeling of not being heard impact intervention and victim-survivors?

## 1.1 Testimonial injustice – (not) being believed, taken seriously or being heard

While testimonial injustice consists in prejudices that cause one to “give a deflated level of credibility to a speaker’s word”, hermeneutical injustice is experienced when groups lack the shared social resources to make sense of their experiences (Fricker 2007, p. 1). In addition, being members of particular social groups outside the hegemonic group often makes women and children also suffer testimonial injustice where their knowledge is ignored or not believed. While most victim-survivors in Germany praised the counsellors from domestic violence services, one remembers a time when even the specialised counselling centre did not assess the situation right: “*I told her, but I realised she did not really believe me. I really asked her for protection. I was deathly afraid of my husband. He had told me he would kill me, or even better kill the child.*” (DV-5, Germany). More frequently, other professionals were described as not hearing or not believing. One woman told the appointed court expert much about the violence, how and what he did to her. “*But she never showed sympathy, rather the opposite: she said I would wish bad things for him. I was greedy for the money and a bad person. And ambivalent and could not care for my children anyway when I was working*” (DV-6, Germany). A legal advisor not only let a woman know that he and the husband talked informally and as friends to each other, he told her directly that women could not be trusted. In the case of another woman it was the children who were not believed by the legal advisor. He interrogated them over and over, suggesting that she had manipulated them.

*I felt like they believed him and his lawyer. It’s like, I think most of the time we were not heard by the court or by lawyers apart from therapists and from [the victim support service]. Once I went to my lawyer the time I wanted to ... I explained the situation, actually once I was alone and he didn’t take me seriously. (...) And then I decided to go again with Mrs AB [counsellor]. (...) From my experience, when you go alone they don’t take you seriously and when you take someone like a therapist or from [specialized advisory service], they react differently, which actually is not fair but it is like this. I felt like I’m not heard.* (DV-8, Germany)

One of the interviews describes even more such situations. This woman is very powerful, energetic, and differs from the powerless victim professionals may expect. The prosecutor in her case told her she was not the victim, her husband was. Although the interviewer gains the impression that she found help at the counselling service that made the interview possible, she feels “*I was not heard. Not at the court, not at the police, nowhere! They simply say ‘she is emotional, she is crazy’. I am not! It is just how I am*” (DV-9, Ger-

many). Women experienced being questioned as disagreeable, especially if they began to wonder if the truth of their statement might be in doubt or were even bluntly told that they were not believed.

*She asked questions, she really asked a lot of questions ... It was OK, but it's like they know I am saying the truth but they are still trying to know more proof... and sometimes they will call me again to ask me and the questions was just too much. If you don't believe me, what do you want me to do, for God's sake? (TSE-3, Germany)*

*I don't know, it just seems odd to me that there are no visible marks. Because if he was choking you, you know, if I grabbed my colleague by the neck, it would show, but there are no marks on your neck. That's one example. Or when he choked my mother, they said she wasn't a good witness because she's my mother. That it was only normal she'd say that just to help me. Then they would say: "He only wants to talk to you, he means you no harm, he just wants to talk, resolve things." Such stuff. All in all, the police was entirely on his side and such comments crushed me. (DV-5, Slovenia)*

While not being believed is a difficult and hurtful experience possibly impacting the further intervention, the opposite enables fruitful intervention, opening the way to help, safety and further participation: “when I got to the police station they were actually very nice ... They listened to me, they listened to everything I have got to say” (TSE-4, England/Wales).

*Yes, absolutely, immediately, the first conversation, when I came to Mrs. [counsellor], I got the feedback “this lady listens to you, she's there for you and she believes you”. And not just her. I felt most like this when I was with her, when I could engage in conversations about things it's very difficult to talk about, even mention to someone ... I could open up to her and speak honestly. And also at the Social Work Center, also with the schools ... I admit, these persons I really ... We thus cheered each other up, at least me. (DV-2, Slovenia)*

Many of the perpetrators were described as charming, well-groomed and “good at talking” so they influenced professionals to be on their side, and to diminish the credibility of the woman. “And there was no acknowledgement at all, no sympathy; She was simply not aware that this man, the well dressed, laughing, well groomed, handsome, charming man could possibly be this way” (DV-6, Germany). One ex-partner worked in a town agency and had friends (including a girlfriend) at the police who told him what to say to look good so that she would withdraw an earlier complaint. Several women described how the perpetrators undermined the credibility of the victim in court by accusing her of not being a good mother, or of lying, stealing or other bad behaviour, or how she was expected to conform to their image of a real victim.

*But I'm angry because they demand it of me. My lawyer advised my mother, who's the same as me and was completely crushed at the time of the court proceedings, but I wasn't there because my son fell ill. And she pressured her to cry and be appalled and I don't know what all else. But you can't if you're not that sort of a person. You can't do it, you can't feign something that's not. My husband, on the other hand, has the on/off button, he can cry, crocodile tears. He cried and cried at court, saying how much he cared, how much he felt for the children. (DV-5, Slovenia)*

Not being taken seriously was experienced by women as well as young people and can have different characteristics. With young persons who sought help on their own it could be attributed to their young age. In England and Wales all the young people felt strongly that they had not been asked about their views – or if they were, that these would be dis-

regarded afterwards. On the other hand, two young interviewees said they found the extent to which social workers required them to participate in decision-making burdensome. Some thought their views were asked for, and more weight was given to them, the older they became. This experience from Germany led to the perception that a call for help depends on whether an adult person confirms and thereby legitimates it, while the help seeking of a minor alone is regarded as insufficient.

*They only have me, they only did something when the pedagogical staff member (school social worker) then said how it really is. They just didn't take me seriously, when I came to them alone (...) Only after the third time, when she was with me and also talked to them like this. (...) Then (the youth welfare office) acted immediately, drove me to a home there. So, I would say, if you are looking for help, you have to take an adult with you or some person of trust whom you can tell everything, so he can talk about it too or so. Alone they won't take you seriously, I would say. (CAN-3, Germany)*

Both women and adolescents experienced that they were not being taken seriously because people they came into contact with suggested they exaggerated or overreacted, concluding “it cannot be that bad”. One adolescent reports that he had to insist on a call for help towards the police before they were finally reacting.

*Yes, I went to the police first and I kicked up a fuss until they brought me to the home. I haven't moved back one meter to my mother (...) They said: Oh well, it can't be that bad. Don't talk so much. Your mother is never like that. And didn't take it seriously (...) I remained tough until they brought me here. (CAN-7, Germany)*

*It is a small town, a small police station. And they know my ex-husband, because he worked for the regulatory agency and they worked together with police. Regulatory office and the town and the police work together you know. And I don't know that they ... “yeah well she overreacted” and whatever. No, I did not overreact! (DV-2, Germany)*

*They were absolutely useless! They just told me to go back and face my husband ... They didn't question me, or allow for the possibility that it could be abuse ... They just said go back and speak to him. (DV-5, England/Wales)*

Especially for women in violent relationships which often go on for a long time and where the women need police or medical attention several times, some women had the feeling they were “already known” to the professionals and not being taken seriously because they did not end the relationship sooner. Overall in Germany the police were perceived as helpful and taking the situation seriously during the first contact in domestic violence cases, while some women described their attitude during following contacts as annoyed, uninterested and even insulting. A few women and even one of their daughters were being told the victim-survivor should “get herself together”. When another woman asked the police to show an ID when they came to her place one of the policemen answered “fuck off”. Another describes the hurtful and disappointing feeling that professionals judge a repeated request for help negatively:

*Sometimes I had the feeling, when I got there [police] that they would think “well, it's her again.” And now they know me. Maybe they thought “she is not to be taken seriously” although I had proof of some kind in most of the cases like a note he put on my car or something like that. (DV-2, Germany)*

One woman in England/Wales felt that the process of sharing information within a Multi-Agency Risk Assessment Conference afforded her former husband a platform to influence professionals.

*(...) and although there's MARAC, in fact they thought it was MARAC who caused me a problem; because of my anxiety and my inability to express myself, he – my ex-husband managed to convince one of the CID, male CID officers, and the ... officer and, I think, even the [NGO] project – and the only way I could figure that they'd all spoken to each other was through MARAC. He managed to convince each one that I was mentally ill before I married him. (DV-5, England/Wales)*

Not being acknowledged also was experienced by adolescents. This one feels her wishes regarding the future are not considered. The job centre suggests that she should go into training in an institution, disregarding her wishes. She reacts to a suggestion that in her eyes was unjustified with a strong need to prove that she can reach the goals she strives for.

*I virtually disagreed in fact and I told them, well to him, he who was responsible for me in the job centre, he just didn't take me seriously somehow. (...) And everybody was picking on me, they said: No, you won't make it and this and that. And then, from that day on I really wrote around 20, 30 applications, all of them in my dream job, she sent them here in the nearby area, everywhere. And then I got accepted ... and I'm really proud. And when I'm really done after these three years, then I will say to them what they told me: Yes, you won't make it or so. (laughs) (CAN-4, Germany)*

In contrast, being able to talk while not feeling judged was perceived as very helpful. “Yes. Exactly. I really felt seen and that somebody listens to me, not, when I'm speaking, it somehow goes in one ear and out the other. And yes, that was actually very good for me” (CAN-4, Germany). Rapid action was perceived as being taken seriously “I went to the Yellow Pages, those books that you get ... And I literally like went to social services and I rang them up ... I didn't know who to talk to, I was like: please come to ... And they came an hour later” (CAN-3, England/Wales), as well as being escorted: “It was so nice in the proceedings that they escorted me, protected me, that they took everything very seriously and that really helped me so much in that moment” (DV-5, Germany). It is even described in response to the question what helped the most: “that evening when they [police] gave me the feeling they take me seriously, take the situation seriously and are trying to do something. They escorted me a while because I told them ‘what if he watches where I go to?’” (DV-2, Germany).

Especially after prolonged and unsuccessful help-seeking, the experience of testimonial justice was often the key to further change:

*I called there with the wish to talk to someone, that someone lifts me up a little. On the call which did not last that long, that was not the case, but she offered me an appointment on that very day and there she took a lot of time for me. That was very nice. Very nice. Because ... because she gave me that much hope, I immediately got the next free appointment for the next counselling and so on, that was very positive right from the start. (...) The way she treated me. That I found so lovely. (DV-3, Germany)*

Another woman thinks her encounter with the counselling service was “perfect” for herself and emphasises that all women are different and need different things. She is deeply impressed that whenever she called she got an appointment very soon and that she can trust her counsellor although she trusts nobody else anymore. Being listened to, in the most literal sense was essential for these two women and their positive encounter. Some wom-

en experienced their (last) counsellors as very knowledgeable, taking time, listening, “*giving me the impression I had all the time in the world to talk about my problems*” (DV-3, Germany).

Emotional investment and personal time given by specialist NGOs was valued, often building a contrast to general services. It is important to be heard and to have space to process and make sense of experiences: “*At least I have someone who listens to me deeply ... and ... I am feeling good – at least someone here close to me to listen to me and talk to me*” (DV-2, England/Wales).

## Racism

While in Portugal and in England/Wales there was a clear perception of encountering racism, triggered by skin colour, concepts of racism were less present in Germany and Slovenia and tended to emerge only when specifically asked about (see chapter 8). A German woman referred to herself as “*Mischlingskind*” (brown or half African) and reported “*I can remember a policeman who said ‘It’s your own fault, why did you choose a man like him. Well you also come from there’*”. The same woman had a lawyer many years back who stated “*these African men are supposed to be much better in bed; I can see that women fall for that*”. Another woman felt that the tone of conversations changed when she said where she was from:

*I heard several times I had such a melodious voice. Many ask “oh, do you come from EU-country G [western Europe] or somewhere about there?” And I said “no, I am from EU-country F [eastern Europe].” And the conversation immediately changed course. I felt that several times. Even from a doctor who said “foreigners here” ... When I spoke on the telephone I could not see their facial expression, but you can hear the tone of voice. Or I had to hear I should be happy to be in Germany, because in EU-country F they would not help me as they do here.* (DV-3, Germany)

A trafficked woman in Germany remembered racism at the time she had to go to the foreigners’ authority to have her stay of deportation renewed.

*What I think is, in the foreigners’ office are people that have strong hearts, not have soft hearts, not to have pity. They are the people that are always put in the foreigners’ office, like people have to be racist for black, you know. So when you go there they will just be shouting “Ja, ja. Ja, what do you want?” So most of them there are not so friendly.* (TSE-3, Germany)

Similar a Brazilian woman in Portugal not only felt the police were unhelpful but also felt them to be prejudiced against her. Although she had a severe injury, the police officer said: “*He is in his country and his home, if you are not well, go back to your country. ‘The police officer also treated me as if I was a prostitute. The justice system here is very racist*” (DV-2, Portugal).

Few women in England and Wales reported discriminatory responses related to their minority or migration status, but they had been contacted for an interview through a specialised support system for black, minority and ethnic women. This woman recalls, after leaving the services of a specialist NGO and being housed in temporary hostel accommodation.

*When I was in pain, they accused me of acting and if I ever criticised anything, they told me to go back to my own country. I felt treated differently to the other girls, sometimes they were drunk but they still listened to them but they didn’t listen to me or believe me.* (TSE-6, England/Wales)

Responses such as these can reinforce women's experiences of violence and its impact in humiliating and silencing them. A shared language and a sense of a shared culture were important to women of black or ethnic minority background, suggesting that the absence of such specialist services could reduce the accessibility of help and support. Culture is experienced as being part of a group in which there are shared norms, practices and ways of living and a sense of belonging. This sense of a common culture was also expressed through food.

*Vegetarian things like sandwiches and, you know, jacket potatoes and things – but kids OK with that food. But I need ... my own meal ... and she [the support worker] cooked the meal at home and she take the meal, everything like dates, two or three dishes and ... tea, and she took everything to the hotel for me. (DV-7, England/Wales)*

## 1.2 Hermeneutical injustice

Women and child victims of violence often encounter hermeneutical injustice where their experience is not understood or there are no concepts available that adequately describe or explain it. One woman describes how intervention resulted in her having obligations and him having rights while she had no terms to describe what happened or to disagree.

*I couldn't accept that the children weren't with me and that my ex was at home. He was detained for just one day and then he came home. And then it went like this: he should be better; he should change, we need to set certain conditions for him so the children can come home ... I couldn't accept that. If someone had asked me, he would have been excluded because he was the problem and the children would have been at home. (...) At the time, as I remember, he constantly had rights: the right to this and that, constantly rights. And I only had obligations. I was the one who had to do things, I had to do this because I didn't do this, I can't do this ... oh God ... I had a lot of work then. (DV-1, Slovenia)*

In the case of one woman who did not have the language to name her experiences, initial interventions failed to enable her to name these. The behaviour of the abusive partner was not named as violence, reducing her experience to cultural stereotypes: “*I was acting out the stereotypical role ... of a controlled Muslim woman. Which I agreed with. But I didn't know it was abuse and I didn't know that I could get out ... she didn't identify that it was abuse for me*” (DV-5, England/Wales). Where the police did not name an experience as rape the woman's belief in the “*real rape*” myth was reinforced, thus denying her justice.

*(...) at the point when they [the police] said we need to know, was it rape ... I didn't answer the question because I didn't know what rape was. I thought it was dragged down the back of an alley ... and I think there's still that massive misconception. Because otherwise I would have said, yes, I'd been raped. And they would have taken him to court. (DV-5, England/Wales)*

## 1.3 (Not) attending to (basic) needs

As Susan Brison (2002) writes: “In order to recover, a trauma survivor needs to be able to control herself, control her environment (within reasonable limits), and be reconnected with humanity” (p. 60). From listening to women's voices we learn that, alongside the importance of justice and respect, it is crucially important that intervention professionals recognise and respond to each victim's specific needs. It means attending to the whole per-

son, rather than focusing only on the problem of violence and offering solutions. After Gabriela finally arrived at the counselling service where she met her personal advisor, she

*found so much understanding. They asked me “do you have food at home? Do you have a refrigerator?” These were ... you immediately see, that these women are experienced (...) 25 years I hid this and could not talk to anybody. And here [counselling centre] I have developed so much trust towards the women and they act so ... I can't find the right word ... in a way that I could open up. (DV-3, Germany)*

By contrast, where agencies fail to recognise and respond to women's basic needs, interventions intended to help can in fact harm. This is illustrated by the case of one woman who was placed in a safe house in England/Wales without any apparent checks that she had the means to obtain food.

*It was horrible. If I go – like as I said, cos I am not sure like if I – were – shall I go there – when I used to stay in the house it was a very difficult time, not only because I didn't have anything to show-er myself, or anything, it was – I thought that I had done so wrong that they were punishing me be-cause that's why they left me in the house there without food and everything. (TSE-5, England/Wales)*

In addition to practical needs, the impact of violence can also leave women feeling very isolated such that recognising and responding to emotional needs is equally important.

*Those people and [the NGO] they have tried to have events and they can invite us, all the women can get together. They prepare snacks and food – they prepare it themselves and that is helpful be-cause we stay inside and we have problems, and when they do this it's nice ... If they would have more events it's much better because – we forget about things ... and then I wouldn't be upset or lonely. (TSE-1, England/Wales)*

Attending to practical needs such as food and comfort are also means to establish trust for services. A trafficking survivor described how the social worker brought African food every time she visited and thus established a personal connection showing how she cared which then enabled the woman to open up and talk about her situation.

Several women mentioned the role of their employers, instructors, teachers or even neighbours in supporting them during the periods of violence and letting them know about resources in the community that they could reach out to. It shows that humane behaviour and compassion can sometimes be just as valuable as institutional measures. Ideally the institutional reaction should also provide understanding and compassion, but there can be other entry points into the system. *“The elderly lady for whom I worked told me: ‘Look, you are a victim of domestic violence (...) there are people that can help you’ and told me about the national call line 144.” (DV-1, Portugal)*

Women survivors of domestic violence we spoke to in Germany sometimes found their needs met even before they realised they had them. In some cases it was as “easy” as asking if they had something to eat at home, asking “*what do YOU want?*”, or offering a shelter or money. For some there was a huge help before they could even ask for it (or did not know that was possible), such as furnishing the whole flat or advising her to leave the courtroom during the ex-partner's statement. One woman's specialised support service arranged for a help service to pay to fly her child back to Germany. The jobcentre sent an official invitation for a mandatory language course to a different woman (asked for by the daughter) so the controlling husband had no choice but to let her attend, thereby giving her space and opportunity to seek further help. On the other hand women sometimes experienced inadequate understanding of their situation. Professionals expected the women



to change the locks themselves and leave the home as safety measures and could not understand that women did not have the money necessary to do so or her family would have deemed it misconduct on her part to leave. Interventions which address the practical needs of survivors were experienced as very helpful in all four countries.

*So they come every single day to make sure everything is going well, and they even call you to the room, do you feel OK? Do you need to do anything? You know, even when they give us money ... to buy stuff ... they give us all the right things that we need in terms of – even when I came here they help me with the GP, they give so much things. So – if you need a ride somewhere, they say, oh, just let me know. (TSE-4, England/Wales)*

Finally while appropriate help is important one should not underestimate the power of small things like a smile, because “*Firstly, what helps me most when I come here (ANC) is that everyone has a smile on their face. The first time I came here, this meant the world to me. Because if you come to a place and see long faces ... But, here, you just come, and they open the door and they all smile*” (DV-4, Slovenia).

### Waiting and being rushed

Long term security enables victim-survivors to mitigate the effects of violence and has an impact on their physical and emotional well-being in general. Waiting for decisions puts great pressure on survivors. It is one of the main themes in trafficking interviews, but it also came up in domestic violence and child maltreatment and neglect interviews. Survivors are waiting for counselling places, safe spaces, placements, stay permits and even prosecution. One interviewee describes waiting for a place in therapy or counselling as “*Waiting everywhere, being patient, swallow some pills and wait for better times. More than once I thought I felt like Job in the bible: You say after seven poor years there will be ... but somebody made a mistake in my case: I believe in my case it is not seven years, but 77*” (DV-3, Germany). A woman who was involved in a court case describes not being informed of the basic procedures of court processes and how this negatively affected her: “*I knew nothing about courts. I didn’t know I had to hire a lawyer so he got a lawyer and I didn’t. I waited four years for a decision. Those four years were torture*” (DV-3, Portugal).

Institutional routines are not shaped to take into account basic needs of victims. They (as are other people) are often made to wait for very long times without food or water as this young woman from England/Wales describes:

*She (the social worker) took me to the Home Office ... And they left me from ten ... to seven in the evening. All day long – it was the longest day of my life in the Home Office, going through there. You know, the interview, waiting for translator, the solicitor, everyone you know ... And then they told me what they were doing. I signed all the papers and they took them and arranged everything. But – it was a bit – I was shocked, I didn’t understand what was going on, just go in this room, go there ... but, you know, all day without food (CAN-1, England/Wales)*

This is illustrative of the ways in which statutory agencies may fail to take violence and its impact into account. In this instance, the Home Office rigidly followed its routines, failing to adapt these in response to a young person with basic needs for food and clothing and in urgent need of medical attention. The process of granting permission to stay in the country, which mostly is something trafficking victims have to go through, is a lengthy process rather than a onetime appointment. Waiting during their temporary stay, waiting to be permitted and waiting for service in offices is stressful and boring sometimes even having a bad effect on their health.

*I waited three years three, four years, four years before the decision came. FOUR YEARS, long years. God, these four years was so long. Oh my God. They will tell you “Du musst warten, du musst warten”. Warten. Wann? Warten, they will tell you to warten. ... I take medication every day for my high blood pressure. (TSE-1, Germany)*

This makes women feel they not only wasted whole days but several years of their lives while being forced into idleness. On top of years of exploitation and social isolation this seemed to them a senseless punishment.

*Because you don't need so long to decide, after 5 years, after 10 years. People will ask “how long are you in this country?” You'll be kind of shy to say “15 years”. “15 years? OK, 15 years. What have you done? Are you working, school?” Then you say “I'm in Heim.” “Heim? For 15 years?” ... The worst part is, then they say, we give you these three months, stay in this building, don't go to City NA, not even City DD. What? We are just a different colour. But the same eye, body, it's not so different. We are all human beings. So treat me like human beings. Not like an animal you keep. (TSE-3, Germany)*

Two women spoke of being treated “like animals”, and one used the metaphor “like slavery” to express her experience of interrogation and of restrictions. While for many victims having to wait was perceived as burdensome and stressful, the opposite can be equally bad. A follow up interview was arranged without consultation of this young person which turned out to be too quick for her:

*I mean it was kind of like rushing me ... I think I could at least have a few months' break. Just have a break and get away from all that, so that I can talk properly; not when I – when all of my brain is stressing me. It makes me want to exaggerate things, if you know what I mean. Cos I'm scared. I don't want to go back. I don't want – so giving me time to actually talk and it just rushes everything ... [but] they said because it was all fresh in my memory. I would forget everything ... [but] I can remember to this day, so how does this work? [laughs] It just felt a bit all too rushed then. (CAN-2, England/Wales)*

*She (the judge) said: “So, have you come to get a divorce or not? Decide now. If not, I'll leave.” She said: “I have five minutes.” ... Then she turned to me: “Will you get a divorce or not? Will you sign this?” (DV-3, Slovenia)*

### Feeling disrespected, punished or treated unjustly

In a Portuguese shelter the women were subject to an inspection of their belongings every time they arrived at the shelter after going out. Such institutional routines made a survivor feel treated as though she was the one doing something wrong; safety measures can be experienced as a form of imprisonment. “I think it is unfair that they treat us as delinquents at the shelter. Every day they inspect our backpacks” (DV-4, Portugal). One woman felt the restrictions imposed in Germany during the waiting period for a decision as degrading:

*I have to have my freedom, I really need my freedom. When the others decide for me what I have to do, this is, it sounds like, I don't know which word to use. Like bondage. [Interviewer: Can you tell me a bit more about how it feels when you are so dependent?] You can't walk, you can't do anything, you have to depend. For bread. I don't know how to say it, it's not good. For me. I like to be independent. Free. How to use my money, what to buy. Because that is what I needed, I was really hoping for. Praying for. And it's freedom. So I came here, I have to give them a receipt of what I bought,*

*how did you use this money. How did you use these 50 Euro? You have to bring the Quittung. They say because "yeah, we pay you". Which was not good. (TSE-1, Germany)*

Many of the women had had unpleasant encounters with staff or persons who they experienced as poorly trained or not competent. Two women reported that the youth welfare agency did not want to talk to them (because they had already talked to the husband); they felt treated disrespectfully, and they had a strong impression that the youth welfare worker sided with the (ex) husband. This can result in feeling not recognised as a full human being. A German trafficking victim described her experience with staying in a shelter as one in which she had a low status.

*I was in the women's shelter for about two months. That wasn't good. Actually I was in two shelters, one was good, the other was not good. They always knocked on my door at 7 in the morning "You have to get up!" Yes, but when you have many problems, a lot of stress, you don't want to talk to other people, you don't want to have others around you. And they were always saying "You have to clean this, you have to clean that" But not the other women. I have no children, so I am free, and I have to do all the cleaning, but the other women have children and they stay with the children, they have no time to clean. And not just for myself, you know? Yes, of course I have to clean my own room, but not the garden and the street, you know? (TSE-7, Germany)*

However one trafficked woman described a supportive experience with the police

*The way they treated me when I was making my statement, and with everything I told them, and there were a lot of things I was really ashamed of, well, the way the criminal police talked to me – it went on for days, and they were just fantastic. The policeman gave me his private mobile phone number and said I can call him any time if something happens. It was very, very good. (TSE-9, Germany)*

During a forensic examination a Portuguese domestic violence survivor was made fun of and felt that the doctor treated other women the same way. *"The doctor mocked me and made a joke about me being hit by my ex-husband. There were other women there and the doctor treated them all the same"* (DV-4, Portugal). Some of our interview partners had hurtful experiences when institutions followed their own agendas or applied rules rigidly. A domestic violence survivor was hurt and discouraged, when she called different help-lines and the first question was whether she had children. Since she had not, she was turned away, which gave her the feeling that she was worth less, because she had no children.

*Because if you have children, then it is urgent. If you don't then you can wait with your own problems. That I heard. They help women with children first. (...) And then if one of your problems is, that you wanted children all the time and you cannot have them ever, then you are punished for that on top. (DV-3, Germany)*

Professional's actions can have a damaging effect, for example where an inner conflict was used against the woman, refusing her asylum application.

*Because they said why didn't you leave earlier? Escape earlier. And I said it was because I was afraid of what they might do to my sister. And they said then why did you escape? Those people are there. And I said because I was suffering too much. Like I did not care anymore for anyone, not even inside myself, like – I would have loved to die actually. But they wouldn't do something to kill me. So that my suffering would end. This is what I wanted for them to do. But they beat me up so bad that I was almost going to die but I never did. So at that time I felt I had to do something. And the refusal later, actually around there ... why did you leave when you knew that your sister is back home*

*and they know where she lives? At that point I think, did I do wrong when I escaped? And I was thinking over and over again, maybe I shouldn't have run out and escaped. (TSE-5, England/Wales)*

If institutions fail to give key information and explain the procedure, this can result in less cooperation of the woman and thus lead to unjust treatment.

*No. They didn't tell me that that interview that I had was actually ... everything was depending on that interview. They didn't say that. So at least I would have given like – even if she was cold in her questions, I, maybe I should have said more ... [but] I felt there that I was being investigated – I wasn't being asked. So at the time that I felt I was being investigated, I would only talk to her in short answers. (TSE-5, England/Wales)*

### Giving up because of inappropriate response

An interviewee had met her husband while he was living in a refugee home and was not allowed to leave the town unless she signed papers that she would be able to pay upkeep for them both and he would not be living on social welfare. When he became violent, she was given to believe that she was not allowed to leave him.

*In the beginning when I was pregnant and with a huge belly he hit me in such a way that I thought the child would not even be born. I was so desperate that I called the foreigners' office and said "I cannot do this anymore", and back then already I wanted to withdraw the guarantee. And the man in the office said: "Well, Mrs X, that is how you wanted it" and I hung up the phone and thought by myself: He is right. I wanted to live with this man. (DV-6, Germany)*

Interventions that fail to respond to the needs of the victim can cause them to retreat from services that they find not useful or that they feel are going a wrong direction.

*I first went to a [counselling service] in 2012 ... They sent me to a support group for families of alcoholics and I went there. When I got there, my feeling was that they would teach me how to live with an alcoholic. I did not want that! I did not want to live with an alcoholic so I gave up. I never went there again. (DV-5, Portugal)*

Institutional routines of a shelter in Portugal prevented a survivor from contacting her family. As a result she was not able to call and warn them that the offender might show up there and threaten them. When this in fact happened, she chose to suffer further violence to protect her family.

*They took my phone away. During one month I knew nothing about my family, if they were alive or dead. This made me feel so bad. At some point I even said I would rather stay with him than to create any problems for my family. (DV-1, Portugal)*

One woman experienced failure to respond by the police and in consequence felt unwelcomed and embarrassed, calling her whole search for help into question.

*Throughout the years I went to the police a few times and made several complaints. I felt unwelcomed and embarrassed when I went there. The police would call him in and he would deny everything. He was also very careful not to leave marks on me so my complaints never went anywhere. I kept thinking: "why did I come here?" The police never went to my house, never checked on me, never talked with the neighbours, nothing. (DV-6, Portugal)*

Refusal to intervene effectively after repeated calls for help can become so wearisome that victims give up completely.

*During [a three month] period I called the police 67 times. The police came to the house but didn't remove him and I implored the police officers: "please take him away!" They said: "we can't do it because there isn't flagrant, there isn't anything ..." It got to a point when I got in front of him and said: "Finish me! Do it!" I said this because nobody believed me! (DV-5, Portugal)*

## 2 Voices of professionals in CEINAV

The project of listening to the voices of professionals involved creating an environment in which they would be encouraged to reflect on what they hoped to achieve and what difficulties they had to deal with when intervening. In the process of debating what could or should be done, implicit and explicit assumptions and expectations within the intervention culture of each country could be brought to light (see chapter 12 on intervention culture). At the same time, giving professionals space to speak in a personal way about difficult decisions and ethical issues of intervention allowed them to reveal dilemmas and ambivalent feelings as well as professional guidelines and methods.

To be sure they could speak openly, careful attention to the composition of each group was needed. We looked for professionals who were very engaged in their work and were recommended by our associate partners. We selected and sorted the participants so as to ensure they would not work the same cases or attend the same round tables in their everyday life. To have a clean slate and not involve cases the professionals had indeed worked with, we created a fictional three-phase case story, a vignette that could be discussed in a multi-professional group. We aimed to create an open space where they could honestly speak their minds, we ensured confidentiality and provided enough room to create an atmosphere in which our invitation to reflect about dilemmas could be accepted.

Professionals in intervention usually are not considered to be silenced or to suffer hermeneutical injustice in the process of intervention. Instead they are often used to evaluate services for victims, but professionals do in fact react emotionally to their clients. Allowing for enough time to share one or even two meals between sessions and have a long break for informal talk created a space where professionals could voice conflicts within their own work, conflicts with the women and/or families they dealt with and – cautiously – conflicts with other agencies and professions. The research gained knowledge of tensions and contradictions in the intervention field and how sympathy and understanding towards victim-survivors may add to those practical difficulties. It is especially the case for the experienced and highly engaged professionals that they struggle with ethical considerations on a daily basis, working in a stressful and burdensome job that is seldom rewarded by what could be considered real success. During the group discussions the professionals used storytelling to enable others to understand why they cannot simply “do their job”, and these stories have a strong emotional flavour, as they ask themselves how they can relate to a victim of violence as a human being and still do their job.

### 2.1 Conflicts and tensions between duty and empathy

In Peggy Grauwiler's study, women in violent relationships expressed their overall frustration and dissatisfaction for the burden that the system places on the victim to secure her

own (and the children's) safety (2008). In the CEINAV discussions tensions emerged between a clear commitment to the professional role and duty of intervention on the one hand and professional's knowledge about and understanding of the dynamics of violence on the other hand, leading to empathy for the victim-survivor who might suffer as a result. In trafficking cases police and justice professionals expressed moral concern not about the perpetrator, but about the victim. While on one hand police as well as counselling services work towards "building" a "stable witness" to build a case against the trafficker, on the other hand they reflected on when it is ethically justifiable to make the victim suffer this process.

*For me at least, the question is: How can we help this Maria? She has turned to a statutory agency that actually offers help, but if we come in swinging the club of criminal prosecution, it is a big question whether our proceedings that then take place will be helpful for Maria. We are always confronted with the question: Does the woman want to testify against her tormenter? And at least in larger scale proceedings, we always ask ourselves: Can we even expect this of the woman, that she take up this fight? That she testifies? With the trial and ... I had a witness, she was interrogated for TEN full trial days, by a team of SEVEN defence lawyers, you just have to imagine to yourselves the torture this was. So THIS is always a question that we really have to ask ourselves: Do we want at any price to expose the facts of trafficking and bring her to speak out? Or do we only want to help her get out of the situation? This is the question I always have to ask myself. (public prosecutor, TSE, Germany)*

Considering how proceedings can turn out, criminal justice professionals could find themselves wondering if they can push their clients through such proceedings or have to protect them. Re-victimisation of survivors or making their situation worse through the intervention or prosecution was a concern across the countries and across forms of violence. A Slovenian doctor described how court proceedings in a rape case dragged on for so long, that the woman was "awfully sorry that she had reported it, that the proceedings themselves had been more violent than the rape itself" (physician, DV, Slovenia). The scope of this was stressed by a prosecutor who added "actually, I have a daughter and I tell you that if anything happened to her, I don't know whether I'd go to court or not" (prosecutor, DV, Slovenia). A social worker recounted a case where responsible professionals firstly were too many and secondly changed numerous times, and summed up "despite this, the child sees two experts in 14 days, and you can't protect him from this, which means that the system abused him once more or two more times" (social worker, CAN, Slovenia).

Also in England and Wales the practical dilemma that justice interventions might only be temporarily helpful and ultimately "only make her situation worse" was most clearly articulated by those in the criminal justice system: "should we be getting involved where a victim doesn't want this, particularly as we recognise that from the intervention the outcome is probably going to be fairly negative. At what stage do we act?" (prosecutor, DV, England/Wales). A Portuguese judge stated that while it was not his job and had to be done by other professionals; "when she arrives to me, her protection has to be ensured; if not how will she be at ease to testify? If she has to return to the same house where she is beaten, and to live with the offender, how can she testify?" (judge, DV, Portugal). The question of whether intervention is justifiable, if it will not change anything and might just cause greater damage was raised by lawyer in England/Wales:

*The first duty is that intervention will do no harm. In that situation, if you mention the police, unless you've explained a lot of other things like the reflection period, a safe place, all those reassurances, you're as likely to do more harm than good – especially if there's no consent. (lawyer, TSE, England/Wales)*

Re-victimisation can have different dimensions: In Germany in domestic violence cases, sometimes social training courses are ordered in the belief that such a training course is the only way to change perpetrators and thus stop the violence more sustainably, while making it possible for families to remain together if they so wish, or to separate safely if that is the victim's decision. One prosecutor in a domestic violence discussion pointed out that the victim often ends up paying for what the perpetrator did.

*The social training course is mostly issued to a perpetrator who wants to stay with his partner. Then the money comes from the joint family account. If I issue a fine, I also know exactly who pays it: Both of them. Just recently I had one who was about to go to jail for failure to pay a fine. He did not do anything, then his girlfriend came by and paid his fine. Then we have the precarious situation that the victim pays the fine of the perpetrator.* (public prosecutor, DV, Germany)

Besides “paying” in the most literal sense (several legal professionals mentioned that, when a penalty for domestic violence was a fine, the woman would often have to pay it) it was also mentioned that victims could suffer increased violence as a reaction to the conviction. When a police officer reminded everyone that they have to consider the victim-survivor and that a conviction could have negative effects, the public prosecutor clearly voiced the frustration resulting, gaining sympathy and agreement from the other participants:

*Yes well, then we have to cease doing our jobs. [others laughing] Yes, that is clear, that is frustrating. [various participants talking at the same time]* (public prosecutor, TSE, Germany)

## 2.2 Contradiction between institutional power and powerlessness

When dealing with a closely knit community that has internal ways of dealing with problems, judges especially in family court sometimes felt powerless, because they knew that whatever they would order would not be done (see Grafe & Hagemann-White 2015, p. 13). While the legal situation is clear and there are legal means available, the perpetrator still can undermine intervention or prosecution, and measures might be ineffective because of the perpetrator's power over the victim-survivor. This judge describes herself as absolutely helpless while she formally is in a position of power.

*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 anymore. 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, DV, Germany)

Another dimension of powerlessness is the lack of proof. A police worker uses storytelling to illustrate why simply doing his job is impossible.

*Let me tell a little story: There is a pimp whom I know and a prostitute whom I know. Well, he walks up to her on the street, she gets slapped by him, she reaches into her purse, gives him the money and he walks away. Now what has happened is: The pimp hits his prostitute and takes away the money she earned. That is exploitative prostitution, maybe even trafficking, the slap is likely meant to make her work further for him. Anyway, I walk up to her and what does she say? “That is my boyfriend.” – “But he just hit you.” – “Well I was a little sassy, he slapped me, that is normal” – “No, that is not*

*normal, but aside from that he took your money.” – “no, no, that is our housekeeping allowance; I wanted to give him that anyway.” And he will tell exactly the same story. We have: Nothing. Despite we all know exactly what happened there, we have ABSOLUTELY nothing. (police officer, TSE, Germany)*

Police and justice system are obligated, and indeed strongly wish to prosecute trafficking, but can only do so if the victims are willing and able to testify and receive enough (NGO) support to enable/empower them to testify credibly and consistently. While the above story describes how a professional sees something but cannot prove anything, a different problem can be that the police have evidence of a crime but cannot do anything without posing a threat for the victim or loved ones. Many trafficking victims face threats of grave harm to themselves or their families at home. The same policeman encountered a woman whom he suspected was trafficked, but the perpetrators had sent her a picture of her son on the way to school back in her home country. Without more words exchanged the woman had understood the threat and the police worker concluded in this case he knew exactly there was nothing he could do besides the offer to come back another time when circumstances had changed. Police and prosecution are confronted and have to struggle with the impossibility to fulfil their tasks.

### **2.3 Professionals may have to bypass regulations to intervene effectively**

When administrative routines do not protect, professionals sometimes have to work on the edges of legality. In Portugal the health care system seems to present many barriers to the access of immigrants (especially when undocumented) who are trafficking victims. This system, national and accessible to all the population, seems to be organised in recent years as an inaccessible fortress for both illegal immigrants and disadvantaged people. In order to help these populations, committed professionals have to form alliances with other professionals in health settings (see Magalhães et. al. 2015).

Protecting the woman in domestic violence cases 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 can jeopardise protection as a lawyer from Germany illustrates.

*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. (lawyer, DV, Germany)*

Also claims regarding the right of access or the right of custody can jeopardise the protection to the point where the one lawyer assesses “*we have to perform acrobatic performances at the borders of legality to manage this somehow, to keep the location of the woman and children secret*” (lawyer, DV, Germany). Engaged professionals who see how the institutional routines undermine safety have to find creative ways to deal with it:

*When women are in the shelter we say “to summon through us”. Every attorney's office can do it that way. And when the woman is now in a shelter in City J and the violent act has happened in City B, then I obviously do not use my own letterhead, but I have colleagues in City B whom I call and then the letter leaves the office under a header of a colleague in City B. (lawyer, DV, Germany)*



A social worker argues that when the safety of a child is at stake, they assess what is the bigger risk, and although it is an ethical dilemma “*stretching the rules*” (see Vučko 2015, p. 19) to ensure safety while trying to respect them might be necessary:

*I am not saying it is illegal, what I am trying to say is that we are walking on the edge. For example, there is a protection order issued but only to protect the mother and not the child that is 2 years old. So there are also contact arrangements between the father and the child. But who will take the child to see the father? It's absurd. So we tell the mother to go to the shelter and we will stretch things a little bit. Send her from the shelter in three weeks instead of 8 days and try to buy time.* (social worker, CAN, Slovenia)

Information sharing is considered helpful for an assessment of the situation, but it stands in tension with data protection. A lawyer criticised that only when criminal proceedings begin does she learn about prior convictions and can tell the woman that this man had been violent against other partners. This leads to a social worker in a youth welfare office adding confidentially:

*My experience is that when we call the police, we get a lot of information. We really get to know much. If data protection (social worker, social services, DV, Germany). You are not allowed to do that. (police officer, DV, Germany) I know. Let us put aside if that is conform with data protection rules or not, but I have the feeling if I call the police and say “listen, do you have something on that guy” I learn, well if I really want to, I learn a lot. And that is good. That is really good.* (social worker, social services, DV, Germany) *But we cannot generalise that.* (prosecutor, DV, Germany) *And we must not record this. [laughing]* (lawyer, DV, Germany)

In a situation where child maltreatment and neglect is possible but not certain, often the child remains in the family and support workers have to gain the trust of parents and child to work together. Straining the trustful relationship can have influence on the options to help and protect – enabling access to support or damaging the relationship upon which it depends (see Beckmann & Meysen 2015, p. 25). Some professionals in Germany try to avoid the problem of putting the relationship of trust under stress through acting against the will by not informing the family members. They act knowingly behind the family members back and are sometimes creative in covering up the proceedings and securing secrecy. They justify these procedures by the statement that only by that – in the case they describe – can support and protection in the conflict between relationship of trust and acting against the will be guaranteed. A social worker found a way to report anonymously so the trust of the family they worked with was not jeopardised.

*And then we [social worker team] thought this way and that way and then we got the idea to, there are such anonymous emails which can't be traced back, and then I told her [colleague], I elaborated together with her what she should report and describe so that the responsible office can take it on and no tracking of the informing person is possible. There are always options, yes, to find ways how to handle reports and procedures.* (social worker, social services, CAN, Germany)

*Sometimes there are also possibilities to take detours. I once had a case, there was one institution working very closely with the family and that was important. And then they got to know that the mother's new partner had abused four daughters of other women, but they didn't want to spoil their own work in the family and then they passed the information through a chain of several intermediaries and then the youth welfare office informed me. So this institution which first had the suspicion stayed anonymous and we just, let's say, handled it then (...) It's not always necessary to know: where does the information come from?* (family court judge, CAN, Germany)

Not informing or reporting openly can also serve as a protection for the professional as a teacher reported whose headmistress was against the report; “*actually, the headmistress did call me into her office afterwards and asked me whether it was me, and I said it wasn’t because I didn’t know what they’d do to me*” (teacher, CAN, Slovenia).

## 2.4 Conflicts between professionals due to different mandates

The ethical conflict between providing support, safety and justice on the one hand and respecting the right of the woman to decide (as crucial to developing and maintaining a trusting relationship) is managed primarily by role separation, but this leads to conflicting mandates (e. g. NGO support work and police/prosecutors) between agencies that have a vital need to co-operate. This conflict is partly latent, partly open. In the first German trafficking group discussion, this standpoint was regretted as a missed opportunity to stop the traffickers or at least to disrupt them:

*That is why I think it’s a shame that we often don’t hear anything from the proactive workers or from the health agency, just a tip to a house for example, because Maria [woman from the vignette] may not be the only one there [public prosecutor: Exactly!] If she does not talk to us, maybe there are two or three others who would. But if we never know about it, because at this point it ends, not even the hint to a house, go and look around there, then we cannot do anything either. And that I find a pity.* (police officer, TSE, Germany)

After being asked if the police took this amiss, the police officer insisted very politely, that phrasing it this way was putting it too negatively. He voices regret for ‘chances taken away from prosecution’ but adds understanding for the conflict the other professionals experience while trying not to jeopardise their credibility. In the second discussion it was challenged on ethical grounds, as one-way cooperation, taking without giving. The argument is shifted to a concern for justice: It is unjust that some women get help and others do not.

*[Our cooperation agreement] is a one-way street from the point of view of the police. [We are obliged to involve the NGOs always], but the NGOs only give us information when it suits them. That is unsatisfactory from a police perspective. Because, well I realise that this can help the individual woman at that moment, but not other women. In this case here there should be an investigation against the brothel owner, and if the woman remains anonymous, he will do the same with other women. And of course that disturbs us as police very strongly.* (police officer, TSE, Germany)

The support services argue along three main lines to counter this critique and it is striking that these defence strategies obviously were ready at hand (which indicates they used them before). First, they underline that in the view of the support services, sharing information with statutory agencies and/or involving police and the criminal justice system without explicit consent would violate the very rights that it is their task to strengthen. Secondly, they describe how fragile the contact is and that they may not even “*know where she is, how could I pass on information then?*” (counselling service, TSE, Germany).

Thirdly, and this is the argument that comes to the foreground most strongly, they emphasise the utility of their confidential support strategy to the police and the justice system, in that only a stable witness can be of use to them in prosecuting traffickers. The victim will not tell her story and she cannot be helped until a basis of trust has been built.

*Under no circumstances would we press her to make a statement, we know that is useless. As long as she is not stable, she is unable to testify [...] because without a stable witness you have no criminal proceedings, and we all know that. (counsellor, TSE, Germany)*

While the first and second lines of argumentation are rather defensive and stress their primary duty to help the woman, the third is presented very confidently, offering the police and the justice system an alliance towards the same goal. A similar debate took place in the domestic violence workshops in Portugal, with a support worker insisting on her primary duty towards the victim and the police pressing for reporting, but in Germany, this division of roles seemed to be accepted. Yet professionals are conflicted over what they can expect from others.

*Our responsibility is to combat trafficking, and in discussion circles like this that is always forgotten. That's my feeling, anyway. Because no-one talks about the traffickers, no-one talks about the men who go there, but it's always about the poor girls, who are really badly off, I don't dispute that. But we can only do our job when we have the girls, when we can bring them to give us statements about what happened to them, how they were forced, how they came to Germany. And if that doesn't happen, we can't make a criminal case against trafficking. (police officer, TSE, Germany)*

A state prosecutor points out the different interests and roles of the prosecution and the women's counselling service.

*The interests are different, she said a while ago "we are there to see what is up with that woman", exactly this is your task: save, help, care, and what not. [Counsellor: We do not save them. [laughter]] is what I have in mind and something has to ... it is good if that is also the case in City A. That the police approach the woman in a sensitive way, that maybe, if she wants, then comes a statement. I as a prosecutor I wish I had a statement, the first statement and everything came on the table right away, neat and clean and understandable, names, names given, that I wish for. I do not wish that in the fourth, fifth, sixth statement, where suddenly the rape is mentioned, then I have to struggle with those expensive lawyers in the main proceedings who say to me "well if we ask her another three times, she has been raped ten times". The judge also does not wish that we get ten different versions. [Judge: Ten versions is bad. But it can very well be one story which unfolds.] Yes. Right. Then it would be understandable. (public prosecutor, TSE, Germany)*

In the child abuse and neglect group discussions in England/Wales there were many statements about frustration with other professionals who failed to share concerns or take action. As an example paediatricians were said to be equivocal in reports as to how injuries occurred. An emotional statement about numerous accounts of children disclosing to professionals and nothing being done was widely supported in the group. In Portugal different mandates between professionals showed when some explained the need to be cautious to not increase the risk for the victim. A police officer professed understanding and sympathy, yet "I cannot avoid doing what I have to do. I understand the idea of 'going smoothly, in slippers', 'going slowly', but I cannot be in complicity [with a crime]. And I am not. For me, when there is a criminal practice, I have to be relentless, with that woman" (police, DV, Portugal).

## **2.5 Anger and frustration (against victims)**

When support services are the first contact with a trafficked woman, they face the dilemma that it will be difficult to offer safety and support if the woman does not talk to the police, while recognising that for many victims from poor countries, the police represent dis-

crimination, brutality or corruption; for these and many other reasons women don't want to talk to the police (see Hagemann-White 2015, p. 17). Since women may not see themselves as victims professionals can feel helpless.

*Basically, we can only work through awareness-raising. She has to have a victim consciousness, if I can call it that. This divergence, that we see her as a victim and she doesn't see herself as one, cannot be overcome. It has to come from her, and in the story of Maria that was THE problem. She has to cooperate with us and tell us what she has experienced and who is doing what to her and why. And then see herself as a victim, that is the essential thing ... We find ourselves exactly in that dilemma: police, prosecutor, judge, the legality principle means we must. But we can't, if the only one who can tell us how the offence was committed will not speak to us. We can't put her under pressure, we can't force her to say anything, we agreed on that already, and that is really the problem, first, because she is not willing to co-operate with the police, and second, because in the backs of our minds we also know, perhaps it's better for her if she says nothing. (public prosecutor, TSE, Germany)*

Professionals in the group discussions were full of worry and understanding for victims. They had a very clear commitment to their duty, yet at the same time have a clear perception that they often cannot do what they should do. A high level of understanding for the victims is the reason they have to face ethical dilemmas while trying to take the needs of the victim into account. Struggling with dilemmas is daily routine in frontline workers in this area. This becomes particularly frustrating for engaged professionals:

*Well, first, when the summons arrives she gets her ears boxed, and when the main hearing takes place, and he may even be convicted, she'll have to work for 24 hours to bring in the money for his fine, and because he is angry, she gets boxed again. In the end, it is all negative for her if we would do that. (police officer, TSE, Germany) Right, OK, then we will just have to give up on our work (everyone laughs). Sure, it's frustrating. (public prosecutor, TSE, Germany)*

This is part of a larger psychological burden that all participants mentioned: Even with knowledge, sensitivity, skills, and dedication to best practice, assisted perhaps by luck, intervention in this area is very demanding and is almost never rewarded by what could be called real success.

## 2.6 Tensions between contradictory rules

In many instances intervention calls for professional assessment. If the police are called to a domestic situation and there are no accusations or clear signs of violence professionals have to assess if there is danger, a threat or possible child endangerment. Legally professionals have to treat every person the same. This also was professionals' initial response in all domestic violence and child maltreatment and neglect discussions, after being invited to reflect on what would change if the person they were dealing with was from a minority or had a different cultural background. On further reflection most practitioners identified that while the "process might be the same" the approach might not be. In dealing with minorities professionals faced more effort and possibly difficulties with language, different understanding of violence, different descriptions of (intensity) of pain, stereotypes and homogenising social groups, while it was acknowledged that issues such as age and gender may be equally, or more, salient considerations. Although there were somewhat different understandings of culture in each group discussion, all participants agreed that issues of culture or cultural sensitivities should not distract from their primary safeguarding roles and obligations.

*You have to be sensitive to culture but you can't work differently with different cultures ... and it doesn't matter where you're from – if you're from Africa or Lithuania – ... so you might work differently with families around what is acceptable there and what is acceptable here but you still focus on the child. (statutory sector social worker, CAN, England/Wales)*

At the same time professionals agreed that working with women or families from a different cultural background called for additional skills and experience, intercultural competence, acquiring knowledge about the relevant cultures in the countries of origin and a case by case assessment for the intervention to be effective. All this of course while at the same time avoiding generalising about groups based on their origin, which is a near impossible task.

*Law and rights here in Germany are the same for everyone. Nonetheless I think, we may not have prejudices, but still we have to take the cultural background into account in each individual case. (social worker, social services, DV, Germany)*

*Yes, and intercultural competences, when I'm thinking about the children in our quarter (...) think, 50 different nationalities, where is my knowledge about them? (headmaster primary school, CAN, Germany)*

An ethical dilemma for professionals unfolds when they are called on to determine the threshold for intervention. This is clearest in child protection. With similar living conditions, one child may be seen as at risk of harm, while for another an out-of-home placement would be more harmful than remaining in the situation. Professionals asked themselves if, by taking the cultural background into consideration, they were actually discriminating and how to weigh this against the experience that treating every case the same without that consideration was also a professional mistake. They referred to indications for neglect in families who thought themselves much better off in Germany than before flight or relocation.

*Because some of them say, well, here, somehow we have at least a house wall, so we're doing better than before, and that I said, that would have been, so to speak, a too massive intervention for the children. And I thought afterwards if they had been a German family I would have measured to a different scale, because in that moment it was for me, well, I expect more from them because they've got our complete social security system behind them, they have the possibility to live under better, under different living conditions than, well, Romanians, Bulgarians especially, that's as you know the specific problem that they come from somewhere, they have no other choice than to live in such a place for a while, for a while, it wasn't about staying there for long, but for a while to live in such a housing. I know that I was startled about that myself, to realise that, that I had really made a difference there. (social worker, social services, CAN, Germany)*

In Portugal, Slovenia and Germany different perceptions and different treatment of Roma children were mentioned compared to other children, as some practices were accepted as a way of life or better living conditions as before. In consequence intervention was not as quick or as severe as it would have been if the same practices were detected in mainstream groups. The practical and ethical dilemma for professionals boils down to the question if good practice, fairness and fulfilling their duty means to treat people the same or to treat them differently (see also Magalhães et al. 2015). While most prominent in child protection, this can also apply for women in abusive relationships:

*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 social worker in social services: 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. (counsellor intervention centre, DV, Germany)*

### 3 Summary

Listening to both victim survivors and to intervention professionals can help to understand why after all the progress in intervention and combating violence that was made in the four countries there are still difficulties and problems. In addition to persisting racism and discrimination victims face testimonial and hermeneutical injustice. From survivors we can hear the high importance being listened to and believed has – for their wellbeing as well as for the success of intervention. Not being able to name their experiences can deny them the appropriate response and justice. One main theme was testimonial injustice – not being believed, heard or taken seriously. We heard several dimensions of not being believed: because the victims were still young, because they requested assistance repeatedly for several incidents, because they showed too little or too much emotion making them seem crazy or not sincere in the eyes of some professionals. Their statements were challenged or questioned sometimes because professionals thought they were exaggerating, sometimes connected to or triggered by the perpetrator being convincing and winning professionals over while discrediting the victim. Where interviewees experience that they were in fact taken seriously and believed, they were deeply grateful for this and developed a trustful relationship which then helped the process. Being listened to sometimes was meant in the most literal sense: having someone to talk to (getting timely and regular appointments to speak to someone) who was not in a hurry and offered a smile or encouragement. Recognising and attending to basic needs (or not) proved to have different faces. A number of survivors felt understood and helped because someone offered food, money, directions or a lift and this way showed compassion and understanding for the problems a journey to end violence can bring. It shows that humane behaviour and compassion can sometimes be worth just as much as institutional measures. On the other hand feeling disrespected, punished or treated unjustly are forms of testimonial injustice that can result in secondary victimisation. When intervention ignores the victim's wishes or needs, she may withdraw from services or give up seeking help.

The journey to end the violence needs to happen at a pace suitable for the victim. Some interviewees desperately waited for something to happen; waited for counselling places, safe spaces, placements, stay permits and even prosecution. Institutional routines are not shaped to take into account basic needs of victims and thus were an additional burden for many. Being forced into idleness was a theme for all three forms of violence, but most dramatically for women who were trafficked. While having to wait was burdensome and stressful, even affecting health, the opposite could also be harmful. Some interviewees felt rushed into a decision after they had suffered years of violence, when they felt they needed time to decide what to do next. Timing obviously is an important matter that needs to be taken into account case by case for successful intervention.

Racism could be expressed directly in degrading personal comments, but it also appeared more subtly by attributing to victims a different cultural background with a higher tolerance for violence, when oppression of women was said to be “normal” for “them”,

which can be regarded as testimonial injustice. At the same time these experiences were more clearly named in Portugal or in England/Wales as racism, while in Germany and Slovenia concepts were not readily available, which can be connected to hermeneutical injustice.

Listening to the voices of professionals after giving them time and space to discuss problems openly unearthed practical and ethical dilemmas. The most powerful theme was the conflict between duty and empathy struggling with the fact that, while there is an interest in punishing the perpetrator, it is fully recognised that punishment can also hurt the victim. In domestic violence cases the woman has the right to choose to stay in the relationship, in child maltreatment cases professionals may have the duty to work with the family towards non-violent upbringing. In both cases punishment is likely to become secondary to support. In trafficking cases the problem is more prominent than without a stable (and cooperating) victim punishment is seldom possible. Secondly professionals face difficult decisions in case of “minority” background and different cultures. They experience a dilemma between two contradicting rules; between treating every person the same and taking into account the personal situation in a case by case assessment. This most prominently shows in cases where women or children live under circumstances they perceive as “*better than in the home country*” but that do not meet living standards of the majority population. Professionals in these situations face the dilemma that they cannot do “*the right thing*” whether they intervene or not. Thirdly professionals aiming to do “*good practice*” may have to work around protocol because institutional routines or a reporting duty can jeopardise intervention or the trust relationship between professional and victim-survivor. In the attempt to do the best job they can without violating protocol they “*have to do acrobatic performances at the borders of legality*”. Professionals may face practical dilemmas such as not being able to help or prosecute due to lack of evidence or risk of inflicting harm on the victim-survivor. This can result in helplessness of a professional who is formally in a position of power, or in anger against the victim-survivor. The struggle with ethical considerations on a daily basis is part of a larger psychological burden that all participants described: Even with knowledge, sensitivity, skills, and dedication to best practice, assisted perhaps by luck, intervention in this area is very demanding and is almost never rewarded by what could be called real success. Professionals need a high level of competence in their professional skills, knowledge and roles, but have to step outside them as well.

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## Chapter 14

# Making visible: employing art in researching intervention against violence

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The intellectual's error consists in believing that one can know without understanding and even more without feeling and being impassioned (not only for knowledge in itself but also for the object of knowledge) [...] that is, without feeling the elementary passions of the people, understanding them and therefore explaining and justifying them. (Gramsci 1971, p. 418)

Can art, as practice and product, help to understand the dilemmas of intervention against violence and empower survivors in their aim to have more voice? This is one of the main questions in the following chapter which looks into the potential of art and aesthetic as epistemological practices and empowerment tools in both doing research and framing a survivor sensitive approach in intervention to stop violence. While focusing on experiences and results of the CEINAV project we explore how the introduction of aesthetic practice (*narrative, visual arts*) can contribute to relations of equality and empowerment in conditions of diversity and plurality, in both intervention and research process itself. We proceed from the assumption that art process and aesthetic experience, if introduced into research and evaluation of intervention, can contribute to “enlarged mentality”, and create a space “in between” in which different voices can be heard and power related experiences made visible in a way that enables deeper understanding of intersubjective power relations in diverse situations, including those of intervention practice.

### 1 The emancipatory potential of aesthetic communication

In the last decades, diverse academic disciplines and research fields have introduced and extensively used art as fruitful research practice and methodology. Creative art and aesthetic education represent an emerging perspective in the humanities through which disempowered voices may be heard and exclusionary practices countered (O'Neill 2010; Spivak 2012). The “practice turn” in social sciences enabled the move from “text-centred” to “performance-centred” research and thus broadened the scope of qualitative research into the direction of artistic practices (Borgdorff 2011, p. 51). There exists a body of evidence about the power of art to enrich and enhance social science inquiry both subject- and meth-

odology-wise (see Knowles and Cole 2008; Sullivan 2005). New art-related methods and approaches are mapping innovative ground for diverse experiences of participants in the research processes. Informants, researchers (and) artists are engaged in efforts to create the “intermediate space (...) between passion and intellect, analysis and subjectivity, ethnography and autobiography, art and life” (Behar 1996, p. 174, cited after Knowles and Cole 2008, p. xii). The potential for “making visible” and for re-configuration of oppressive relations, as a quality of art and aesthetic education was also addressed by feminist and post-colonial theories of voice, language, empowerment, and citizenship.

## 1.1 Art practice as “making visible” and aesthetic communication

The role of art and aesthetics has radically changed in the last century, especially after the emergence of the modern, avant-garde art of the 20<sup>th</sup> century when the link between the beautiful and art has ceased to exist. Art became distinctively experimental while artists introduced new rules and criteria which seemed to completely repudiate the classical standards.

The possibility for such an aesthetic revolution was theoretically prepared already in the 18<sup>th</sup> century by Immanuel Kant’s *Critique of Judgement* (Kant 1987) which allowed thinking about a different role for art than just representing the beautiful and mimicking the visual. Supported by his revolutionary treatment of the analytic of the beautiful and thanks to his analysis of the sublime, the contemporary, post-Kantian aesthetic (and ethic) are primarily connected with the concept of the sublime experience (Lyotard 1994) and with the art of “making visible” (Klee 2013; Merleau-Ponty 1968).

The breakthrough made by the Kantian analysis of the potential of aesthetic communication and the power of judgement was the discovery that it is the realm of the aesthetic where we are able to make specific judgements of taste that can acquire general validity without being derived from pre-given concepts or imperatives. They are based on our experiences with the concrete and particular cases of judgements, which cannot be subsumed under pre-defined “objective” “universals” (of the beautiful) and which are linked with the existence of a specific shared “sense” which only emerges in the intersubjective process of judgement itself. In the centre of such process is our communicative connection with other people i.e. our capability to take into consideration the opinions, feelings and the position of others. This allows for an enlarged way of thinking and establishes a particular space “in between”, an “enlarged mentality” where judgement is neither reduced to “subjective” nor entirely “objective” (Wenzel 2005, p. 1). It is interwoven with our sensory experience and the capacity to share it with others. Everyone can participate in this process of making a concrete judgement, while acting “as if” there (pre)exists a kind of common “sense”– even if there seems to be no specific ground for assuming it in others and even if it is only the process itself which brings it about.

The second point in question is the Kantian (additional) lesson of the sublime experience – important not only for the modern aesthetic debates but also for philosophical and ethical concerns. While the experience with the aesthetics of the beautiful concerns the feelings of pleasure and brings about something positive in our relation to the outer nature, the purpose of the (in the first instance negative) sublime aesthetic experience is different. Sublime aesthetic experience is an encounter with something that does not seem to have a comprehensible form or size and which we do not seem to be able to grasp with our imagination. It thus remains “unimaginable”, or “non-representable” (*unvorstellbar*). What happens in such an experience is not only that the pre-given concepts, schemata, notions, rules etc., which are basic for our thinking, and are supposed to be used, turn out to be inadequate and misleading for the scope of our encounter. More importantly, we are faced with the limits of our imagination itself (see Kant 1987, pp. 97–140).

While for Kant, such sublime experience finally points to the power of reason which is capable of stretching our capacity to think even over the limits of imagination – and therefore to think even the unimaginable, Jean-François Lyotard (1994) points to the irresolvable antinomy of such situation. There exists an unbridgeable gap between imagination and reason which he calls “the differend” (p. 123) and which can be explained as the conflict between the “language of form” and the “language without-form”. The sublime feeling becomes a “transport” which leads thinking, also critical thinking, to its limits (p. 124). And precisely this gap is productive for the modern art as a project different from the one which is concerned with the beautiful and mimesis.

The project of post-modern art, so Lyotard, is to represent this gap, namely the existence of the “non-representable” which can only be done by transcending the language of form. Maurice Merleau-Ponty, the pioneer of the notion of embodied knowledge, similarly holds that the main task of art is to make “present a certain absence”, and to give the “visual existence to that one which the profane sight holds for invisible” (cit. after Sallis 2015, p. 132). Or, if we summarise this with the words of Paul Klee, “art does not reproduce the visible, but makes visible” (*Kunst gibt nicht das Sichtbare wieder, sondern macht sichtbar*. Klee 1920, p. 28). Art therefore shapes the conditions of visibility of specific, otherwise not visible phenomena that are from this world. Such “making visible” as a ground rule of modern and post-modern aesthetic communication represents the starting point of our understanding of the role that the art can play, insofar as it attempts, as Merleau-Ponty put it, to “communicate and add something new to the existing series of visible things” (cit. after Sallis 2015, p. 133).

The question of “making visible” and of representing the “non-representable” is particularly significant for several theories of the emancipatory potential of aesthetics. Such are for example Jacques Rancière’s politics of aesthetics and Gayatri Spivak’s conceptualisation of aesthetic education, and the concept of the subaltern, which we used as a theoretical background for our endeavour to make visible those intervention experiences of survivors of violence that are excluded from the majority’s (culturally framed) perception.

## 1.2 Subalternity, invisibility, and emancipatory potential of aesthetic

While bringing theory closer to art Gayatri Spivak is borrowing Paul Klee’s expression for the art’s task by saying that “theorizing, as making visible and staging, is not separated from art practice” (2011). Simultaneously, she is advocating for an »aesthetic education« (Friedrich Schiller’s term) as “training the imagination for epistemological performance” which should be accessible to everyone (Spivak 2012, p. 122).

Spivak defines subalternity as a nexus “where social lines of mobility, being elsewhere, do not permit the formation of a recognizable basis of action” (Spivak 2012, p. 431). In other words, missing conditions for action is the main characteristic of those who are entirely excluded, who “cannot speak” in “such a way as to be heard and acknowledged” (Harindranath 2007, p. 3). This absence is marked by different structural axes of exclusion and discursive and epistemological practices that are not visible to those in privileged position – including different ways of “helping” or representing the other (or speaking for them from the position of those who know) which can further undermine his/her basis of action.

Spivak’s theory of the subaltern radically questions attempts at representation, and of speaking for/on behalf of the other. The statement that the subaltern cannot speak (which is revealing her/his powerlessness) also implies that s/he is “unrepresentable”. Spivak’s analysis and her proposals indicate that there is no easy solution for solidarity with those

who are oppressed and non-privileged.<sup>1</sup> Even if they are listened to and heard (and start to speak for themselves) “their speech will not necessarily be either liberatory or reflective of their ‘true interests’, if such exist” (Alcoff 1991/1992, p. 22). The visibility and speaking of those who are oppressed might (and should) therefore result in disagreement between them and those who want to represent them or speak on their behalf.<sup>2</sup>

Jacques Rancière (2009) identifies precisely the moment of disagreement as the time when politics emerges in the framework of aesthetic revolution. While leaning on Kant and Schiller as well, he claims that the aesthetic revolution brought about a crucial displacement in the field of art. Less and less is aesthetics identified with “things of art” and more and more defined in terms of *manières d’être sensibles*, “the ways of sensible beings” (p. 11) while containing some kind of the promise of common humanity that Schiller saw in the aesthetic “free play” (p. 14). Rancière sees an intrinsic emancipatory potential of aesthetics in “reconfiguring the distribution of the sensible, which defines the common of the community” (p. 25). This happens when those who are not visible and heard, who have no name and “were perceived as mere noisy animals” (p. 25) and thus lack the framework for action, “take their necessary time” and “show that their mouths really do emit speech capable of the pronouncements of the common which cannot be reduced to the voices signalling pain” (p. 24). While directly implementing the main principle of politics which is equality, these pronouncements are not expressions of the “common” consensus but are above all articulating the disagreement.

We should probably start here if we assume that the creative art practice/intervention – as an attempt to create conditions of visibility and audibility, so that the disempowered voices may be heard and exclusionary practices countered – could provide a provisional framework for the non-representable to appear. What kind of “platform” should it lay down so that those who “cannot say ‘I am a subaltern’ in whatever language” (Spivak 2012, p. 431) could be seen (but not in their assumed “authenticity”) and achieve the space and audience for their speech and disagreement? To put it differently, in order to “make visible” and alter the position of powerless, wouldn’t it be necessary to create exclusive (and not “inclusive”) spaces where the specific structures which define the position of those who do not have a space/basis for action can be, at least temporarily, suspended?<sup>3</sup>

Such spaces would mean absence of not only any kind of direct or structural violence, but, for example, suspension of paternalism, or discursive hegemony,<sup>4</sup> including impos-

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<sup>1</sup> Spivak first opposed connections of “subaltern” to other forms of domination and defined as subaltern only those humans who are actually outside the (capitalist) system, and do not have any representation whatsoever. Yet, later on she also considered other minorities as possibly subaltern, such as for example the Romani minority (see chapter 4; Spivak 2011). Considering this and also the fact that she adopted a Gramscian term which referred to subaltern classes in a broader meaning we think it is justifiable to use it in our context as well.

<sup>2</sup> Thus, to promote “listening to” as opposed to speaking for essentialises the oppressed as non-ideologically constructed subjects. But Spivak is also critical of speaking for which engages in dangerous re-presentations. In the end Spivak prefers a “speaking to,” in which the intellectual neither abnegates his or her discursive role nor presumes an authenticity of the oppressed, but still allows for the possibility that the oppressed will produce a “countersentence” that “can then suggest a new historical narrative” (Alcoff 1991/1992, p 23).

<sup>3</sup> Women and young people whom we interviewed cannot be seen as radically “powerless”: while they took part in the workshops they did not lack voice and agency, yet these had been suppressed while they were directly subjected to regimes of violence and often in the process of intervention too. Additionally, as members of different minorities they might have been exposed to different intersecting regimes of oppression.

<sup>4</sup> Alcoff proposes that we strive “to create wherever possible the conditions for dialogue and the practice of speaking with rather than speaking for others. Often the possibility of dialogue is left unexplored or inadequately pursued by more privileged persons. Spaces in which it may seem as if it is impossible to engage in dialogic encounters need to be transformed in order to do so, such as classrooms, hospitals, workplaces, welfare agencies, universities, institutions for international development and aid, and governments.” (Alcoff 1991/1992, p. 23).

ing either language or form. In intervention practice there exists a hierarchy of position and knowledge which, especially in cases of minority groups, hampers the possibility of dialogue and listening to the others. Linda Alcoff proposes to transform hierarchic spaces while striving to create conditions for dialogue and speaking with and to rather than speaking for others. This would require genuine awareness of asymmetrical reciprocity of participants (Young 1997), meaning that we take into consideration that it is impossible (for those in a privileged position) to fully understand the other. One cannot “close the gap” even if one thinks that all obstacles to practicing enlarged thinking and solidarity with those who are unprivileged or victims of violence and abuse have been removed.

With this in mind, we can turn to the concrete method.

## 2 Introducing art and aesthetic communication into research

Two basic approaches to connecting art, aesthetics and research can be found in the literature. First, the *art based research* is defined as “systematic use of artistic process (...) as a primary way of understanding and examining experience by both researcher and the people that they involve in their studies” (McNiff 2008, p. 29). Arts in this approach are not used as merely producing data to be analysed by academic disciplines but are seen as an independent domain that produces knowledge and understanding by their own means. This corresponds with Rudolf Arnheim’s (1996) notion that art itself is epistemological practice, “visual thinking” since perception and thinking are always already united and unseparated (p. 9). The artist’s investigation, their “imaginative and intellectual work” can be seen as a particular form of exploration (Sullivan 2005, p. xi) which does not adapt methods of inquiry from the social sciences. It rather resembles, for example, the painting process in the studio/atelier (McNiff 2008, p. 29). Such attempts to reach similar research goals by following different path or paths through arts are considered to be complementary to social science methods, yet they are often “profoundly breaking off from the academic research orthodoxy” (Finley 2008, pp. 72–73). Due to its ethical and revolutionary oriented quest to address several inequalities, art based inquiry appears as radical and engaged. It brings much freer and more alterable research methods as well as contested, liminal spaces into the process of inquiry. Art based research does not necessary concentrate on the form but attempts to include multiple representational forms according to the needs of the group or individual or group emancipatory perspective.

The second approach, *arts-informed research*, is not entirely based in arts but is influenced by them so that they function as alternatives to conventional methods and forms of inquiry. They can be included into wider methodology so that they help with specific “languages” and “forms” of arts and expand the possibilities of reaching research goals (Knowles & Cole 2008, p. 59). Similarly, arts are used for knowledge exchange and dissemination strategies in order to reach wider audiences, to sensitise them for complex insights in a more open way.

The project on which we base this chapter, Cultural Encounters in Interventions Against Violence (CEINAV), combined both of the above approaches while building on participatory art and aesthetic communication. It explored intervention practices against violence in four different historico-political and socio-cultural surroundings: in Germany, Portugal, Slovenia, and UK (England and Wales) in three forms of violence (domestic violence, child abuse and neglect, and trafficking for sexual exploitation). The main goal was to find out how culture frames intervention practices, and to contribute to the survivor sensitive cross-cultural approach to the intervention process led by the professionals. The rationale

behind this was that, despite the ubiquitous idea of “empowerment” in policy documents, intervention in cases of violence in practice seems more likely to occur without the consent or against the will of the victims among relatively less powerful groups such as ethnic or religious minorities, non-citizens or the socially disadvantaged. Moreover, research that was done to evaluate intervention and services in European countries has shown that little room was granted to the victim’s self-definition of expectations and needs.

The project was accordingly addressing elementary ethical questions about how intervention can contribute to the empowerment rather than being imposed on those who need it. It sought to make room for cultural encounters where the dissonances between the serious institutional attempt of “doing the right thing” and the personal experience of struggling with violence can be uncovered and named. This is why the question of the voice of those who are survivors of violence has been placed in the forefront of the project investigations (see also chapter 13). And it is precisely this dimension of the project where the art process and aesthetic communication entered as crucial “means of inquiry”, or, to put it differently, practice of “making visible” the needs and wishes of the less powerful. The art was meant to create spaces “in between”, where individual’s intervention experiences and their eventual disagreement with the dominant rules and discourses which lead intervention practices and their potential for agency could be seen and heard.

## 2.1 Two streams of inquiry and their relationship

CEINAV developed a multi-layered and interdisciplinary approach that included art as a special stream of inquiry, which was, however, not detached from the rest of empirical research and theory. Art process was seen as equally important production of special knowledge which went along with but also transcended other empirical research methods and proceedings with their limitations.

Empirical research comprised of three sets of qualitative methods. First, multi-professional focus groups with practitioners were organised to explore the implicit cultural premises of intervention, and to discover what ethical issues and dilemmas the professionals experience (see chapter 2). Parallel to the focus groups, some practitioners offered statements about their ethical issues and dilemmas to be videotaped for the use of the video production. Second, as a counterpoint to the thinking of professionals interviews with those who are helped by intervention (survivors of three forms of violence) on their experience with pathways and resources leading out of violence were carried out. Both workshops with professionals and narrative interviews with women or young people were analysed comparatively. And third, in each country special reflection processes took place at which participants in the research were invited to reflect on the preliminary cross-national research findings.

Art process, on the other hand, proceeded by and included several moves that became integrative parts of the whole. It introduced a parallel “space of appearance” and different reflective process than just rational and textual “research” synthesis. Narrative interviews and participatory art formed two sides of exploring the potential both of narrative and of visual representation to stimulate the imagination needed to hear different voices and to recognise the agency of victims. Artist-researchers planned and carried out participatory art workshops with interviewed persons, survivors of violence who had experienced intervention. Finally, a scripted documentary was edited, which was used for dissemination of the results but also attempted to frame the survivors voices as the most important messages of the project.<sup>5</sup>

<sup>5</sup> There were some other specific engagements with art and by artists which cannot be discussed here due to the limited space (see CEINAV Final Report 2016).

The two streams were carried out independently, thus separated, but interconnected at the same time. Apart from the common theoretical background that connects both research and art process and the definition of the research problem, the main link between them was involvement of different participants (researchers, artists and practitioners, associate partners and interviewed persons/survivors) at various stages of research into consecutive common activities. These included discussions between researchers and artists who lead the creative participatory art process, meetings between researchers and associate partners, and additional common workshops called “creative” and “reflective” dialogue meetings in each of the countries where researchers, associate partners (NGOs who were also practitioners of intervention), other professionals, and survivors/interviewees engaged with each other in discussing the outcomes of participatory art. The narrative aspect of the survivor’s experience was present both in empirical research and crucial parts of their stories were “re-told” in the participatory art process – they were intended to be re-told possibly with other means than verbal or textual (see also Rothmüller 2015).

## 2.2 Developing creative art process

The art-research process followed the preceding empirical steps (focus groups and interviews) while assuming that art has transformative potential as well as that it is easier for participants to communicate their possibly traumatic experiences through aesthetic means. Art workshops were meant to give victims/survivors the possibility to express themselves and share their views regarding the intervention process they went through, by using a process of aesthetic communication. Instead of being the discussed objects of research, the participants were regarded as the agents of the creative process, so that they could, together with researchers, produce critical knowledge, and eventually also give suggestions about what needs to change. Art process has therefore been understood as a practical moment of empowerment, while generating the environment where the participants do/make something by themselves and where they wished to communicate could be presented in an active and independent way. This approach resonates with above described emancipatory potential of aesthetic communication and Josef Beuys’s thesis that everyone can engage in an art process (Bodenmann-Ritter 2007), or in other words, that the aesthetic sense is connected with the common “sense” meaning the feeling for the social and other environments and how we experience them and react to them.

Moreover, as the particular interest of the project were experiences of survivors from ethnic/cultural/migrant minorities,<sup>6</sup> and the dominant language of their country of residence might not have been their first language, the art also seemed to represent a promising means to overcome this barrier while capturing the experience by different aesthetic means rather than (just) language. Images are of course not more or less subjective or objective than the words survivors, researchers or other participants use in the research. If organised in a certain way, the relationship between the researcher’s and the participant’s subjectivity facilitates the possibility of dialogue, de-constructs hierarchies and produces a negotiated version of reality – intersubjectivity, the space in-between, which facilitates the perception of the experiences and imaginative worlds that might not be accessible to us. Our goal was not the display of the researcher’s perspective, but to make visible and alternatively communicable the multiple experiences and the survivor’s perspectives. The analysis of

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<sup>6</sup> While we could not produce common definition of the concept “minority” that would apply across the four countries (see chapter 8) we worked with categories meaningful in the context of each country. In some countries we therefore did not find/include any “formal” minorities while in others we did: such example is Romani minority in Slovenia.

the art process and its outcomes were supposed to be grounded in these multiple perspectives (participants, artists-researchers and researchers), while we were aware of the interactions between participants, and the possible invisible hierarchies among them and the facilitators, artists-researchers.

## 3 Participatory art workshops

### 3.1 Framework

The planning of the creative art workshops revolved more or less around the idea of visual narrative as a form of expression and communication (Pimenta & Poovaiah 2010). In spite of a common framework each country shaped its creative process differently and independently and they all resulted in something unique. After the interviewees were asked if they would be ready to participate and anonymity was assured to them two workshops took place in each of the involved countries, mostly with survivors of one or more of the three forms of violence. Altogether, 35 participants aged from approximately 16 to 75 took part in the workshops: 4 in Slovenia, 9 in Portugal, 9 in Germany and 13 in England/Wales. The duration of workshops varied from 2 (England/Wales) to 10 hours (Slovenia). Apart from the survivors of violence, an artist-researcher and researcher-observer played a part in them.

Four paths that were taken while implementing the participatory art process involved differences regarding the format and durations of workshops, the number of participants, which forms of violence they experienced, what mediums they used, while there were also differences in and in variety of participant's "minority" statuses. Some belonged to minorities which stand in a direct connection with the post-colonial legacy (in England/Wales and Portugal), others were in a position of minority due to migration or (dis)integration of the former state (Germany and Slovenia). In many of these cases, however, the participants didn't even consider themselves as minority members.

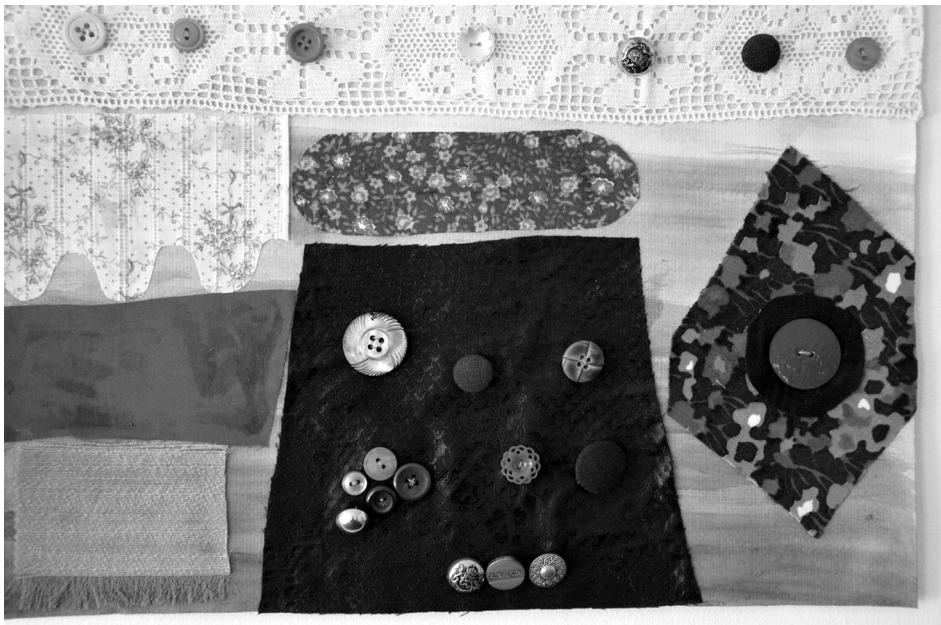
In the two larger countries, England/Wales and Germany, due to the geographical spread of the interviews two separate workshops took place, one with young people and one with women. Two models of how the artists-researchers were included in the overall project were practiced: while in Slovenia and Portugal, there was more close integration of artists-researchers into the entire project, in England/Wales and Germany, there existed a greater distance, and they were included only at the point of planning and implementation of the workshops. Contact to participants went through the support workers, so the artists had no prior contact with the participants; indeed, when the venue was a supporting agency, some participants also came who had not been interviewed. Thus the linkage to the research process was loose and open. In Slovenia, the artist had also been the interviewer, and in Portugal the artist had met with the women and young persons who had agreed to participate before the workshops to give them a "creative kit" and pick it up two weeks later. While some artists-researchers additionally analysed produced art (Portugal and Slovenia) others produced artworks themselves too (Germany, England/Wales).

There were more firm and rather loose approaches in planning. The artist-researchers either envisaged a range of possible issues the participant's work might be focusing on, while others specifically planned the particular path to be taken. In Portugal, visual narrative as a form of expression was chosen in advance. Already before the workshops, the participants were using the camera with instructions how to proceed to capture the photographic images that were symbolically related to relevant moments or aspects of the in-



tervention and could be used in the creative process. In England/Wales, two different paths of workshops were taken, one more loosely and the other more firm, with different outcomes. The first path suggested to participants to write and to freely visualise the written text (but they could also keep the artworks as texts if they did not connect with the idea of visualising it further). Most of the participants of the first workshop produced a handwritten text. In the second workshop a more structured and technically specific creative path was offered, focusing on the themes of choice and control. Much less was planned in advance in Germany and Slovenia and participants had a range of options to choose what they would do the site. In these workshops, very little was suggested to the participants (neither material, work method, nor form or practice), however materials that were made available and possible options were discussed with participants. Artists then just followed the participant's ideas, or made them aware of them, while directing them towards their own way of doing things. In Slovenia, the participants themselves all chose the same medium – collage, while in Germany they worked with many different creative options, except for one creative technique which was suggested to all as introduction to the workshop – the footprints.

A wide selection of equipment and material was at disposal in all workshops: from paper, canvases, textiles, pens, inks, various kinds of colours, label makers, glue, scissors, newspapers and magazines to tape recorder with microphone, camera for filming, camera for photos, laptop, even typewriter. The process was therefore partly guided by the materials which were made available on the workshop location or previously prepared by them (like photographs in Portugal). In all countries, participants also developed ideas about how they wanted their work to be displayed. Most of them were ready to participate in the creative dialogue and present their artworks there.



German art workshop: Quilt, 2015

Concerns regarding participant's knowledge of how to work with art were anticipated. Most had no previous experience with artistic work and therefore it might seem to them to be artificially pushed into a field they did not feel at home in, even if the point of departure was that no "perfect" artworks were supposed to emerge. While a non-hierarchical principle of work was adopted, there nevertheless existed the pre-given hierarchy of leadership, skills and knowledge. In order to loosen the pre-given hierarchy and to lessen the influence of professional workshop leaders, the artists used several approaches in preparing the participants to enter the process of aesthetic communication and introducing them into "art" as specific means of expression, and they stepped into the position of a "medium" which was there to be "used" and utilised by the participant's imagination in order to make their own creative process develop more easily.

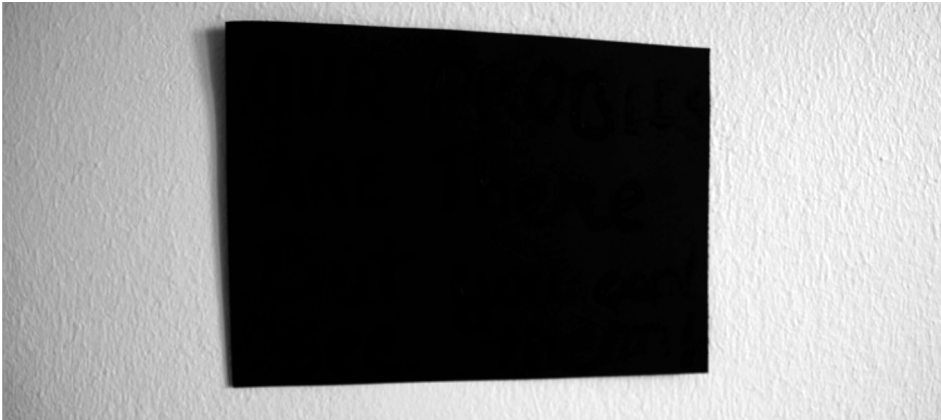
### 3.2 Outcomes

Heterogeneous structures of the workshops, medium and techniques resulted in variety of visual and some other forms of artwork. Various materials also lead to different creative outcomes. In Portugal, the workshops resulted in seven visual narratives (stories) that reflected the most important aspects in the intervention. In Slovenia, the main final results of the workshops were four unique collages that engage with the author's own experience of the intervention process in a visual way. Other results were four canvases with inscriptions that represent some of the typical reactions of the institutions; audio records of the most distinctive statements that they have been told (by police, judge, prosecutor, centre for social work), video and photo shots of the process (hands, feet, so that the anonymity of participants was preserved).



Slovenian art workshop: Before and after, collage 70x50, Collective "Warning Signs", 2015.

Apart from the foot prints a variety of different material, mainly visual, artworks resulted from the workshops in Germany: paintings, drawings, word pictures (image HILFE/help), but also poetry, a quilt (textile picture like a quilt), an audiotape, and a peep-box. The artist-researcher, herself being a sculptor, also created three art works outside of the workshops, which represent her own reflecting on themes that emerged from how interviewees described their intervention experience. In England/Wales, the result of the first workshop was a collection of texts which were agreed to be collated by the artist into an e-book/PDF under the title “Farasha stories” (farasha meaning butterfly in Arabic) with a limited run of physical copies.<sup>7</sup> The results of the second workshop were a collection of texts and short, filmed performative clips involving the text which the artist later assembled them into a short film, and a selection of photographs, one with the text-message of participants plainly visible and one with it not.



UK art workshop: Our problems are there but you can't see them, 2015

<sup>7</sup> <http://issuu.com/ceinavlondon/docs/farashastoriesfinal>.

Apart from the material results the outcomes of the workshops were important non-material achievements which could not be seen directly from the artworks but mainly from the process. They consisted above all of interactions in joint creative experiences, exchanges about the art process with the facilitator and discussions of the individual artworks that were created. The discovery of the participants that they can work with art, that their ways of expression were given space and attention regardless of their previous experiences with art and that their work has value regardless of whether people like it or judge it in one way or another was one of the most important and empowering outcomes of the creative process (Rothmüller 2015a, p. 12). While the produced artworks were uttering the participant's own specific visualised voice and experience, which is not necessarily mediated through the researcher's words, texts or concepts, the process itself also yielded several other results: in the spontaneous climate the participants much more self-confidently expressed their thoughts and emotions which flowed into their creations. Through this process, the convening artists-researchers, on the other hand, admitted the limits of their own knowledge and expertise and acknowledged the participant's experience which is ready to directly speak to an audience as important, as valuable and powerful. It is important to notice that most of participants thought immediately after the process that their work was not to remain completely anonymous. While the artworks were planned to be presented in the creative dialogue meetings, some participants thought that they could or should also be presented to the broader public, not only within the project, and be given a chance to raise awareness about the problems involved in intervention against violence.

#### 4 Lessons of the creative process: making visible and empowerment of voices

In spite of the different paths in planning and implementation, the outcomes have shown some salient commonalities: in dealing with and solving problems of hierarchies of knowledge in the creative process, in artistic means of addressing/visualising the participant's experience of intervention, and in the content of the artwork messages. Moreover, the creative process of the visualised knowledge production complemented the "pure" research process on ethical dilemmas in intervention by bringing about non-material results that could not be directly seen from the art works and/or their interpretation by the outsider but consist of the joint creative experiences of the participants and artists-researchers.

These commonalities allow us to make more general conclusions about the lessons learnt from the participatory art. The lessons, firstly, concern the art process itself and involve the relation between participatory art, voice, knowledge and power, and changing hierarchies in the art-research process. Secondly, they involve the visibility of some invisible aspects of intervention that can be approached through the question of how the artworks are seen, "read", perceived and interpreted directly by the spectators: can artwork as such, without additional explanation, stimulate those who are involved in intervention to think about the intervention in general and about their own practice in particular? Or, to put it differently, do artworks "speak for themselves"? Thirdly, and finally, they concern the relationship between the "objective" data-knowledge gathered with traditional research methods and specific "subjective" knowledge produced by artistic means.

#### 4.1 De-hierarchisation of creative process and discovering participant's own creative capacities as means of empowerment and knowledge

The creative process in all workshops was based on certain key questions of identity, autonomy, power and decision-making proposed by feminist theories of inequality and intersectionality, multi-culturality and postcolonial studies.<sup>8</sup> The objective was not only to produce material works but the same importance was given to the way the participants as creators-artists felt and whether and how the principles of equality and respect were implemented in that process. While reflecting about how much art can really bring about participant's voice and agency, the most challenging question for the facilitators/artist-researchers seemed to be how to deconstruct the initial hierarchical relations. That is, such hierarchies are likely to emerge both in research process and also in art workshops where the participants felt non-experienced, while they were nevertheless invited and expected to actively participate and experience the art work as empowerment. Due to the "nature" of art which – differing from anonymous interviews – demands involvement, implies a certain public exposure and eventually leads to recognition, the art workshops were supposed to create space where the participants could "raise their voice" and make their experience to be "heard" and "seen" without being forced into the straitjacket of pre-existing concepts. To create such space was the most difficult task for the artist-researchers. Notwithstanding the amount of sensitivity while planning the workshops, and in spite of the radical and participatory artist's understanding of aesthetics, art is still seen mainly as a gift one is born with. The participants in art workshops shared this traditional and elitist understanding which considers most people not talented enough to create art. Such a view is opposite to the assumption that everyone can be an artist and does not automatically vanish if we just formally declare to the group that there will be no hierarchy – it, instead, just remains unspoken.

There were two different but complementary approaches of the artists to deconstruct the traditional notion of art and increase the self-confidence of the participants. In some of the countries (like Portugal) the facilitators consciously avoided using the term "art" for what was being done in the workshops in order to remove some of the pressure and expectations that the artistic work carries with. They referred to the participatory art as "creative project" and process rather than using "art" as the main signifier. In England/Wales, the text-writing as the main creative practice was proposed as the main medium for a similar reason, namely to lessen the pressure on participants by demanding that they create "conventional art". In Slovenia too, the choice of medium and technique itself – the collage making – diminished the importance of "perfect" drawing skills for the artistic engagement (see Caretta & Vaccelli 2015, p. 7) while using images from other sources (magazines, newspapers etc.) as "ready-mades". In Germany, on the contrary, the artist-researcher specifically underlined that participants were "already acting artists", capable of creating something unique and not-yet-existing in this world, while directly referring to Josef Beuys. Participants in German art workshops were surprised by the discovery that art can successfully be used in such a specific and unique way. Both in Germany and Slovenia, artist-researchers consciously stepped into the position of "mere" assistants in the process which additionally lessened the pre-existing hierarchy.

Other means of relaxing the atmosphere and building trust were used (such as sharing individual stories, listening to music, or body awareness exercises) to create less hierarchical spaces for both individual art process as well as group dynamics. Using photographs as the first medium for creating visual narratives in Portugal's creative process served to

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<sup>8</sup> The theory of complex inequalities is discussed in more depth in Chapter 4.

loosen some of the constraints but also to create a sense of familiarity and proximity of participants with symbolic representations. Various forms of “material based creative engagements foreground or allow for different forms of artistic presentations, rather than representations” (Rothmüller 2015), and particular art techniques or exercises proposed by the artists-researchers were important parts of this process, as they can help to increase spontaneity which is the source of creativity. Coloured foot prints as introductory activity, as used in Germany, were linking the whole body and sensory experiences (Merleau-Ponty 2002). The participants were invited to “visually translate” their path into a “semi-chronological” colour foot print: they were literally “re-walking” intervention.



German art workshop, Footprints, 2015

The technique of hiding or showing written messages with special ink used in the England/Wales second workshop provided a visual form for the young people's struggles with voice and being heard. Using the camera to photograph the process (in all countries, although never in a way which would endanger anonymity of participants) gave the participants the power "to frame one's own witnessing process as it materializes in the art work visually" (Rothmüller 2015). Such ownership of the process can be considered as performing the right of free expression, a fundamental citizenship right on which inclusive ethics for the voices of disempowered populations can be built (ibid.) All this has brought about the de-hierarchisation of creative process, giving participants the opportunity to discover their own creative capacities as means of empowerment.

#### **4.2 Two kinds of survivor's "messages" and the difficulty to separate the experience of intervention from the history of violence**

The participant's stories as well as artworks – however different in their singularity – clearly had two common identifying moments. The first one is disappointment and disagreement with the system (state institutions: police, prosecution, judiciary, social work centres, medical institutions), which failed to prevent violence or to provide timely assistance because it was not based on recognition of victim's needs and supportive counselling. This disappointment, and sometimes also anger with the inappropriate, rigid, even heartless institutions in which the participants were not being listened to and not being consulted about what was to happen, thus depriving participants of their agency, was shared both in the interviews as well as in the conversations and visualisations, which came to the fore in the art process. To a large extent, participants dealt with the question of how to communicate this individual encounter with the system, and how to creatively express their disagreement with what was happening. This was directly addressed in the second England/Wales workshop (*This is us*) which took the frustration with the system as a starting position for the creative work with hidden/revealing messages, and in Slovenia, where the participants got an opportunity to loudly, explicitly, and also mockingly (literally with their own voice on audiotape) express some of the painful moments of intervention (the disturbing words of a judge, for example). Artworks expressing disagreement sometimes offer clear and direct action-oriented statements which seem to address the public and professionals, and their makers might have been or were sometimes explicitly hoping to make an impact while being heard by those responsible.

The second moment was the positive, thankful and hopeful, forward looking attitude of survivors which was clearly expressed in the aesthetic process and materialised in many artworks. They visualise positive experiences of intervention, of help which was offered to them, especially by non-governmental organisations, but also, for example, by the police and others. This moment was especially present in the first England/Wales workshop with overwhelmingly positive responses to the intervention in the handwritten texts which were forward-facing and hopeful, but also in other countries (Slovenia, Portugal, Germany). Such an attitude of participants actively questions the predominant image of the miserable, pathetic victim of domestic violence, or trafficked sex worker (see Meyers 2016) and enables us to see how participants in the workshops viewed themselves. Their effort to concentrate on the positive results of intervention (even if it was painful and difficult) is in fact the moment of self-empowerment. They often presented their liberation from violence as the most important event/moment in their lives while also addressing the period of life in which they were exposed to violence.

While the whole project focused on encounters in intervention it was sometimes difficult for the participants to make a "clear" distinction between the intervention story and

the history of violence. In the creative process, some of them needed to tell the story of violence once more in order to show the difference between before and after, and give a deeper sense of the intervention. The artworks often included the history of violence and made a link between these two, especially as things went back and forth over a long time. In order to explain the important moments of intervention, some participants included their history of violence into debates and artworks. The collage-making and the visual narrative were particularly appropriate mediums for presenting the process of going back and forth between history of violence and intervention. Collage as a technique, for example, gives one a lot of freedom before it is closed and finished – one first creates the whole composition before sticking the images to the surface, and can then completely rearrange everything again and again, replace what seems not fitting well. In the art process in Slovenia, the collages functioned as experimental spaces where reflection process could take place, and they can be described as “thought-things”. An analogous case was the creative process in Portugal, where participants could work with the photographic images (but not solely), also with those made by other participants, to create their visual narratives. However, this effect could also be achieved in some of the artworks by using “solely” writing as a graphic form, and not creating images as “proper” forms of visualisations (example is the case of *Diary to myself* in England/Wales where the author moves from before to after through sequences in time, marked as dates). The foot prints in Germany, too, as an introduction to the workshops, visualised the process of going back and forth in intervention, the tempo, the circling, jumping, etc.

### 4.3 The relationship between textual narrative and the visual: two types of produced stories

This brings up a further question regarding the nature of artworks and the research process itself, namely what was the relationship between the narrative as a text (meaning written, textual products of the research such as transcripts and written stories) and the visual in the project, i. e. between the narrative material in the art works and in other (written) research results, and how this explains the possibility of the aesthetic communication of survivor’s voices. The issue at stake here are experiences in working with narrative that researchers and artists as well as participants, had in the project.

With participatory art workshops the project originally tended to move “further” from the language and spoken word (the interviews and written stories) into more visual forms of expression. While most workshops therefore concentrated on working with visual images or similar,<sup>9</sup> some workshops (in England/Wales) still used writing as the main medium of expression and concentrated on text. With choosing a handwritten text (manuscript) as the main art form, these workshops and their results additionally addressed the relationship between the visual and the textual forms of (re)presentation. While language might represent a barrier in the intervention process and add to the exclusion of the survivor, using written text as a visual art form helped to relativise this kind of exclusion of voices of the survivors. The writing experience provided participants with an opportunity both to record and share, what they had wanted to say at the time. One of the participants who did not speak English very well and felt language to be a barrier overcame that feeling after successfully expressing herself in writing.

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<sup>9</sup> Text and words were used in all the workshops yet they were mainly accompanying visual narratives or served as means of accentuating particular messages that the participants could not translate into images only. There were few cases when exclusively words or text were used in other workshops: i. e. in one of the collages, in the audiotaped works.



Writing thus represented some kind of a retelling of stories about intervention that were told to us by survivors in the process of interviewing. While these stories were written down after the transcripts with the aim at listening to difference and getting as close as possible to the survivor's voice and not to "represent" it (see "Anthology of Stories" Grafe & Hagemann-White 2016 and chapter 13), they still could not be told in the direct survivor's voice. In the process of editing they were shortened and have therefore lost the idiomatic phrases. They did not include the experience of violence itself. When in the art workshops, the participants were picking up their stories again and retelling them with their own specific voice/language (by using whatever form) these were in effect different stories than those produced during the research for the anthology of stories. They included the unique subjective dimension, even the original, or visible trace of voice, and the direct personal touch condensed in the line of the drawing, in colour or tone used, in lightness or darkness of presented photograph, or in the specific graphic of the handwritten text which could be written in "minority" language that the artists and researchers did not understand.

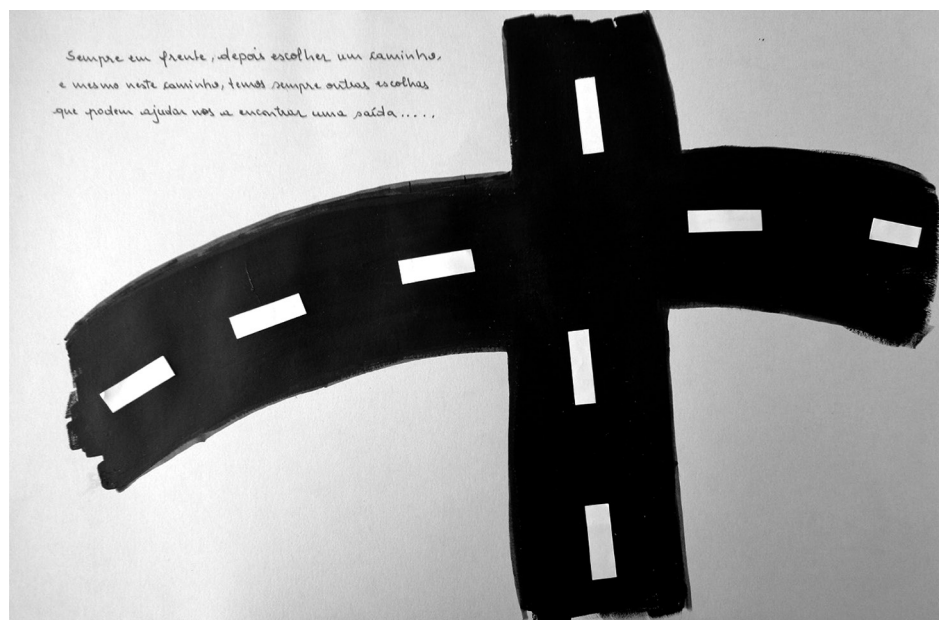
While the art-oriented research might try to overcome "text-centred" with more visual and "performance-centred" research, the attempt to "make visible" does not necessarily abandon "verbal" (or word) and "language" (or text) – as a practice which involves hierarchy and domination. If, as Gayatri Spivak (2012) writes, the position of subalternity as lack of voice and agency is marked by exclusion from discursive and epistemological practise of those in privileged position and thus from "privileged" language (including visual "language"), the thing to be questioned and overcome are rather specific forms of narrative and language, or constraints of professional or academic discourse affecting its capability to "listen".

#### **4.4 Aesthetic encounters, visibility and the power of interpretation: what was "made visible" through art-works themselves?**

The encounter between the "visual" and the "textual" also leads us to think how much the art products of the workshop participants "speak for themselves" and therefore engage the spectator's mind. While the artists themselves commented on this point to some extent already in art workshops, this was mainly tackled in creative and reflective dialogue meetings where the artworks were exposed and their authors met and discussed them with researchers and some of the involved professionals. These encounters have shown that the art-works cannot be entirely separated from the process itself and that they often need to be additionally contextualised in order to be understood by the outsider – especially, as they emerged in a specific context with specific aims. Yet this is often the case with much art, especially modern – it needs context and interpretation. While opinions regarding the question how much the concrete works "speak for themselves" may differ, we want to summarise some commonalities of visual depictions of intervention experience and discuss how might these visualisations "engage" the addressed spectator's mind. Which critical issues of intervention process did the artworks address?

Art works across the countries had some typical common features that point to some important experiences of participants in the intervention process and express disagreement, gratitude or, eventually (one case only), resignation. The visualisation or image of the intervention most often chosen was a *path (journey, or passage, road, life trajectory, a train ...)* which is taken by the individuals, whereby the intervention is only one specific moment of it. The journey is in no way linear but involves *moving back and forth, and running in circles, it is full of complicated and difficult dilemmas and decisions* that had to be made. *Intervention* as such is often presented as a *rupture in time*, being the starting

point of change, and can therefore happen in one single day/moment only, while a clear difference between “before” and “after” comes into view as “time” stretching in two different or even more directions. *Before* is often visualised as a dark and cold period, chaos, full of feelings of *enclosure, imprisonment, powerlessness, lack of confidence, suffering, indecision, frustration, but also hope and desire for change*. The artworks expressing gratitude mostly underline the positive aspects of the “after” and intervention as the point of change and *new life, of liberation, transformation, flying, light, colour, order, happiness with children* (they are a very important reference in some women’s visualisations). Even if intervention was perceived as forceful and violent, if it helped to make a right decision it is retrospectively seen as good for the participant.



Portuguese art workshop: Visual narrative, 3rd moment, 2015, reproduction authorized by the author.

The artworks expressing disagreement are different, and usually show a clear critical stance towards intervention process – the fact that *the door remained shut* or that intervention happened *too late*, that the suffering was *not recognised and seen*, that they were *not believed*, that they were *pushed to make decisions* even if they were not prepared to decide yet. Some works point to the critical issues of intervention regarding the *treatment and expectations from the victims: focusing on their aptness, adequacy, and much less on the perpetrators*. The *victim is stigmatised* and has to give the evidence of being a “deserving” or “good” victim. Especially young people expressed *lack of control, the non-visibility of their experience (speaking but not being heard)* and the *non-timeliness of the intervention*. Some art works have clearly shown that the *individuals also need counselling and assistance after the immediate intervention*, as they are – in spite of a great change – still the same person who needs long term support in order to change her circumstances. Interestingly, in the workshops, the fact that the participants were coming from different cultural surroundings somehow faded behind the commonality of experience in the art process and the fact that they shared similar experiences in intervention.

In this sense the artworks and aesthetic communication have both confirmed the results of the more strictly designed research work on ethical dilemmas and also greatly illuminated them. In addition, the survivors' stories are presented in a way that additionally challenged the conventional research approaches. There was a moment of surprise both in terms of the experience of the participants and how they felt about the art (process) and in terms of our own expectations about what can be "made visible" by the aesthetic encounters. The participants-artists found their own specific expression and languages of "making visible". While taking into consideration the whole process of aesthetic encounters, we can say that they reach considerably beyond the knowledge and understanding that the scientific methodology and inquiry can provide. Therefore, art, both as practice and product, substantially contributed to a nuanced understanding of the ethical issues involved in intervention.

## 5 Everything I told them: documentary video production

As mentioned, a scripted documentary with the title "Everything I told them"<sup>10</sup> was produced as one stream of the art process as well. It included all countries, languages, and all kinds of violence. The film aimed at dissemination among practitioners, state officials and research community, and at making the main insights from the research accessible to a wider public. It pulled together different streams of the project work while bringing into conversation three sets of different voices: survivors of violence, professionals/practitioners, and researchers. These voices are framed by the survivors' narrative in the light of their own experience and are thoroughly structured around three main ethical issues that come to the fore in the intervention process: the societal culture of disbelief, the question of how to treat differences in the intervention process and how to support self-determination of the survivors.

The documentary was developed from videotaped statements made by professionals at the end of the focus groups in the four countries, and stories from women and young people about their intervention experiences. All partners contributed statements and stories with translations into English for subtitles, and joined in a discussion on which should be used, and what the documentary might communicate. In the last stage, the collected material was supplemented by statements of three principle investigators on key insights from the project.

There is no "objective" narrator connecting the sequences of the film. The storyline which follows the research process and findings is invisibly present through the sections that are presented in three chapters which sensitively combine parts of the survivors' experiences (audiotaped in English translation with voices of actors) and selected and taped reflections of practitioners on dilemmas of intervention, particularly when working with members of minorities. Such approach was only possible due to the whole methodological framework which enabled the producers of the documentary to collect experiences and knowledge both in the research as well as in the process of reflection (the workshops and discussions). On the other hand, the discussions about the script and the process of editing also contributed to more profound insights into cultural encounters in intervention.

The main challenge in production and editing was how to present the interaction of voices, and sometimes also their disagreement, in a way that attracts the interest of the viewers, and at the same time brings about nuanced understanding of the intervention prob-

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<sup>10</sup> accessible on the CEINAV website <http://tinyurl.com/ceinavproject>.

lems. The selected music and shots of specific places/movements that accompany the survivors' voices introduce dynamic in the otherwise static narrations. This makes the documentary an aesthetic whole which renders educational material to make visible the dissonances in the intervention process, which have no easy solutions.

## 6 Conclusions

"(...) where do we learn from? We learn from the people who are mistaken as only object of benevolence rather than help to locate ourselves in a safe space within it" (Spivak 2011).

As we pointed out at the beginning, aesthetic experience can bring about grasping things that might otherwise remain incomprehensible and non-representable. We have the capacity to make "subjective universal" judgements on the basis of aesthetic-sensory experience which is of a great importance for understanding the practice of both research and intervention – especially when it comes to the question of how can we make the particular experiences of survivors in the intervention process visible and heard – without forcing them into the straightjacket of pre-existing concepts of right or wrong approaches. That is to say, this capacity is important if we are to find out how to judge in/about the intervention process on the basis of single and unique experience without – at the same time – giving up the idea of universal equality of humans or reducing the unique individuals to assumed characteristics of particular (cultural) groups.

The workshops and other aesthetic encounters have enhanced our capacity to think over the victims' experiences via analysis or via art works which have brought "something new into the existing series of visible things" (Merleau Ponty in Sallis 2015, p. 133). Hence, they were/are useful for aesthetic education. In this process, it was not so important what researchers, associated partners or professionals immediately "saw" in the artworks themselves but what these have provoked in the observer, how they stimulate the spectator's imagination and open the channels of communication. In some cases such incentive was provided by a special technique that was used and in others by the motive or something else "unexplainable". The participatory art process became a means of thinking and empowerment for the participants as well. The artists helped to create a surrounding which relativised hierarchies of knowledge while admitting the limits of their knowledge and expertise, and acknowledging the participant's unique experience which could speak directly to the audience as important, valuable and powerful. The workshops offered the participants time and space for creative concentration to produce something which only they could create as special individuals. From this perspective, a very important outcome was not only the fact that each participant was able to satisfyingly engage in artistic expression but also that young persons and women with the painful experience of violence and intervention were even ready to participate in the art workshops.

They could discover their artistic potentials, and experience the participatory, "democratic" side of art regardless whether they considered themselves artists or not. They "took their time" and expressed their disagreement (Rancière) or approval of intervention and some of them wanted to step out of the anonymity so that others (i. e. professionals) would engage with their work and its message. Therefore, to a certain extent, some form of control was returned to the participants in terms of ownership of the stories and knowledge, while agency and the will to interfere were shown by both disagreement and forward looking attitudes. As art can reveal more than the author would intend and the spectator might understand it differently than the producer, also non-intended and non-controllable effects occurred. This is

an ever present risk in any communication, including aesthetic, which is even more subject to the power of interpretation. It was therefore important that the reflection took place in the safe spaces and that the authors of artworks had the opportunity to directly explain their own art in the creative and reflective dialogue, to clarify and contextualise it additionally.

Reflecting on participatory art workshops as a research methodology some other authors are coming to similar conclusions. On the basis of their own experience with “art informed focused group discussions”. Caretta & Vacchelli (2015), write that there is much more potential in using participatory art workshops in research design than the narrow boundaries of the academic literature on qualitative methods presently allow. Such workshops are still under-theorised and understood as un-theoretical and practice (reciprocal learning) oriented. They therefore suggest to use a mixture of research methods, combining for example focus group discussion with art oriented workshops. They argue that such a “mixture” of workshop and focused group discussion, called creative focused group discussion, represent an effective and innovative data generated method, especially for vulnerable groups. While this was not the approach we used, we think their findings additionally confirm our experiences.

During the process of aesthetic encounters and the reflection of it, we have experienced that researching and theorising, to paraphrase Gayatri Spivak (2011), is not separated from art practice. The way we understood art and aesthetics and how we practiced participatory art in the project with victims of violence was perhaps even more important than arriving at direct “knowledge results”. Important here were rather opening the channels of communication and creating a common field and conditions where aesthetic encounters could take place. Various techniques and graphic elements, that is colours, lines, surfaces, figures, photographs, letters, sentences, audiotaped sequences of stories, music, video shots etc. which were successfully combined and composed into a meaningful whole in the workshops and in other art works (like the documentary), created a palpable sense of how the victims actually felt before, during, and after the intervention.<sup>11</sup> However, we should be aware that with that the knowledge gap did not disappear, we rather “challenged notions of objective knowledge” (Rothmüller 2015). Art process and art works are mainly an approximation to knowing and understanding the artists perception and feelings regarding intervention. Therefore, art embraces the charm of leaving us in our reflection with an awareness that there still is something we haven’t found out.

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## Chapter 15

### Reading ethics into interventions against violence

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Identifying ethical issues and dilemmas in practice was a core component in the original vision of the research project Cultural Encounters in Interventions Against Violence (CEINAV), with establishing ethical foundations for intervention the outcome set for the project. These were reached through lengthy discussions among the five partners, in preparing our funding bid, as offering the only way in which we could accommodate our different histories with respect to colonialism and migration and the variations in intervention cultures which we were already aware of (see chapters 3, 8 and 12). From the outset, therefore, this was the approach we imagined could be a basis for common standards within a human rights framing: principles which could work across the fields of violence, across variations between countries and the diversity of communities within them.

As Chapter 4 reveals, traditional ethical theory has had relatively little to say about interpersonal violence, requiring us to explore what the harms of violence were, not only to bodily integrity but also to the sense of self and connections to others. Our early analysis of legal-organisational frameworks and socio-cultural backgrounds of the national protection systems in our four countries helped us to deconstruct practice and begin to map professionals' frames, their perceptions of ethical dilemmas. But it needed the experience of the victim-survivors to build a sufficient basis for thinking about and building a foundation how these harms can be compounded or mitigated through intervention.

Over the three years of researching and thinking together CEINAV also brought to light how practice is influenced both by national policy and by organisational decisions at the local level. Through our discussions we concluded that so called "best practice" or "standard-setting" is, in its application, likely to produce illusions of compliance, with practice dealing with the challenges going "under the radar". We also reflected on the importance for policy makers and those who produce guidelines to give consideration to the constraints and opportunities within specific local contexts. Our task, then, was to find the framing and the level of concreteness that could speak to the diversity of contexts in Europe and address all levels from in person practice, organisational responsibilities up to regional and national policy.

We took ethics as the lens through which we developed guidance for interventions against violence. The challenge was that intervention models should not drift into arbitrariness such as "Do what you think is right in your context" whilst recognising the tensions that unavoidably arise in the course of interventions. This was precisely what our empirical findings and the art work revealed. This led us to describe what ethical practice in interventions needs to take into account, should reflect on or achieve, rather than what

or how this should be done. In relation to the issues of minority and majority backgrounds we drew on histories of under and over intervention within certain minority/migrant communities, on uncertainties among practitioners as to whether they should work with cases involving women/children/families from minority/migrant backgrounds in the same way, and, for some victim-survivors, on encounters with explicit and implicit racism. Connecting everything we had learnt was the basis for a first draft of the ethical foundations written by two of the team: one with expertise in violence against women and one in child abuse, and from countries with different foundations for intervention. Feedback from other team members lent more clarity and clarification.

Thinking through the lens of cultural encounters and the diversity of origins and cultures that are present in Europe in the 21<sup>st</sup> century led us to conclude that it is not possible for any professional to know what the meanings or consequences of intervention might be for each minority community, let alone all individuals within any community: What is termed 'cultural competence' is not achievable through training or other accepted forms of professional knowledge creation. Rather we invite professionals to be curious about what they do not and cannot know in advance, to engage with women, young people and families as knowers, to learn what their situations are like and what differences or belongings play a role in their lives. This offers a route to respectful engagement, ways of crafting interventions that can accommodate difference whilst ensuring equality of protection and support.

Our transnational foundations for ethical practice in interventions, as published in 2016, are a balancing act. Whilst we welcome the emergence of support 'by and for' those who have been harmed by violence, have been marginalised or minoritised, we simultaneously want all professionals to have firmer ground on which to think and work, to be reflexive, open to knowing more and differently.



## Chapter 16

# Transnational Foundations for Ethical Practice in Interventions Against Violence Against Women and Child Abuse

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## 1 Introduction

Increasing recognition of the private spheres of family, sexuality and interpersonal relationships as sites for violence has led to transformations in law and policy at national and international levels. There is now a broad consensus in Europe that the state has responsibilities to protect children and women from violence. To enter these arenas, however, is to encounter complex intersections of power relations with respect to gender, generation, race/ethnicity, nationality and faith: a matrix of rights and responsibilities which professionals have to navigate. In this paper we use the overarching concept of intervention, drawing on its etymology: venire – to go, inter – in-between or inside. Professionals are stepping into the lives of others, which raises a set of ethical issues and dilemmas which also are linked to power: of the state, of belonging and knowing. Intervention as used here includes assessment, investigation, and legal measures alongside support, advocacy and counselling.

Introducing ethics brings the word moral into play: the foundations we offer encourage a reflective questioning of what ethical practice in interventions against violence comprises and at the same time advises against an attitude where moral judgements are made based on stereotypes. Agencies have different roles and responsibilities: some have legal powers to intervene (the police, courts and child protection) others have duties of care (health, counselors) and still others are community based and offer, as far as possible, confidential spaces in which the meaning and impacts of violence can be explored (helplines, advice centres, shelters, specialist women's organisations). Inter-agency work needs to recognise and respect these differences.

This framework draws on the work of the CEINAV project<sup>1</sup> which focused on three forms of violence (child physical abuse and neglect, intimate partner violence, trafficking for sexual exploitation) in four countries (England/Wales, Germany, Portugal, Slovenia). We conducted multi-disciplinary focus groups with professionals, individual interviews with women and young people from minority communities who had experienced the three forms of violence and an art work process involving survivors and professionals. The proj-

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<sup>1</sup> "Cultural Encounters in Interventions Against Violence" (CEINAV).

ect explored not only when intervention is justified but also the orientation of professionals, how they approach those they are offering support/help and what kinds of intervention make a difference for women and young people.

## 1.1 Harms of violence and abuse

I develop and defend a view of the self as fundamentally relational – capable of being undone by violence. But also of being remade in connection to others. (Brison 2002)

Violence removes control over one’s body and mind, it changes the internal sense of self and the relationships to others. All intervention should, therefore, begin from a recognition that every subsequent interaction can be part of re-stitching social connections or compound the harm. The challenge is not just to protect from further abuse but to expand ‘space for action’ to restore the freedom/liberty that has been interfered with, to come to terms with difficult experiences, and in families to enable positive parenting.

Violence against women or children tends to be a course of conduct, repeated over time, rather than discrete ‘incidents’ of crime. For each person there will be a complex story which they need to tell, to have the abuse recognised and named and an assurance that this should not happen again in the future. For many it may also connect to other forms of abuse in their lives – being bullied at school, the everyday ‘micro aggressions’ of sexism and racism. Micro aggressions are slights, snubs, or insults which communicate hostile or negative messages to a member of a minority or other non-dominant group which reinforce stereotypes: for example, saying “I don’t see you as black” implicitly suggests that for the speaker blackness has a negative connection to things this person is not; referring to women as ‘dear’ or ‘love’ in a professional context diminishes her in relation to male colleagues. Awareness that you are often considered ‘less than’ connects directly to experiences of violence and to being able to seek and receive help. Recognition of these experiential connections is part of an orientation that seeks to understand and redress the harms of victimisation.

Ethics encompass both action and attitude, with implications for what we do and how we do it. For example, a professional could act with care and respectfulness yet still fail to take any protective action, another may be sharp and unsympathetic but take protective action. Ethical practice would combine the two: respect plus protective action.

*Well, once again, we have to remind ourselves how important it is to take your clients seriously, and to respect them.* (statutory sector social worker, CAN, Germany)<sup>2</sup>

*We need to tread carefully to respect her rights and just find out if she’s having a hard time and needs to talk about it and where she wants to go next with it.* (NGO, DV, England/Wales)

*Firstly, what helps me most when I come here is that everyone has a smile on their face. The first time I came here, this meant the world to me.* (woman, DV, Slovenia)

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<sup>2</sup> We draw on quotes from professionals, women and young people from our research, the notation offers their position, the form of violence they are talking about (CAN = child abuse and neglect, DV = domestic violence, TSE = trafficking for sexual exploitation) and which of the four countries they are located in (England/Wales, Germany, Portugal, Slovenia).

## 1.2 Implications for intervention

Violence is about being diminished, made to feel less than and controlled: for interventions to be ethical they should endeavour not to reproduce this positioning. This means beginning from a recognition of the other person/s. The starting point for a professional must be an interest to move in connection to, and conversation with, the person whose integrity and dignity has been violated. Where help is sought or welcome this means far more than being heard, it is a joint exploration of the past, present and potential futures. The core responsibility of professionals, agencies and institutions involved is protection, which we interpret as not simply to end violence but also to support ways of living beyond the harms, to remake the self and (re)build social connection.

There are, however, times when professionals are required to at least investigate concerns where an adult victim and/or child have not sought support or intervention: this presents a specific set of ethical questions and challenges. The first layer involves when it is legitimate to do this, the second how possible is it to be honest and open about what may happen next and how much control and influence the victim might have in the process. The third is negotiating potential conflicts of rights and responsibilities.

There are tensions and dilemmas at all stages: an ethical framework offers a foundation for thinking one's way through them. The challenges and questions have a particular salience when also working across race/ethnicity, culture, and faith: the diversity of Europe means that new histories, values and meanings are increasingly part of this process of negotiation.

## 2 An Ethical Orientation

### 2.1 Respect and human dignity

The principles of respect and human dignity should be the foundation of all engagement: made all the more important since both may have been violated through abuse, often activating a sense of shame. How we treat others is the foundation of everyday ethics: are we approaching them with genuine interest and concern, with the intention to be fair and just, to do more good than we do harm? Women, children, and parents are frequently sensitive to any suggestion that they are worth less than others because of what has been done to them or what they have done. Being alert to this in oneself and others can prevent interventions doing further harm. This perspective should also inform an awareness of the coping and survival strategies that women and children find, and the resources in themselves and from others that they have marshaled to date. They are not necessarily weak and totally powerless, although repeated abuse may mean they feel like this when you first encounter them. On the other hand some are angry, defensive and wary of others. Working from stereotypes of how a victim should feel and behave means we are unlikely to openly approach the person themselves, and may mean that we unintentionally further demean and diminish them. Kathleen Barry (1979) calls this 'victimism'.

Creating the role and status of the victim is the practice I call victimism. (...) she is assigned victim status and then seen only in terms of what has happened to her. (...) It creates a framework for others to know her not as a person, but as a victim, someone to whom violence has been done. Victimism is an objectification which establishes new standards for defining experience, those standards dismiss any question of will, and deny that the woman even whilst enduring sexual violence is a living, changing, growing, interactive person. (pp. 38–39)

A similar process can happen with a parent or parents who have neglected or hurt a child, whereby they are reduced to a stereotype, often linked to class and/or race/ethnicity. Approaching them as complex, whole people, as women and men, may create a space in which they can dare to acknowledge their behaviour. Stereotypes of men who abuse and exploit women may place them outside the category of human, and thus not worth engaging with. Everybody who faces interventions should be accorded basic respect and human dignity: these are the foundations on which those who harm others have the right to be held to account and offered the opportunity to change, to be given the chance to reflect on what they have done and its consequences. Men who have dominated their partner as well as those who have trafficked women need to receive clear messages that their behavior is neither supported nor endorsed. In cases of physical child abuse and neglect mothers and fathers usually need to be helped to reflect on their parenting, and often also their relationship with each other, in order to see what their children's needs are, to think about what positive parenting looks like. In households with children in which intimate partner violence is present, professionals must recognise that protection also applies to the adult woman. As long as she herself is in need of protection, intervention should seek to open up spaces for action that enable her to find a way out of the violence, offering support towards finding solutions that ensure both her own safety and that of her child(ren).

*The only thing they wanted me to do was to leave home and go to a shelter but that is so unfair! He is the one who should leave the house. (...) everything in my house was bought with my money. (woman, DV, Portugal)*

## **2.2 Keeping the focus on the purpose of intervention**

*Everyone is so risk averse and even in those finely balanced cases you come down on the side of caution. (lawyer, CAN, England/Wales)*

Interventions against interpersonal violence are not an end in themselves. The purpose is to secure or restore the dignity of a person that has suffered or is likely to suffer harm. Protection is thus a vital part of this task which is likely to be legally regulated. Failure by agencies to act to protect when they knew about violence also exposes professionals and organisations to public critique. This can lead to a focus on not making mistakes and only preventing the worst from occurring or recurring, rather than building trust and connection and enabling good outcomes. Good outcomes are more than reducing risk or securing immediate safety, they encompass a more holistic and contextual assessment of the harms that have been sustained and how these might be mitigated. 'Following the rules/guidelines' can become a professional refuge from more demanding engagements, especially in fields which are often characterised by uncertainty and ambiguity. It is an understandable and genuine need to be able to refer to clear standards and guidelines, but the value of professional judgement in individual situations should not be diminished. Guidelines/standards/rules are a baseline, a place from which to reflect on their relevance and potential consequences in the lives of specific women, children and families.

## 2.3 Self-determination and participation

*They put me in a room and started asking me everything about my father, everything from A to Z, but I really didn't want to talk to them. Because it was true, three men sit next to you asking you various questions, but I didn't talk. I told them it was none of their business ... It was my personal matter, it didn't concern them. (woman, TSE, Slovenia)*

*Oh dear. Just as if she was my boss. Well, it was like she would decide everything about me. I really felt like that. (adolescent, CAN, Germany)*

*When we started to tell our situation, they immediately said that they had to inform the authorities. I immediately gave up. I am absolutely sure that if I pursued a divorce he would kill me, I am certain of that. (woman, DV, Portugal)*

A strong commitment by states to intervene in situations with violence, but which is linked to 'following the rules', may create practice cultures in which control sits with professionals, where they are assumed to know more about violence and how to end it than those who are suffering it or, particularly with parents, who are responsible for it. This produces actions which are not based in conversation and exchange but a paternalistic 'we know best'. Women, children, parents, and professionals all know more, know less, know different things, these different forms of knowledge need to be shared and negotiated.

For example, a perception that minoritised<sup>3</sup> women are more likely to accept abuse, even not define it as violence (a position taken by some professionals in our study) may be challenged in a conversation: women can be clear that the behavior of partners or exploitation by traffickers was wrong, not acceptable, yet not believe it can be stopped, or not know who they can trust to support them. Here we encounter a version of victimism which positions women from minorities as not knowing, rather than professionals not being curious enough to discover what the women they are working with know and think. We suggest approaching them as knowers of their own experience and to inform them about their rights and possibilities to activate the intervention system.

Viewing violence as a 'tradition', where women 'take what's coming to them', is not the same as a perception that men's behaviours should be absolved. Rather, it is that such abuses are rooted in notions of men's rights, and specialist support enables women to recognise their own rights to live free from violence (Coy & Sharp-Jeffs, 2016, p33).

At the same time there may be situations, obviously for children but also for women, where safety, dignity and self-respect are at stake, in which they need others to advocate for them and/or take responsibility for difficult decisions. The impacts of ongoing abuse can erode confidence, and in some situations the extent of control limits one's capacity to make decisions for oneself. It is, however, not always possible to know whether these conditions apply before creating contexts in which women or children are able to tell their story to someone. Ethical standpoints are, therefore, not absolutes. They vary depending on what emotional and other resources each person has at any point in time to make self-determined decisions on the one hand and on what possibility the professionals have to establish a connection with the individual/s on the other. This is why interventions require negotiation and consideration. It is not unethical to act on someone's behalf if they have asked you to do so or you have offered and they have accepted. It might be unethical to take protective actions, especially in relation to an adult, where that person has refused or not taken up an offer of help. Here a series of questions need to be asked: are there other

<sup>3</sup> We use this term to refer to anyone from an ethnic or cultural minority and in recognition that there is social process involved in being 'minoritised'.

forms of support which might be acceptable; is the refusal of support rooted in fear or coercion?; are there timescales required in law or by procedures?; is there space to slow down processes, to make time in which someone can be supported to participate? The fundamental issue is whether timescales can be adjusted, in each specific context, to enable exploration of what the barriers and concerns of women, young people and children might be.

*You're afraid, or fear for your life, or fear for your child's life, or (...) you have other wishes or you're ashamed before your neighbours (...) So you're not capable of making decisions on your own at the time.* (woman, DV, Slovenia)

*Well, it's very clear, if I have to assume that there is a concrete danger, that she is actually in danger, that there have been attacks and very bad things are happening, then I would certainly pass that information on.* (NGO, TSE, Germany)

Interventions in the lives of women, parents and children, initiated without their consent and thereby over-ruling self-determination, can only be legitimate where their safety is in serious jeopardy: in the field of violence against women this is the only ethically justified entry into unconsented intervention. In the field of child abuse and neglect the state responsibility to protect (art. 19 CRC) and the child's right to live with her/his family (art. 18 CRC) call for an assessment of the possible outcomes for the individual child if intervention takes place or not, while the child's and young person's growing ability and wishes to be participate in decisions needs to be taken into account.

Acting for someone else through advocacy might be appropriate where their space for action has been depleted by abuse and/or where the processes are ones in which they would be structurally disadvantaged, this includes access to language, knowledge of the law and systems but extends to not being responded to in fair and just ways. To advocate for someone, however, requires knowing how they understand their situation, their own needs and goals, and seeking to get as close to these as possible within a framework of protection. The role of the professional is to ensure that the person's rights are recognised and realised: this includes explaining laws, policies and processes so that at a later point the woman or young person can become their own advocate. Such sharing and discussing can shift a process from acting for to acting with someone.

*(...) any intervention plan has to be done according to the woman's will. Because, in the end, we realise that women are the experts of their own risk, of the risk they are living.* (NGO women's centre, DV, Portugal)

## **2.4 Accepting uncertainty: too early or too late, too much or not enough?**

*Yes, at the best one would like 100 percent safety: 100 percent, but you just can't have that.* (Child care worker, CAN, Germany)

*(...) it is important that all professionals become aware that victims' feelings are very ambivalent.* (magistrate, DV, Portugal)

*And that is exactly our courage or no courage or what, our decision how we sometimes, do we address a problem, do we not address it, the reasons why we delay something, this is really difficult.* (emergency residential care, CAN, Germany)

The ethical dilemmas of intervening too early or too late, too much or not enough, trouble professionals across countries and professional groups, leading to a search for more effective ways to assess the degree of danger or potential harm. This can be perceived as a tightrope walk but usually the path is much broader, leaving room for alternatives in the process of decision-making. And even the best risk assessment and risk management systems do not resolve the questions of when to intervene and how much.

*So it's like at the beginning it all happened too fast and now everything is all happening too slowly. (adolescent, CAN, England/Wales)*

*I really felt seen and that somebody listens to me, not, when I'm speaking, it somehow goes in one ear and out the other. And yes, that was actually very good for me. (adolescent, CAN, Germany)*

The abstract requirement to assess a (potential) risk of harm needs to be balanced with the concrete situation of intervening into the lives of individuals. We should, therefore, wherever possible, begin from engagement with the victim or family. This raises questions about the ethics of collecting information from other agencies before speaking with the person/s themselves. Learning how to ask about violence and abuse confidently, with care and sensitivity, and being able to listen to and hear what is said are basic components of ethical practice for a range of professionals. At the same time we know that it is not always possible to tell. Constraint, coercion and distrust act as barriers. Here professionals may have a responsibility to investigate further whilst keeping open lines of communication, to be curious and open to what you do not know. Women, children, and most of the time parents, should feel that professionals prioritise cooperation with them over that with other professionals.

*[NGO] are taking the fear from me. (woman, TSE, England/Wales)*

*Of course, we realise that identifying the woman as a victim of a crime will frustrate her more than it will support her because it will crumble the [self-]image, all those expectations that she created. (NGO, TSE, Portugal)*

There will be occasions where it is necessary to take protective action even when it has not been requested. This requires a weighing of interests. These may be set generally and bindingly (by law, guidelines) or require professional judgement in each case: this requires both the courage to act and not to act, courage to not just follow the rules, but to explore what action might be the most beneficial to the person concerned. This reflective process means that professionals themselves need support, spaces in which they can explore the potential consequences of their actions, including for the relationship they have with the women, children and parents.

## 2.5 Confidentiality, transparency and relationships of trust

*Ms. Y. She's the one that is there for me. Now I am relaxed not like before. (...) She knows everything about me. Yeah, I can tell her everything, I trust her that she is not going to let it go. (woman, TSE, Germany)*

*Yes, absolutely, immediately, the first conversation, when I came to Ms. X, I got the impression: this lady listens to you, she's there for you and she believes you. (woman, DV, Slovenia)*

*When I went to the institution I was assigned a tutor. My tutor is an incredible person. She is like a mother to me. Inside the institution she treats me like anyone else, outside the institution she is a mother and treats me as if I was her own daughter.* (adolescent, CAN, Portugal)

*It was all confidential and private. They [NGO] were not sharing my personal matters to anybody else – [which is] – really important – I am not sharing with anybody. If I have shared, that person – the person I am sharing with has to be trustworthy – they really went deep down and understood.* (woman, DV, England/Wales)

*(...) we could start by offering her something, a safe place to stay, something to eat, someone who speaks her language. In that way as well, trust can be built.* (NGO, TSE, Germany)

To experience violence and abuse, especially from a partner or family member, is to have trust betrayed. Building and maintaining trust in helping relationships is therefore a necessity, but also a challenge. A trusting relationship with professionals matters intensely to women and children who overcome exploitation, abuse or neglect: creating this requires ongoing balancing between confidentiality and transparency. The right to informational self-determination should be respected as much as possible, and anonymity should be preserved in any large data sets. But there are occasions where confidentiality cannot be promised or guaranteed. In these cases honesty and transparency should be the primary orientation: the limits of confidentiality must be made clear from the outset and the likely outcomes of sharing information made explicit. Women, young people, parents and, where appropriate, children have the right to know who information will be shared with. This returns control to the women, children, and parents, to decide how much to tell and to whom, and how much trust to place in professionals. Honesty and transparency, especially when taking actions that women, children, and parents may be wary of, or that are unwelcome, are also ways of becoming worthy of trust. It is critical to remember that information sharing is an act that can help or harm: it must, therefore, be thought about carefully each time. To share information is not a protective or helpful intervention in itself, it is what is done with information that can make a difference.

*This obligation to report often can put the victim at a higher-risk. (...) Sometimes, people move forward without caution.* (victim's centre, IPV, Portugal)

*Where there's confidentiality you understand about consent and an opportunity to build trust.* (lawyer, TSE, England/Wales)

*You pass this information on and hope that something will happen.* (teacher, CAN, Slovenia)

*(...) a child confides something to us and if we pass this information on, we'll be abusing their confidence in a way, so I think it's important to explain to the child.* (NGO, CAN, Slovenia)

## 2.6 Prioritising protection and rebuilding lives

*I had to go to court as a witness, but because I didn't want to, I said that it didn't make sense for me to go to court. (...) But they made me go.* (adolescent, CAN, Slovenia)

*My adviser then called me and said: See, I do not ask you for permission, I have already informed the police, but the report we're going to do together.* (woman, DV, Slovenia)



Whilst international human rights standards require that violence and abuse to women and children is criminalised, freedom from violence needs to be placed at the forefront of professional guidance, if in conflict with criminal prosecution. An ongoing ethical challenge is how to create systems that deliver both protection and prosecution; it remains the case that taking part in prosecutions is frequently experienced as having no control, and being demeaned. These are unfair burdens, especially if the criminal justice system fails to provide safety for women or children before, during and after proceedings. The conflict and ethical dilemmas here cannot be resolved only through victim's rights in proceedings, although enabling these rights to be realised is necessary. There are times when the responsibility of the state to prosecute sits in tension with the self-determination of a woman or the best interests of a child. Some minority communities are less likely to see criminal justice systems as sites of safety/protection or indeed justice – particularly where male family members experience racialised forms of harassment/surveillance.

Contested understandings of what is just are in play here, and need to be considered. We need to ask the fundamental question of how criminal law can be ethical if it fails to protect women or children in the prosecutorial process or if it overrides the necessities to provide protection and support. If a prosecution results in a woman or child having to live with ongoing fear of retaliation, needing to move away from a community they are part of, or being rejected by other family members, what has been gained?

*Women have already been denied any voice or control so to deny them choice [about sharing information] again would be replicating their experiences of trafficking.* (NGO, TSE, England/Wales)

*She keeps my privacy, I can tell her everything.* (woman, TSE, Germany)

## 2.7 Culture and ethnicity as one lens

*Yes, my mother is African. Me, I am not African.* (woman, TSE, Germany)

*Culture is another, very necessary, but just one other lens through which you approach the case.* (lawyer, CAN, England/Wales)

*The truth is that, between the need, at least the social demand, of respecting the culture and the need to intervene, this issue is not easy.* (statutory sector social worker, CAN, Portugal)

*We pigeon-hole people whether 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.* (NGO, DV, Germany)

The same right to protection regardless of the cultural or ethnic background of a woman, child or family is, from a human rights standpoint, an undisputable normative frame and principle (non-discrimination). Having the same rights, however, does not mean that everyone should be responded to in the same way: it does not follow that interventions should be exactly the same, on the contrary, they need to be adapted to individual contexts.

Professionals from majority cultures often express less confidence in their practice when working with women and/or children from minority communities. Some draw on cultural narratives to explain this. This can stem from an authentic wish for deeper understanding of histories different to their own, but it can also reflect an unquestioned attribution of culture only to those who do not belong to the majority. Culture is thus seen as relevant only to those from minorities, often deemed as 'more traditional' even though in the very acts of seeking/

accepting support women, children and parents are challenging such views. Here lies the danger of stereotyping, of thinking of ‘culture’ as some unchanging essence, as an inherited and fixed attribute. This may lead to labelling as ‘us’ and ‘them’; of implicitly excluding minority children or families, women and men from the circle of trust and belonging.

*It's part of their culture that a woman mustn't – that she must bear it, that she mustn't leave.* (prosecutor, DV, Slovenia)

*Our experience, especially with Roma women, is that you can't get a Roma woman out of her clan. That is really as you said, they grow up like that.* (Police, TSE, Germany)

In the field of intimate partner violence interactions can prompt what has been termed a ‘triple defensiveness’: women are defensive with professionals about their victimisation; how their mothering will be judged; and about being a minority woman. This is why many appreciate being able to access specialist services run by women from minorities, it creates a different basis for interaction.

In the field of child protection there is also the trap of attributing maltreatment to a cultural or religious background, rather than exploring, as would be usual practice, the particular family situation: current living conditions, individual, sometimes transgenerational learning in which culture may play a more or less important role.

In the field of trafficking for sexual exploitation immigration and nationality status locates victims structurally as ‘others’ by placing cooperation in criminal proceedings as an exchange for potential and partial protection. Furthermore, limitations on the reflection period and distinctions between EU and third party nationals may remove even the most minimal of support.

*Unfortunately we can only support those who are in the NRM [National Referral Mechanism]. (...) We cannot guarantee the safety of non-EU women. They thought they were safe and then they end up sleeping in a bus shelter.* (social worker NGO, TSE, England/Wales)

The diversity of many countries and in cities means that many professionals will encounter children and women who have a different heritage to their own. Responding to these challenges by developing ‘cultural competence’ has limits: it is simply not possible to have even cursory knowledge of the range of all the backgrounds, histories and contexts that one might encounter. There is also an implicit assumption in this concept that there are shared cultural beliefs and values across whole groups, which is another form of stereotyping. Moreover, the expectation that professionals should be ‘cultural competent’ can lead to feelings of inadequacy when faced with someone from a background the professional knows little about.

*Yes, and intercultural competences, when I'm thinking about the children in our neighbourhood, 50 different nations, where is my knowledge about them?* (headmaster primary school, CAN, Germany)

*We would ask specific questions in order to look at what we needed to put in place, and what they need to be safe.* (NGO, DV, England/Wales)

We propose an alternative approach, what we are terming ‘professional curiosity’: to be a hearer who seeks to understand from another’s perspective, to imagine what might be troubling them and then explore this in conversation. This means placing each woman, child, parent in the position of a knower, a holder of knowledge about their history, social location, and cultural and social experiences. Supporters can only share this if they ask and

engage in conversational process to ensure they are understanding rather than assuming. Key things professionals need to ask about include what it means in their context to be a victim, and what concerns and fears do they have about engaging with state and support agencies. Respectful and appropriate questioning here may also reveal critical information relevant to securing protection. Asking about and exploring these aspects of lived experience is also a route to earning trust, being worthy of trust to those who have been victimised as well as the family members they are working with; over time this will also promote trust on one's capacity and capability as a professional.

*But it [the fear] is because we don't know very well the reality and culture. (...) we fear, many times, what we don't know. (police, DV, Portugal)*

*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. (statutory sector social worker, DV, Germany)*

*She asked me like what kind of family I would feel comfortable in, is it OK, is there any specific religion, stuff like – she just wanted me to feel comfortable, asking me if I want to be, if I want to stay. (adolescent, CAN, England/Wales)*

Culture and race/ethnicity are just one lens through which to approach children, young people and women. Other lenses may, at certain points or for individuals, be less or more significant. This again is something to be explored with the person concerned. It is often only within specialised services, or even mutual support from others in similar positions, that these complexities of location and identities can be fully articulated and recognised.

*We sort of comfort each other by hearing our stories. (woman, TSE, England/Wales)*

*It strengthens you, where you just feel now you can breathe for yourself (...) that was the first time I felt safe. (woman, TSE, England/Wales)*

## 2.8 Ethical practice needs resources

Food is the first thing, moral follows on. (Bertolt Brecht)

At the level of the national and local state ensuring key components of support and protective measures are available is a foundation for an ethical informed practice itself. If vital support and assistance is not available and accessible when women, children and parents need them, protection in its broader sense is in question. Therefore, access to appropriate support for women, children and families, sufficient in relation to their needs, is indispensable.

*Then we got a family assistance and then things were getting a little bit better for me. (adolescent, CAN, Germany)*

Not every service/institution is appropriate to take on the responsibility of engaging with women, children or parents who seek help. But if they are approached, and someone begins to speak about abuse, there is an ethical obligation to develop a welcoming practice of initial listening and hearing and then referral to more specialised services.

For those for whom language, knowledge and access to rights represent barriers to protection and support it is the responsibility of services to address these. It is up to the systems to find ways to get into contact with those who are currently excluded. This involves reaching out – ‘outreach’ – to places and spaces which marginalised groups do access. Specialised support services led by minority women/professionals, crafted from knowledge of minority communities, is an encouraging model of such an approach. Independent NGOs are uniquely positioned in cases of violence, they usually have more opportunities to be flexible, respond to individual needs and situations. For ethical practice across intervention chains this needs to be valued and maintained.

*It would be difficult for women to go through this on their own, without these organisations. (woman, DV, Slovenia)*

### 3 The Ethical Professional

*The worst part is, then they say, we give you these three months, stay in this building, don't go to City N, not even City D. What? We are just different color. But the same eye, body, it's not so different. We are all human beings. So treat me like a human being. (...) Not like an animal you keep. (woman, TSE, Germany)*

To be in connection with other human beings is a responsibility of ethical practice which requires responsiveness and space for reflection. Within this professional curiosity, asking questions is less a sign of ignorance, and more the communication of a genuine interest in understanding and learning.

Building trusting relationships is crucial to an ethically informed practice in the fields of violence against women and child abuse and neglect: this requires confidentiality, if this cannot be given in the particular case, situation or professional relationship, transparency and honesty must be the hallmarks of interaction.

Ethical engagements with those in need of protection and support cannot be crafted only through resorting to rules/guidelines. Rather these have to be in conversation with the wishes and needs of particular persons, with consideration of what the intended and unintended consequences of various courses of action might be. Ethically informed practice requires space for professional judgement, since it is here that the needs and contexts of the particular woman, child or family can be taken into account.

Culture/ethnicity is one lens professionals look through when working with women, children and families in their search for understanding and appropriate interventions. And this lens needs to be more like a kaleidoscope, allowing for variations and changes of horizons between individuals and groups.

To achieve an ethical practice professionals need space for reflection on their actions, their relationships with the women, children and parents, their positioning as a professional, their beliefs and frames of reference. Therefore, explicit discussions on and learning about professional ethics, peer supervision, and other supportive spaces are essential to becoming and remaining an ethical professional when intervening in violence against women and abuse of children.

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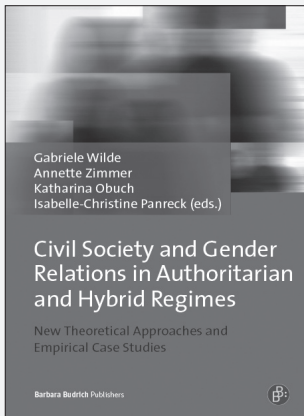
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