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Why Domestic Violence Remains Under-Reported

A CASE FOR MIGRANT COMMUNITIES IN GERMANY

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Abstract

As an identified pervasive global problem, it is quite shocking that domestic violence (DV) still remains under-reported. In Germany, this problem has been compounded by the recent influx of immigrants, who do not share the same cultural/ethnic background of Germans. To gain a deeper understanding on why DV remains under-reported within migrant communities in Germany, this thesis aimed to identify influencing factors which led to the existing negative reporting behaviors. Through an in-depth analysis of existing national laws, prevention and civic intervention programs, as well as the operationalization and implementation of both laws and intervention programs, it was identified that a stronger legislative framework is needed to ensure greater legal protection. In order to stimulate empowerment amongst victims, a more sustainable and manageable network of referral system is also needed. Additionally, through a deeper, interdisciplinary understanding of DV, as well as the role of culture, especially relevant for DV victims of migrant communities, gender- and culture- sensitive approaches must be applied by professionals throughout all intervention stages. Further research is also recommended to understand civic populations' perceptions of DV, paving way for better long-term prevention and intervention strategies.

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List of Abbreviations

AufenthG	Aufenthaltsgesetz (German Residence Act)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BMFSFJ	German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
CAT	Convention Against Torture
CAT Committee	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
EU	European Union
FamFG	Familienverfahrensgesetz (German Act on Court Procedure in Family Matters and Jurisdiction over Non-Contentious Matters)
GewSchG	Gewaltschutzgesetz (German Protection Against Violence Act)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LPartG	Lebenspartnerschaftsgesetz (German Civil Partnership Act)
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
StGB	Strafgesetzbuch (German Criminal Code)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council
UN HR Committee	United Nations Human Rights Committee
UNGA	United Nations General Assembly

1. INTRODUCTION

“I did not know any different. This has always been the way my life has been since the day we got married. I had no way out.”

“He never felt he was at fault for anything. This was the way it was at home all the time.”

“I could not reach out to anyone. I didn’t even know that I could get help. I barely spoke German. I didn’t even know there was such a thing as a Frauenhaus.”

“My children begged me, saying it was enough, that they couldn’t take it anymore.”

“We could not be placed at the Frauenhaus because there were no free spaces left and my son would otherwise be separated from us.”

“We were asylum seekers in Germany. We had no idea what would have happened to us.”

“Had it not been for my neighbor, Mdm. Rosa, I don’t know what would have happened to me and my children”*

“Before, I felt so worthless. All the years of insults and verbal abuse, I started to believe I was worthless. But now, I am slowly starting to feel so much better!”¹

¹ The excerpts were taken from an interview with Nadia, a domestic violence survivor of migrant background (Albanian) in Germany who had gone through the justice system and system of referral network in Germany. The following sentences were relayed in the German language during the interview, and have been translated into English for the purposes of this thesis. Names have also been changed to protect the security and privacy of all parties involved, due to the sensitive nature of the subject-matter. See Chapter 5 for full Case-Study.

Case 1:

The excerpts on the first page of this thesis were taken from a survivor of domestic violence, Nadia*, who shared her experiences, from the beginning when it all started, all the way to the very end, where she was finally able to escape the clutches of her abusive husband. The excerpts were selected to illustrate the different thoughts that went through her mind, spanning at least 15 years, from Albania, where they were originally from, to Germany, throughout the *various stages of her life with her abusive husband*, in dealing with the situation. Not only was she unaware that what she was going through was indeed domestic violence, she was not empowered to ‘fight’ back. She saw the occurrences as ‘normal’ and accepted it as part of her life.

As an asylum seeker, she *was also not able*² to seek assistance on her own due to the various concerns that she had had and based on her unique circumstance, she was not even certain help was available to her and that she should have sought it out, even when her own health was finally threatened. She had three children depending on her, and she had concerns for their safety and also financial security. She also came from a different ethnic background with different cultural ideologies on what was accepted and what was not. And when she was finally able to access some form of assistance, there were layers upon layers of systemic barriers that she had to overcome. These barriers were not simple and she was only able to overcome them with extensive help from the relevant professional persons and agencies.

² Here, the phrase *was also not able* (to seek assistance) is used instead of *did not* (seek assistance) because not only did Nadia face systemic challenges, she had not at first recognized the abuse, and later accepted her situation. This behavior is common in victims of domestic violence, especially those from migrant backgrounds. See Chapter 2 for detailed description of the Six Stages of Violence, identified by Liz Kelly.

And most importantly, she had to endure the psychological trauma throughout - from the beginning of her situation in Albania, whilst going through the system of assistance in Germany, and finally, until today, on her process to recovery and to being empowered.

Case 2:

Recently, on December 27, 2017, in Kandel, a small town in the southwestern part of Germany, with barely 10,000 inhabitants attracted national attention and made it on the news. The particular event was not at all positive - it was the murder of local teenager of only 15 years, Mia Valentin, committed by her Afghan ex-boyfriend, Abdul Mobin Dawodzai, who claimed to be 15 when he entered Frankfurt, as a refugee, without papers³.

Mia was stabbed multiple times to death in a local drugstore with a 20-centimeter long kitchen knife. Before her death, Mia had also been coerced, received several threats and insults, and had her personal rights violated from Abdul after they had broken up. After investigations to ascertain his actual age, Abdul was determined to be around 20 years of age. According to investigators, his asylum application was rejected in February 2017, but he was not deported due to a prohibition to deport, which was established under the German Residence Act (Aufenthaltsgesetz - **AufenthG**)⁴.

Abdul is still in custody and currently on trial in Landau for the murder charge. The trial is not open to public due to him being a minor⁵.

³ K. Bennhold, 'A Girl's Killing Puts Germany's Migration Policy on Trial', *The New York Times*, 17 January 2018, <https://www.nytimes.com/2018/01/17/world/europe/germany-teen-murder-migrant.html> (accessed 23 June 2018).

⁴ 'Mutmaßlicher Täter von Kandel war unter 21 Jahre alt', *Die Welt*, 20 February 2018, <https://www.welt.de/politik/deutschland/article173769922/Gutachten-Mutmasslicher-Taeter-von-Kandel-war-unter-21-Jahre-alt.html> (accessed 23 June 2018).

⁵ 'Refugee stands trial in Germany over alleged murder of teen', *Deutsche Welle*, 18 June 2018, <http://www.dw.com/en/refugee-stands-trial-in-germany-over-alleged-murder-of-teen/a-44271140> (accessed 23 June 2018).

Case 3:

Back in 2005, Hatun Sürücü was killed by her own brothers at a young age of 23 in Berlin because she had divorced her cousin, whom she was forced to marry at 16 years and had a son with in 1999, and was reportedly dating a German man. Her murder had sparked debate over the issue of honor killings amongst the Muslim migrant community in Germany.

On Feb 7, 2005, Hatun was shot thrice to the head and murdered by her brothers at a bus stop, just three hundred meters from her apartment. In an interview with *Die Welt*, Ayhan Sürücü, accused, had confessed that he had thought of killing his sister for awhile and had felt pleased with himself for having accomplished it⁶. Hatun's modern lifestyle was not approved by her family who had considered it as an insult to their family's honor. She had taken her veil (*hijab*) off, moved out of her parents' apartment, and found refuge in a dormitory for young mothers, where she managed to complete her secondary school education. Her brothers also feared that Hatun's son, their nephew, would be raised in the same modern style as his mother, and not according to the rules of Islam.

A trial which happened over the course of seven months cross-referenced Hatun's family members. Even though Hatun's younger sister denied that the family had any plans in the murder, the family chose to remain silent. Prior to the trial, which began in September 2005, the accused brothers denied to the murder. In the end, only Ayhan was sentenced to almost ten years imprisonment with the other two brothers acquitted due to lack of proof of

⁶ D. Von Matthias, J. Goll, 'So brachte Ayhan Sürücü seine Schwester Hatun um', *Die Welt*, 26 July 2011, <https://www.welt.de/vermisches/weltgeschehen/article13504056/So-brachte-Ayhan-Sueruecue-seine-Schwester-Hatun-um.html> (accessed 23 June 2018).

involvement. The court decision had sparked a nation-wide debate over tougher punishments and legal boundaries⁷.

Ayhan Sürücü has been deported back to Turkey as of 2014⁸.

1.1 The Current Situation in Germany

What are the similarities in the three cases and why have they taken center-stage in this thesis? The simplified answer - they are all classic domestic violence (DV) cases⁹ *and* all three involve the migrant population in Germany. Fortunately, at least one victim did not lose her life and survived the ordeal, while the other two sadly did not survive. Mia had been harassed and threatened by her ex-boyfriend, while Hatun's murder was premeditated by her own family. The individual stories from both Mia's and Hatun's perspectives will never be heard but Nadia's had a slightly more positive ending. All three cases went through the German justice system and the network of referral system. Nadia sought assistance through going to a women's shelter (*Frauenhaus*) with the help of a neighbor¹⁰, Mia's parents had contacted the police¹¹, and Hatun had sought refuge in a dormitory for

⁷ S. Beikler, 'Sürücü-Mord kommt wieder vor Gericht', *Der Tagesspiegel*, 19 August 2007, <https://www.tagesspiegel.de/berlin/polizei-justiz/berliner-justiz-sueruecue-mord-kommt-wieder-vor-gericht/1017588.html> (accessed 23 June 2018).

⁸ 'Verurteilt wegen "Ehrenmord" Mörder von Hatun Sürücü abgeschoben', *Berliner Zeitung*, 4 July 2014, <https://www.berliner-zeitung.de/berlin/verurteilt-wegen--ehrenmord--moerder-von-hatun-sueruecue-abgeschoben-3093864> (accessed 23 June 2018).

⁹ DV does not only involve persons in romantic relationships, they also include acts of violence perpetrated amongst family members. What DV is and the players involved will be discussed in greater depth in Chapter 2 of this thesis.

¹⁰ See Chapter 5.

¹¹ N. White, 'Afghan 'child refugee' goes on trial in Germany for allegedly stabbing to death 15-year-old girl after she ended their relationship, sparking protests over Merkel's immigration policy', *Daily Mail Online*, 18 June 2018, <http://www.dailymail.co.uk/news/article-5856291/Afghan-child-refugee-goes-trial-Germany-murder-girlfriend.html> (accessed 24 June 2018).

young mothers to gain independence from her family¹². All three cases also illustrate the complexity of DV as a crime and highlights the importance of a thorough understanding of its multifaceted nature, deserving of an interdisciplinary approach to combating it.

In Germany, DV, or better known as '*häusliche Gewalt*', along with gender-based violence (GBV) and violence against women (VAW) seem to remain a pressing issue, as highlighted by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) in the 'Concluding observations on the combined seventh and eighth periodic reports of Germany' in March 2017¹³. Germany was commended for achieving legislative progress through the amendment of section 177 of the German Criminal Code (Strafgesetzbuch - **StGB**)¹⁴ and for improvement efforts in eliminating discrimination against women through the creation of the '*Hilfetelefon - Gewalt gegen Frauen*' a national violence against women support telephone hotline in 2013¹⁵. Despite the recent progress as well as existing prevention and intervention strategies in place¹⁶, DV still remains to be part of many women's daily lives, regardless of their socioeconomic status or education level, with greater physical and sexual violence faced by victims of migrant backgrounds¹⁷.

¹² S. Beikler (n 7).

¹³ UN Committee for the Elimination of All Forms of Discrimination against Women (CEDAW Committee), 'Concluding observations on the combined seventh and eighth periodic reports of Germany', (9 March 2017), UN Doc CEDAW/C/DEU/CO/7-8, Para. 25-26.

¹⁴ Ibid., Para. 4 (a).

¹⁵ Ibid., Para 5 (e).

¹⁶ German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), 'Second Action Plan of the Federal Government to Combat Violence Against Women', (Berlin, 28 November 2007), <https://www.bmfsfj.de/bmfsfj/meta/en/en/publications-en/second-action-plan-of-the-federal-government-to-combat-violence-against-women/95690> (accessed 24 June 2018).

¹⁷ Ibid., p. 8.

According to a representative study commissioned by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, better known as the 'Bundesministerium für Familie, Senioren, Frauen und Jugend' (BMFSFJ) in 2003, in which 10,264 women residing in Germany between ages 16 - 85 were interviewed, as many as 25% of the respondents have experienced some kind of physical and/or sexual abuse by their current or former partner at some point in their lives¹⁸. Additionally, 50.2% of perpetrators of physical violence were partners or former partners, making for the highest group; and next to that was family members, at 30.1%¹⁹. For sexual violence, perpetrators who were partners or former partners were at 49.3% and perpetrators who were family members were 10.1%²⁰.

In a more recent survey published by European Union Agency for Fundamental Rights (FRA) in 2014, it was indicated that 67% of women in the European Union (EU) have experienced physical or sexual violence since the age of 15 and in the 12 months preceding the interview²¹. The survey also found that 35% of women in Germany have experienced physical violence or threats by a partner or a non-partner since the age of 15²². 22% of the women surveyed in Germany stated that their perpetrators were either their current and/or

¹⁸ German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), 'Health, Well Being and Personal Safety of Women - A Representative Study of Violence against Women in Germany', (Berlin, Summer 2004, reprint November 2006), <https://www.bmfsfj.de/bmfsfj/meta/en/en/publications-en/health--well-being-and-personal-safety-of-women/95704?view=DEFAULT> (accessed 24 June 2018), p. 9.

¹⁹ Ibid., p. 13.

²⁰ Ibid., p. 14.

²¹ European Union Agency for Fundamental Rights (FRA), 'Factsheet' in 'Violence Against Women: An EU-wide Survey', (March 2014) <http://fra.europa.eu/en/publication/2014/violence-against-women-euwide-survey> (accessed June 24 2018), p. 1.

²² FRA, 'Main Result' in 'Violence Against Women: An EU-wide Survey', (April 2014) <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report> (accessed June 24 2018), p. 24.

previous partners²³, with 3% having experienced physical and/or sexual violence by their current and/or previous partners in the preceding 12 months before the interview²⁴. These statistics are in line with those of the BMFSFJ nation-wide study.

The situation is further aggravated by the recent influx of asylum seekers and refugees Germany has taken into the country throughout 2015 and early 2016²⁵, bringing with them their cultures, values, and norms, which include not recognizing women's fundamental rights. "*Women and men from these cultures tolerate and expect conflict and interaction patterns that "we Germans" understand to be violence*"²⁶. General crime rates have also seen a sharp increase, according to a criminology study commissioned by the BMFSFJ in 2017, which was carried out by three renowned criminologists from the Zurich University of Applied Sciences, linking and blaming immigrants as the root cause with 92.1% of this increase attributable to asylum seekers²⁷. This has propelled fear amongst Germans and tolerance has been tested more and more with assertions that migrants are making Germany less 'safe'²⁸.

²³ Ibid., p. 28.

²⁴ FRA, 'Main Result' in 'Violence Against Women: An EU-wide Survey', (n 22), p. 34.

²⁵ UN Doc CEDAW/C/DEU/CO/7-8, (n 13), Para. 7.

²⁶ Grafe, Bianca & Hagemann-White, Carol: Working Paper on Intervention Against Domestic Violence in Germany, from the research project "Cultural Encounters in Intervention Against Violence" (CEINAV), in partnership with The German Institute for Youth Human Services and Family Law (DIJuF) e. V. (January 2015), https://www.dijuf.de/tl_files/downloads/2016/Forschung%20und%20Projekte%20Seite/Projekt-CEINAV/05_DV%20working%20paper%20DE.pdf (accessed June 25 2018), p. 12.

²⁷ BMFSFJ, 'Zentrale Befunde des Gutachtens' in 'Zur Entwicklung der Gewalt in Deutschland, Schwerpunkte: Jugendliche und Flüchtlinge als Täter und Opfer', (January 2018), <https://www.bmfsfj.de/bmfsfj/service/publikationen/zur-entwicklung-der-gewalt-in-deutschland-/121148> (accessed June 25 2018), Para. 1.2

²⁸ J-M. Hauteville, 'Study blames migrants for increased violence, calls for integration', *Handelsblatt Global*, 4 January 2018, <https://global.handelsblatt.com/politics/study-blames-migrants-for-increased-violence-calls-for-integration-871383> (accessed 25 June 2018).

According to an analysis that the BMFSFJ carried out on the health and violent situation of women with and without migrant backgrounds, more women with migrant backgrounds experience domestic, sexual, and psychological violence as compared to other women in Germany. 46% of women with migrant backgrounds experienced physical or sexual violence from a current partner as compared to only 13% of women of German origin²⁹. Immigrants often come from a '*patriarchal society*' where men are viewed as aggressive and macho. These men often feel that they are entitled to discipline their wives who often have less autonomy, and this level of violence is considered '*normal*'³⁰.

Many of these women have also faced DV and GBV from their country of origin, and the abuse continued with them along their way while escaping and many are still facing DV and GBV whilst in refuge in Germany, even though actual numbers still remain unknown³¹. An investigation by news service, Integrated Regional Information Networks (IRIN), which were carried out in Berlin's refugee camps showed that women in the camps face "*grossly inadequate protection from sexual and gender-based violence*," with many of them living in constant fear of attack, prompting accusations that Germany has failed female refugees³² due to the lack of legal protection³³.

²⁹ BMFSFJ, 'Gesundheit - Gewalt - Migration - Kurzfassung' in 'Gesundheit-Gewalt-Migration: Eine vergleichende Sekundäranalyse zur gesundheitlichen und Gewaltsituation von Frauen mit und ohne Migrationshintergrund in Deutschland', (Berlin, July 2009, 3rd Edition), <https://www.bmfsfj.de/bmfsfj/service/publikationen/gesundheit-gewalt-migration/80598> (accessed 25 June 2018), p. 14.

³⁰ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 14.

³¹ S. Schmollack, Un er wird es wieder tun, Frankfurt am Main, Westend Publishing, 2 May 2017, p. 248.

³² 'Germany 'grossly' failing female refugees on sexual violence: report', *The Local DE*, 11 May 2017, <https://www.thelocal.de/20170511/report-finds-wide-spread-sexual-violence-against-refugee-women-in-berlin> (accessed 25 June 2018).

³³ Dr. Delal Atmaca, DaMigra e.V.'s CEO and Advisory Board member shared her concerns in her opening speech at the #MITOO Conference on International Abolishing Violence Against Women Day on 25 November 2017 in Frankfurt am Main. See publication DaMigra e.V., 'Migrantinnen* auch! Nein zu Gewalt an Migrantinnen* und geflüchteten Frauen*!', (November 2017) <http://www.damigra.de/publikationen/> (accessed 26 June 2018), p. 14.

As a state party to both the Convention on the Elimination of Discrimination Against Women (CEDAW)³⁴ and also recently to the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention³⁵, Germany has a legal obligation to prevent GBV and VAW, which includes DV. Despite not having a legal definition of DV³⁶, Germany has set up a comprehensive federal action plan³⁷, providing for a positive outlook in the attempt to prevent it, but the problem still persists due to the inherent gaps between policy and actual implementation³⁸.

1.2 Research Aims, Scope, and Relevance

The main goal of this research is to understand the reasons behind *why domestic violence remains under-reported within the migrant communities in Germany*, even despite having the necessary prevention and intervention strategies set in place. This is the main research question that guides this thesis, moving forward. In order to answer this over-arching question, several things need to be analyzed. First of all, there is a pressing need to determine whether *the laws are sufficient and comprehensive* enough to promote positive

³⁴ Germany ratified CEDAW on 10 July 1985. See *Reporting Status for Germany*, United Nations Office of the High Commissioner (OHCHR), http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DEU&Lang=EN (accessed 25 June 2018).

³⁵ Germany recently ratified the Istanbul Convention on 12 October 2017 and entered into force on 1 February 2018. Germany made three reservations in accordance with Article 78 (2) of the Convention. See *Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence*, Council of Europe (CoE), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=0ZOIcxZe&coeconventions_WAR_coeconventionsportlet_enVigueur=false&coeconventions_WAR_coeconventionsportlet_searchBy=state&coeconventions_WAR_coeconventionsportlet_codePays=GER&coeconventions_WAR_coeconventionsportlet_codeNature= (accessed 25 June 2018).

³⁶ TrustLaw Connect, *A Landscape Analysis of Domestic Violence Laws*, Thomson Reuters Foundation, December 2013, <http://www.trust.org/publications/i/?id=02bf55c6-0d6b-4799-b9ba-eab57c5b93a9> (accessed 25 June 2018). p. 124. This is also mentioned in Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 2.

³⁷ BMFSFJ, 'Second Action Plan of the Federal Government to Combat Violence Against Women', (n 16).

³⁸ Grafe, Bianca & Hagemann-White, Carol, (n 26) laid out some intervention challenges experienced by professionals. See Chapter 5.

reporting behavior. Secondly, there is a need to *clarify the role of civil society and understand to what extent do they play a part* in influencing victims' reporting behaviors. In this particular section, the role of cultural norms in connection to applicable DV theories need to be explored in order to provide some insights into reporting behaviors for this particular group of victims. A separate chapter analyzing the *current implementation of existing laws, as well as prevention and intervention strategies* will provide a clearer picture of factors that might influence victims' reporting behavior. And finally this will help uncover *how Germany can address the issue in a more effective way*.

The purpose of this thesis is not to identify the already known information. It has already been established that DV is a global problem, with all available data pointing to its prevalence³⁹ and that it is also considered a gender-based crime⁴⁰. However, due to DV's multifaceted nature⁴¹, each case is unique, regardless of whether they get reported or not - albeit with similar elements throughout⁴². Internationally, in countries with available data, less than 40% of women who experience violence seek help. Amongst those who do, most reach out to family and friends. Very few victims look to formal institutions and mechanisms, with less than 10% of victims having contacted the police⁴³.

³⁹ UN Women, Facts and figures: Ending violence against women, August 2017, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#notes> (accessed 25 June 2018).

⁴⁰ See Chapter 2.

⁴¹ A. Robinson, G. Pinchevsky, and J. Guthrie, Under the radar: policing non-violent domestic abuse in the US and UK, *International Journal of Comparative and Applied Criminal Justice*, vol. 40, no. 3, 2016, p. 196.

⁴² The actual acts of violence differ from case to case but the standard elements of violence remain the same. To clarify, for example, one case involves a partner who continually beats his wife, whilst the other involves a partner who continually subjects his wife to verbal abuse. Both cases are substantively different but they are essentially domestic violence cases. See Chapter 2.

⁴³ United Nations (UN) Statistics Division, World's Women 2015: Trends and Statistics, Department of Economic and Social Affairs, (New York, 2015), https://unstats.un.org/unsd/gender/downloads/WorldsWomen2015_report.pdf (accessed 25 June 2018) p. 159.

The scope of this thesis directly covers DV victims of migrant backgrounds and communities. This includes both classes of immigrants, legal and illegal. Examples of legal immigrants include international workers and students, as well as persons residing in Germany who are awaiting for approval and/or have been granted refugee and asylum status. To simplify, these are essentially persons who have obtained a legal status to reside in Germany, regardless of duration and permanence. Examples of illegal immigrants include those who have exceeded their original approved length of residence in Germany, those whose refugee and asylum applications have been denied, as well as those who have clandestinely entered Germany without legal permission. It should be noted that the country of origin of the DV victims is of no impact to the analysis done in this thesis.

The applicability of this thesis may expand beyond Germany's borders in that it looks to understand DV as a crime, as part of gender-based violence (GBV), since we are viewing it from a social science perspective, and bearing in mind the role culture has to play in influencing DV prevalence and understanding thoroughly what makes for positive and negative reporting behaviors. Additionally, through the understanding of the various cultural backgrounds, the findings in this thesis can have interdisciplinary applicability, with the potential to guide further research in other DV-related sub-topics, such as women and employment, education, protection of children affected by DV, as well as other related social science topics.

1.3 Methodology and Outline

The research in this thesis has been conducted from a social science perspective and through an interdisciplinary approach. In this case, DV is not only viewed from a normative standpoint but also as a crime that requires both criminal and civil remedies. By applying an inclusive approach, the human rights of DV victims are further enhanced through a greater understanding of the problem, viewed through the lenses of the various actors

involved, including that of the victims themselves. This encourages an active discourse instead of a linear view. This research involves extrapolating qualitative data from primary research sources including the media, analyzing both soft and hard legal sources, as well as secondary literature exploring relevant related theories.

A major section of this thesis focuses on the actual analysis of existing applicable laws and current practices to understand whether they are efficient in promoting positive reporting behavior, as well as their successes and limitations. Additionally, qualitative interviews with three subjects were also conducted, as part of this section of the research and analysis process, with the goal analyzing the efficacy of current practices. It is important to note that the responses were collected for the purposes of either confirming or rejecting the hypothesis and are to be treated as supplements. The interviews were conducted in an informal environment and questions were semi-structured in nature. They should also be treated as reflections of the current situation, and dynamics between policy and application with the aim of providing practical insights on the issue. Names of interviewees have been changed, at their request to protect their identities, due to safety and security concerns, along with the sensitive nature of the topic.

At this point, it is also important to highlight that in order to answer the question of why DV remains under-reported within the migrant communities in Germany, there is an imperative need to understand reporting behaviors as well as the drivers behind them, especially bearing in mind the cultural difference and the complexity of DV as a crime. This may seem like taking a huge step backwards but is indeed an important one. Without understanding this phenomenon from an interdisciplinary perspective, policies will continue to be created only to fail, and perhaps at best, DV is only slightly ameliorated. Throughout the analysis in this thesis, it will become apparent that non-migrant DV victims, as well as children victims are also indirectly covered as a result even though the

main target group is of those of migrant backgrounds. Through understanding the various drivers that encourage or discourage reporting behaviors of migrant victims of DV in Germany, reporting behaviors of non-migrant victims can also be understood as well.

For the purpose of clarity within this thesis, the term DV will be used as the terminology of choice to prevent further confusion from other varying terms like IPV, or GBV, or even family violence, which are often used interchangeably. Similarly, the terms ‘women’ and ‘victim’, as well as ‘men’ and ‘perpetrators’ may be used interchangeably. This does not mean that DV victims are exclusively women and DV perpetrators are exclusively men; it is understood that DV does not discriminate against gender or sexuality, even though DV often falls under the umbrella of GBV and VAW due to the prevalence of men being perpetrators against women victims.

The thesis proceeds as follows: Chapter 2 provides a thorough background on DV as a crime and its multifaceted complexities. Chapter 3 discusses the challenges within the legal sphere. Chapter 4 looks at the role of civic engagement in DV prevention and intervention. Chapter 5 examines and critically analyzes the implementation and relationship between the law and civic engagement, connecting it to applicable DV theories in relation to culture, supplemented by the case-study interviews. And finally, Chapter 6 summarizes the thesis and provides useful recommendations moving forward as to how Germany can best respond to the problem of DV within the migrant communities.

2. UNDERSTANDING DOMESTIC VIOLENCE

2.1 What is Domestic Violence Really?

A good starting point is to rediscover and find out what DV really is, what forms of violence it entails, what its definition truly is, and why it is so important to understand in depth. Domestic Violence (DV) or sometimes known as Intimate Partner Violence (IPV), when involving a former/current spouse or partner in an intimate relationship setting, or in some cases even Family Violence (*häusliche Gewalt* in the German language), when acts of violence are perpetrated against family members, children, parents, and the elderly, is an ongoing worldwide epidemic that does not discriminate against gender, race, color, religion and culture, affects people across various socioeconomic classes, and reaches far across oceans to every corner of the world⁴⁴. It can happen to anyone and the vicious cycle of victimization prevents victims from easily getting out of the situation⁴⁵. Despite the insidious nature of this crime⁴⁶, it still has no universally accepted definition⁴⁷, with men most commonly being the perpetrators and women being the victims⁴⁸ and children being more than mere witnesses to the crime⁴⁹.

⁴⁴ Data and statistics compiled by UNWomen showed violence against women across the globe. This shows how the problem is not one that only affects a particular group of people, or a particular socioeconomic class. UN Women, Facts and figures: Ending violence against women, (n 39).

⁴⁵ Cycle theory of violence is a tension-reduction theory developed by Lenore E. Walker in 1979 to explain the patterns of behavior in an abusive relationship. See L. Walker, *The Battered Woman Syndrome*, 3rd. Edition, New York, Springer Publishing Company, 2009, p. 91.

⁴⁶ See Chapter 2.2.

⁴⁷ At an international level, the CEDAW Committee has defined DV, and at a regional level, closely relevant to this thesis, the Istanbul Convention also has an express legal definition of DV. See Chapter 3.

⁴⁸ This figure is reported at 99% of perpetrators being male. See BMFSFJ, 'Health, Well Being and Personal Safety of Women - A Representative Study of Violence against Women in Germany', (n 18), p. 10. This is in line with international findings. See United Nations (UN) Statistics Division, *World's Women 2015: Trends and Statistics*, Department of Economic and Social Affairs, (n 43), p. 154.

⁴⁹ United Nations (UN) Statistics Division, *World's Women 2015: Trends and Statistics*, Department of Economic and Social Affairs, (n 43), p. 152

DV victims normally go through a continuum of violence at the hands of their known aggressors, which is what differentiates DV greatly from criminal incidents where the victim and perpetrator are strangers to each other, such as stranger rape and murder. A “regular” assault occurs once, but an assault in a DV setting occurs multiple times, with the perpetrator aiming to achieve control over the victim usually through a pattern of repeated behaviors and tactics selectively chose by the perpetrator himself⁵⁰. This continuum experienced by the victims is also what makes it extremely insidious, with one episode building upon past episodes and setting the stage for future ones⁵¹.

Forms of violence in DV that are inflicted upon the ‘weaker’ partner by the ‘stronger’ partner include physical, sexual, psychological, and even economic abuse. These acts of violence range from threats, intimidation, physical and verbal humiliation, to being slapped, beaten up, raped, or even killed. Additionally, these behaviors vary widely in range and intensity with some leading to actual physical injury, while others do not, making it extremely difficult to criminalize⁵². However, cumulatively, all behaviors are psychologically damaging to the victim⁵³. There is, however, no causative behavior in victims that cause DV incidents⁵⁴.

⁵⁰ A. Ganley, Understanding Domestic Violence: Preparatory Reading for Participants, Futures Without Violence (previously known as Family Violence Prevention Fund), 1995, www.andvsa.org/wp-content/uploads/2009/12/60-ganely-general-dv-article.pdf (accessed 26 June 2018). p. 62.

⁵¹ Ibid.

⁵² D. Tuerkheimer, Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence, *Journal of Criminal Law and Criminology*, vol. 94, no. 4, 2004. p. 966.

⁵³ Ibid.

⁵⁴ Ibid., p. 73.

Some common characteristics of DV victims include (but are not limited to) suffering from extremely low self-esteem, having poor self-confidence and negative self-image⁵⁵, as well as having emotional dependency issues⁵⁶. It is not unusual for them to accept responsibility for the violence they have experienced⁵⁷, often staying in the relationship. Additionally, in line with the “learned helplessness” theory, victims who remain in such violent relationships eventually stop believing that they can escape their perpetrators so that they can develop coping strategies for themselves to stay alive and minimize their suffering⁵⁸.

Research has also shown that alcohol or substance abuse does not lead to DV, proving that there is no cause-and-effect relationship. However, there is a high correlation between aggression and the consumption of such substances. While the usage of alcohol, drugs, and other substances can lead to increased levels of aggression in the perpetrator, it does not cause DV⁵⁹. Additionally, DV is also not an ‘illness’ caused by stress or anger⁶⁰, and neither is it caused by the victims’ behavior or the relationship⁶¹.

2.2 An Insidious Crime with Multiple Stages

There are several theories trying to explain the phenomenon. One of the long-standing theories is the “**Cycle Theory of Violence**”, which was first developed by Lenore E. Walker in 1979. This theory depicts the three very distinct phases that occur in a DV cycle.

⁵⁵ L. Walker, (n 45), p. 154-155.

⁵⁶ Ibid., p. 209.

⁵⁷ BMFSFJ, ‘Health, Well Being and Personal Safety of Women - A Representative Study of Violence against Women in Germany’, (n 18), p. 31.

⁵⁸ L. Walker, (n 45), p. 8-9.

⁵⁹ A. Ganley, (n 50), p. 70.

⁶⁰ Ibid., p. 71-72.

⁶¹ Ibid., p. 72.

In the **first phase**, tension increases gradually and acts of violence are generally discrete, such as name-calling and/or other minor physical abuse. The perpetrator expresses very acutely, dissatisfaction and hostility towards the victim, while the victim tries to placate the perpetrator through actions she thinks might calm him down. Her small success in placating her perpetrator reinforces her *“unrealistic belief that she can control this man”*⁶². In the **second phase**, the acute acts of DV become more frequent and escalates, making the victim more fearful of her perpetrator due to her inability to control his angry response pattern. Typically, the perpetrator *“unleashes a barrage of verbal and physical aggression that can leave the woman severely shaken and injured”*. When this happens, the victim tries her best to protect herself by *“covering parts of her face and body to block some of the blows”*. This is also normally the phase when injuries happen and the police become involved (if at all contacted). This phase ends only when the perpetrator stops⁶³. In the **third and final phase**, the perpetrator *“may apologize profusely, try to assist his victim, show kindness and remorse, and shower her with gifts and/or promise”*. Here, the couple may also renew their courtship period, which may last for a little while before the cycle repeats again since the woman has renewed hope in his ability to change⁶⁴, making DV the insidious and complex crime it is.

Another tool which further highlights the complex nature of DV is called the **“Six Stages”**, identified by Liz Kelly. It describes not only the stages of DV from the victims’ point of view but also stresses the need for varying intervention strategies, which depend on the stage that the victim is in within the ordeal⁶⁵. The **first stage** is the point at which violence

⁶² L. Walker, (n 45) p. 91.

⁶³ Ibid., p. 94.

⁶⁴ Ibid., p. 94-95.

⁶⁵ The Highland Council, ‘Responding to Violence Against Women - Multi-Agency Guidelines for Staff’, Highland Community Planning Partnership, August 2010, <http://www.womenssupportproject.co.uk/userfiles/file/VAW%20Multi-Agency%20Guidance.doc> (accessed 27 June 2018), p. 6.

is first experienced in the relationship between the woman and the perpetrator. In this very first stage, some women end the relationships but the majority do not. The victims find, or accept, an explanation for the incident and try to manage the situation on their own and sometimes even hide it, usually with the hope that their partner will change. They develop strategies to manage the situation and incidents of abuse, very similar to the first phase of the Cycle Theory of Violence. When they realize that their partners will not change, at the **second stage**, they often blame themselves for the abuse they faced and constantly look for excuses to cover his actions. Their reality gets distorted where they *“do not perceive the behavior as abuse, but believe they have marriage problems”*. In most cases, many women from developing countries and/or migrant backgrounds view this as ‘normal’ behavior⁶⁶. Recognizing the abuse, with the understanding that it is a serious issue is the **third stage**. In her research, Kelly found that many women of migrant backgrounds *“arrive late to this stage, often when their children start school and they break their isolation by meeting other parents”*. The **fourth stage** is when victims begin to find a way out of their plight. Again, at this stage, migrant women face added challenges. *“Many don’t have anywhere to go.”* More often than not, victims don’t overcome this stage until there is imminent threat to their lives and/or the lives of their children that they finally reach the next stage. The **fifth stage** is often complicated because it does not signify the end of abuse. At this stage, many women continually get harassed by their partners even when they have found a way to escape. They continue to feel the constant threat of their partners. There are times where their perpetrators manage to locate them, even at women’s shelters or at other locations. *“Many perpetrators keep texting or use charm to convince their partners to return. Women often go through repeated relapses before abuse ends for good.”* The **sixth and final stage** is the actual end of the abuse. For some women, connection with their perpetrator is severed but

⁶⁶ See Chapter 5.

for those who still have to maintain contact for the sake of their children for example, this can often feel like an illusion⁶⁷.

A look back at Nadia's excerpts at the first page of this thesis illustrates the shocking reality that DV victims live in, as identified by both theories. Both illustrate the complexity of the crime, in that it is not as 'clear-cut' as a 'regular' assault (one-time occurrence between two strangers) or other well-defined crimes such as theft or murder. In fact, it is extremely insidious in nature, and for many, years would have passed before they manage to successfully find a way out, bringing with them the burden of extensive psychological trauma for the rest of their lives⁶⁸.

2.3 Why is DV a Gender Issue?

Traditional gender roles has always seen the man as the husband (the stronger one) and the woman as the wife (the weaker one)⁶⁹, coming together to found a family. This has always been the typical set-up in most every family or every romantic relationship. Especially in migrant cultures where patriarchal structures are predominant, this traditional dynamic is extremely common⁷⁰. Additionally, women become victims of violence, including DV, simply because they are the weaker sex, the weaker gender and that violence '*is directed against a woman because she is a woman or that affects women disproportionately*'⁷¹. This

⁶⁷ M. Sula, 'Domestic violence: still a hidden problem for many migrant women', *The Guardian UK*, 16 December 2017, <https://www.theguardian.com/voluntary-sector-network/2017/dec/16/hidden-domestic-abuse-migrant-women> (accessed 27 June 2018).

⁶⁸ United Nations (UN) Statistics Division, *World's Women 2015: Trends and Statistics*, (n 43), p. 139.

⁶⁹ R. Ozaki and M. D. Otis, 'Gender Equality, Patriarchal Cultural Norms, and Perpetration of Intimate Partner Violence: Comparison of Male University Students in Asian and European Cultural Contexts', *Violence Against Women*, vol. 23, no. 9, 2017, p. 1078.

⁷⁰ *Ibid.*, p. 1081.

⁷¹ UN CEDAW Committee 'General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19', (14 July 2017), UN Doc CEDAW/C/GC/35, Para. 1.

is further exacerbated by the ‘*aspects of patriarchy embedded within culture*’, enabling these trends to continue, even in western societies⁷². Statistics worldwide point to the prevalence and pervasiveness of VAW and girls, prompting the UN General Assembly (UNGA) to adopt a 2014 resolution prompting states parties to intensify efforts to eliminate all forms of forms of VAW and girls⁷³. This explains why gender cannot be ignored when discussing DV and when referring to DV, it often falls under the umbrella of GBV and VAW.

Before women’s emancipation and women’s rights gained traction, and without going into a philosophical debate, many natural law and political philosophers have supported the view of women as an inferior gender, with claims of women lacking the necessary judgment and reason to participate in society and that should they be afforded equality, it should be restricted to the private sphere⁷⁴. In religious texts, women have also been viewed as inferior, as property, as objects, as ‘*lesser*’ persons that need to be disciplined. Religion, coupled with patriarchal norms, have contributed to the discriminatory mindset of role of women today. Within Christianity, it is mentioned in The New Testament, which endorses the Old Testament that ‘*the head of the woman is the man*’, a statement which clearly subjugates women⁷⁵. In Islam, the Qur’an also considers women as less valuable than men. It states that men are in charge of women and allows men to control women, that ‘*good*’ women are obedient and explicitly gives men the permission to strike (hit/beat) disobedient women⁷⁶. Without entering into a religious debate over the interpretation and application of

⁷² R. Ozaki and M. D. Otis, (n 69), p. 1077.

⁷³ United Nations General Assembly (UNGA) Res 69/147 (18 December 2014) UN Doc A/RES/69/147.

⁷⁴ P. Paxton and M. Hughes, *Women, Politics, and Power: A Global Perspective*, 3rd. Edition, CQ Press, 2015, p. 102-103.

⁷⁵ 1 Corinthians 11:3, New Testament Revised Version.

⁷⁶ Surah An-Nisa 4:34, Qur’an.

any religious texts, such provisions thus paved way to the view of traditional gender roles and stereotypes. This mindset, especially common amongst the migrant communities further exacerbates the issue of DV, making it '*ok*' and is thus normalized within the community.

To further compound an already complicated matter, these days, the traditional and binary view of gender has undergone evolution. This has led to a variety of relationship types, in that we have male-male relationships, female-female relationships, male-trans relationships, and so on and so forth. The reason that this needs to be mentioned is not to have a discussion on the evolution of gender, but rather, to highlight that gender roles do play a part in DV, in that the '*weaker*' gender remains the victim in this power-play continuum. Regardless of the sex of the two persons within the relationship, one partner takes on the role of the female, and the other, the male. Even in cases involving family members, the victim is always the '*weaker*' one. This is an important point to keep in mind especially since data continuously points to men being the perpetrator and women being the victim.

2.4 Public or Private Issue?

Another one of the long-standing debates that has plagued those who are concerned with DV is whether it is considered a public or private issue. On the one hand, its prevalence and pervasiveness has reached far and wide across every corner of the globe, makes it a public issue that is widely discussed; but on the other hand, DV acts mostly happen behind closed doors, in the intimacy of one's own home, makes this issue a private one. The lack of witnesses and substantial proof also contribute to the difficulty in prosecuting it, because

most claims are treated as hearsay⁷⁷. Law enforcement officers often refuse to get involved, and especially in cases where migrant communities are involved, they are viewed as a waste of time since such behaviors are inherently part of their culture which they have brought with them⁷⁸. In Germany itself, due to a lack of express legal definition of DV, an interpretation by some state actors have become - unless a violent DV act of a grave nature has been committed, such as those involving extensive bodily harm with available proof, not many even make it to court since courts have a very high threshold for prosecuting DV cases⁷⁹.

It is only in the recent few decades that DV, in all its complexities, is viewed as a serious, public social problem. However, many in society still do not seem to be perturbed despite their general disapproval of DV. Research has shown that pre-existing attitudes towards women have an influence on how victims of DV are judged by society. Additionally, victims who provoke their perpetrators are judged more harshly, placing the responsibility and blame on the victim for the perpetrator's outburst⁸⁰, similar to victim-blaming. Additionally, it has even been suggested that society's lack of involvement in combating DV (unless one is deeply concerned and/or interested in the issue) follows the Girard's theory viewing '*victims of such violence as sacrifices, providing an outlet against public violence*'⁸¹.

⁷⁷ An interview with a Polizeikommissar (police commissioner) and a Leiterin (Leader) at a Frauenhaus (women's shelter) in the State of North-Rhein Westphalia (NRW) in Germany affirms this view. See Chapter 5.

⁷⁸ C. Menjivar and O. Salcido, Immigrant Women and Domestic Violence: Common Experiences in Different Countries, *Gender & Society*, vol. 16, no. 6, 2002, p. 901.

⁷⁹ The views provided in the interview with the Polizeikommissar in Chapter 5 fall in line with CEDAW's concluding observations made for Germany in UN Doc CEDAW/C/DEU/CO/7-8, (n 13), Para. 25 (a).

⁸⁰ M. Pavlou and A. Knowles, Domestic Violence: Attributions, Recommended Punishments and Reporting Behaviour Related to Provocation by the Victim, *Psychiatry, Psychology, & Law*, vol. 8, no. 1, 2001, p. 84-85.

⁸¹ B. Decker, Violence and the Private: A Girardian Model of Domestic Violence, *University of Pennsylvania Journal of Law and Social Change*, vol. 11, no. 1, 2007, p. 107.

Enough data has also been gathered and collected to ascertain that VAW (DV included) incurs significant costs, both direct and indirectly, affecting the victims livelihood and to the state as well. Associated direct costs include ‘police, hospital and other health services, legal costs, and costs associated with housing, social and support services’. Indirect costs are those that affect the victims and their families. These include costs related to loss of productivity and reduced employment, suffered from the negative psychological effects causing a ‘*diminished value of life*’, simply for having their rights being violated through these acts of violence⁸². These negative health and economic impacts shift DV from a private issue into a public one.

2.5 When Children are Involved

Another area that should be of concern is the involvement of children, whether directly or indirectly. In many DV cases, children are not just sideline spectators. Often, the perpetrator may also harm the children when the victim refuses to listen or obey. In other cases, even though the perpetrator does not seek to cause direct harm to the children themselves, they become indirectly physically hurt, or some would say, ‘caught in the cross-fires’ between the two fighting parents. In other more serious cases, children are even physically and sexually violated. Regardless of all the different types of DV that these children are exposed to, multiple research have now shown that these children are at high risk of either becoming perpetrators or victims themselves later in their adult lives⁸³. In particular, boys who were exposed to DV during their childhood homes are more likely to engage in DV as adults and girls on the other hand, are more likely to become DV victims as adults⁸⁴. In

⁸² United Nations (UN) Statistics Division, World’s Women 2015: Trends and Statistics, (n 43), p. 141.

⁸³ U. Till-Tentschert, The Relation Between Violence Experienced in Childhood and Women’s Exposure to Violence in Later Life: Evidence From Europe, *Journal of Interpersonal Violence*, vol. 32, no. 12, 2017, p, 1875.

⁸⁴ FRA, ‘Main Result’ in ‘Violence Against Women: An EU-wide Survey’, (n 22) p. 132.

Europe, women who were physically abused (non-sexually) during their childhood had experienced DV in their adult lives twice more as compared to those who had not experienced childhood physical abuse. For women who were exposed to sexual abuse during their childhood, they were 4 times more likely to be sexually mistreated in a relationship⁸⁵.

As children, being exposed to such a crime with such an insidious nature can scar them not only physically, but also mentally, causing long-lasting physical and emotional damage. As these numbers have proven, DV can be very cyclical in nature if it is not tackled and understood. Relevant and appropriate legal and civic protection, remedies, as well as prevention and intervention strategies must extend to children who are exposed to DV in order to minimize the cyclical nature from repeating itself, making it also an issue that falls under the interest of the public domain.

⁸⁵ U. Till-Tentschert, (n 83), p. 1875.

3. THE NEED FOR LEGAL PROTECTION

One of the most important aspects that cannot be overlooked when trying to decipher why DV remains under-reported within the migrant communities in Germany is looking at the legal protection afforded to victims of DV and assessing its strength. Since there is a need to understand the behaviors that actually encourage reporting, with the aims of answering the research question, it is important to thoroughly look at the role the law and subsequently, its actors, have to play in encouraging or discouraging reporting behavior. With that view in mind, this chapter will focus on the analysis of the available legal protection for DV victims in Germany, regardless of whether the victims are from migrant backgrounds or not. It is important to note that even though specific legislation concerning children may be mentioned, the analysis is not aimed at exploring impacts it may have to children.

This section is by no means suggesting that Germany is in breach of any of the international or regional conventions it is party to. It is also neither the primary goal of the thesis, nor of this section, to point accusatory fingers. However, it seeks to understand whether legislative protection is sufficient in order to encourage positive reporting behavior. Insufficient or ineffective legislation *can* not only hamper the application of any provision or any relevant treaty, to which a State is party to, but *can* also, whether directly or indirectly, violate the human rights of victims through unsuccessful implementation of any preventative and intervention programs it may have⁸⁶.

It is without a doubt that by now, as a crime, it should be clear within the thesis that DV (falling under the umbrella of VAW and GBV) has been viewed internationally as a violation of human rights through violation of various basic freedoms such as the right to

⁸⁶ See Chapter 5.

life, health, liberty and security of person, the right to equality, and the prohibition against torture⁸⁷, amongst other rights enshrined in the CEDAW Convention as well as other international treaties. It took some time but it has received so much international attention that by now, it is an issue that states can no longer ignore. It has steadily gained momentum over the past decades that gave rise to creation of national laws specific to protect victims of DV (such as in Cambodia⁸⁸ and Vietnam⁸⁹) and to existing national laws being amended or reformed to better protect victims of DV (such as in Ukraine⁹⁰) by including express clear definition of the term “domestic violence” and other DV-relevant and DV-associated terms including expanding its scope and in some instances, even procedural matters as well as rehabilitation matters. It is important to highlight that in Germany, there is no express legal definition to the term “domestic violence” but there are several applicable laws in dealing with DV cases, along with two federal action plans for combating violence against women. The first action plan paved the way for the German Law on Civil Protection Against Violent Acts and Prosecutions (2001), known as the *Gewaltschutzgesetz (GewSchG)* and the second action plan led German courts to pay special attention to prevention of violence against children⁹¹.

3.1 The Road to Explicit Legal Protection Against Domestic Violence

Addressing DV was indeed a legal challenge, even at an international level due to the lack of explicit language or lack of clarity in definitions or terms used in legal text. When there is a lack of clarity, interpretation can vary, causing further challenges, which then becomes a further aggravated issue when such provisions are to be applied or implemented. Often,

⁸⁷ UN Doc CEDAW/C/GC/35, (n 71), Para. 15-16.

⁸⁸ TrustLaw Connect, A Landscape Analysis of Domestic Violence Laws, (n 36), p. 13-18.

⁸⁹ Ibid., p. 407-409.

⁹⁰ Ibid., p. 403-404.

⁹¹ Ibid., p. 125-127.

the meaning and scope of such provisions are challenged and many times, may adversely impact and contribute to the disadvantage of the victims. This *may* also, whether directly or indirectly, contribute to support certain ideologies, where such ideologies may exist. This can be considered as an insult to law itself by eventually failing the victims, which the law was created to protect, as highlighted by UN Special Rapporteur on Violence against Women, ‘*It has become increasingly clear that there is a **correlation between prevalence rates and effective and responsive accountability measures. The investigation, prosecution, protection and redress measures, offered to women victims of violence, will have a direct effect on the prevalence rates of such violence***’⁹². In order to successfully eliminate all forms of VAW, “*Firstly, **rights must be treated as universal, interdependent and indivisible. Everyone is entitled to have their human rights respected, protected and fulfilled regardless of their geographic location or social position, and this includes the right of women to be free from violence.***”⁹³”

Even though there are various legal instruments that offer protection against DV at an international level, in the beginning, simply due to the absence of the explicit mention of relevant terms such as ‘*domestic violence*’, ‘*gender-based violence*’, and ‘*violence against women*’, it was a challenge to establish a direct connection that such acts of violence which normally occur in DV are actually violations of the right to life, health, liberty and security of person, the right to equality, and the prohibition against torture, rights which are enshrined in the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

⁹² UNGA ‘Statement by Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences’, 66th Session, Item no. 28 (10 October 2011), <http://www.un.org/womenwatch/daw/documents/ga66.htm> (accessed 28 June 2018), p. 3.

⁹³ Ibid.

Articles 1, 3, 5 and 7 of the Universal Declaration of Human Rights (UDHR), which was adopted by UNGA in 1948 sets forth as a base that all human beings, which include women, are born free and equal in dignity and rights, that everyone has the right to life, liberty and security, and to be protected against torture, or to cruel, inhuman or degrading treatment or punishment⁹⁴. Even though the UDHR was not originally legally binding on member states, it has been accepted by the international community to such a wide extent that it has provided for an outline for the foundational principles in human rights. It has also been recognized as a binding expression of customary law through the ‘*adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles)*’.⁹⁵

The two fundamental treaties, the ICCPR and the ICESCR⁹⁶, has provisions explicitly protecting all human beings, women included, of their basic inherent rights, even though there is no explicit usage of the terms ‘*domestic violence*’ and the like. This does not mean that victims are not protected from acts of violence perpetrated in DV through the relevant provisions; however, simply due to the lack of the explicit terminology, the link between the cause and effect from an act of DV is not made and one can be left to make various interpretations. Taking article 6(1) of the ICCPR as an example, “***Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily***

⁹⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), UN Doc A/RES/3/217A, Art 1, 3, 5, 7.

⁹⁵ Judge Antonio Augusto Cançado Trindade stated that “*The Universal Declaration, moreover, is today widely recognized as an authoritative interpretation of human rights provisions of the Charter of the United Nations itself, heralding the transformation of the social and international order to secure the enjoyment of the proclaimed rights.*” See A. Cançado Trindade, Universal Declaration of Human Rights, Audiovisual Library of International Law, <http://legal.un.org/avl/ha/udhr/udhr.html> (accessed 29 June 2018).

⁹⁶ Articles 3, 6, 7, 9, and 12 of the ICCPR and articles 6, 9, and 12 of the ICESCR contain explicit provisions protecting the basic, inherent, universal, interdependent, and indivisible rights afforded to all human beings.

deprived of his life”. In more severe DV cases where the victim has been murdered, such as in the case of Mia Valentin⁹⁷, her right to life was violated by her perpetrator.

Up till this point, there is still no explicit mention of the term ‘*domestic violence*’ in any of the legal treaties, including that of CEDAW, which was adopted by the UNGA in 1979 and entered into force in 1981. It is often described as an international bill of rights for women with the primary focus, in which all State Parties agree to, was to “***condemn discrimination against women in all its forms.***” CEDAW provides the basis for realizing and ensuring equality between women and men so that women can enjoy all their human rights and fundamental freedoms, through targeting “***culture and tradition as influential forces shaping gender roles and family relations***”, where States Parties agree to take all appropriate measures within their legislation, including any temporary special measures required⁹⁸. However, despite its strength, implicit protection still seemed to be the pattern.

It was only until DV began to receive more attention in the 1990s, when the CEDAW Committee, the monitoring body of CEDAW, finally adopted General Recommendation Number 19 in 1992⁹⁹. In this document, the definition of the term “***discrimination against women***” was finally clarified to explicitly include GBV as a form of discrimination covered by CEDAW. Acts of GBV has also been further clarified to include ‘*physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty*’, and asserted that regardless of whether provisions ‘*expressly mention violence*’, acts of

⁹⁷ See Chapter 1.

⁹⁸ UN Women, ‘Overview of the Convention’, ‘Convention on the Elimination of All Forms of Discrimination Against Women’, (1979), <http://www.un.org/womenwatch/daw/cedaw/> (accessed 29 June 2018).

⁹⁹ UN CEDAW Committee, ‘General Recommendation No 19 (1992)’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. II), p. 331

GBV may breach specific provisions of the Convention if they occur¹⁰⁰. The document also further clarified how acts of GBV “*impairs or nullifies the enjoyment of women of human rights and fundamental freedoms*” and included a long list of the various rights that are violated, including the right to life, health, liberty and security of person, the right to equality, and the prohibition against torture, amongst many others¹⁰¹.

Special attention was also noted where “*Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices...*”¹⁰². Further, the term ‘**family violence**’ was used in place of the term ‘domestic violence’ stating that it is “***one of the most insidious forms of violence against women***” to which women of all ages are subjected to. The connection where such acts of violence “*including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes*” are a violation of these basic rights mentioned above, have been finally explicitly clarified, adding that “*...Lack of economic independence forces many women to stay in violence relationships...*”¹⁰³

The actual term ‘*domestic violence*’ was only used in the section where the CEDAW Committee provided specific recommendations for states parties in paragraph 24(r) on the necessary measures that are needed in order to overcome family violence which should include, “*...Criminal penalties where necessary and civil remedies in case of **domestic violence**;...Rehabilitation programmes for perpetrators of **domestic violence**;...*” and in paragraph 24(s) where “*States parties should report on the extent of **domestic violence** and*

¹⁰⁰ UN Doc HRI/GEN/1/Rev.9 (Vol. II), (n 99), Para. 6.

¹⁰¹ Ibid., Para. 7.

¹⁰² Ibid., Para. 11.

¹⁰³ Ibid., Para. 23.

sexual abuse, and on the preventive, punitive and remedial measures that have been taken”¹⁰⁴

In the year 2000, the Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body of the ICESCR also highlighted the close relations of the right to health and how it is dependent upon the realization of other human rights¹⁰⁵ as well as the “...*need to develop and implement a comprehensive national strategy for promoting women’s right to health throughout their lifespan*”¹⁰⁶. States parties have an obligation to fulfill the right to health by giving it sufficient recognition ‘*in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realizing*’¹⁰⁷ in particular with respect to “...*sexual and reproductive health, traditional practices, domestic violence*...”¹⁰⁸, amongst other health issues, since “...*These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality*”¹⁰⁹.

The Human Rights Committee (HR Committee), the monitoring body of the ICCPR also reminds States parties that “...*The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors*...”. Measures must be taken

¹⁰⁴ UN Doc HRI/GEN/1/Rev.9 (Vol. II), (n 99), Para 24 (r), (s).

¹⁰⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 14 (11 August 2000), UN Doc E/C.12/2000/4, Para. 3.

¹⁰⁶ Ibid., Para. 21.

¹⁰⁷ Ibid., Para. 36.

¹⁰⁸ Ibid. Para. 36

¹⁰⁹ UN Doc HRI/GEN/1/Rev.9 (Vol. II), (n 99), Para 23.

by States parties to prevent future injury and to respond to past injuries especially “...to patterns of violence against categories of victims such as...violence against women, including **domestic violence**...” amongst others¹¹⁰.

In 2017, 25 years later, the CEDAW Committee adopted General Recommendation 35, condemning all forms of GBV, regardless of where it occurs and further clarifies the standards and obligations of States parties for eliminating such violence, bearing in mind the pervasive nature of GBV, the weakening of legislative and policy frameworks in combating GBV, often justified in the name of tradition, culture, religion, fundamentalist ideologies, and even as a response to “austerity measures” following financial crises, and its continuous occurrence even in a globalized world. Further obligations were also addressed including States Parties’ responsibilities and due diligence by clearly defining the different levels of liabilities of the State¹¹¹.

It also serves as an update General Recommendation 19 to include the view where cases of DV “...may amount to torture or cruel, inhuman or degrading treatment...”¹¹², as supported by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his recent report to the Human Rights Council (HRC) which was prepared pursuant to Council Resolution 25/13¹¹³. The Committee Against Torture (CAT Committee), the monitoring body of the Convention Against Torture (CAT, 1984) also supports this view as evidenced by General Comment 2, placing the scope and responsibility on the State and not the individual “...to prevent and protect victims from

¹¹⁰ UN Human Rights Committee (HR Committee), General Comment No 35 (16 December 2014), UN Doc CCPR/C/GC/35, Para. 9.

¹¹¹ UN Doc CEDAW/C/GC/35, (n 71).

¹¹² Ibid., Para. 16.

¹¹³ UNGA ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, 31st Session, Item no. 3 (5 January 2016), UN Docs A/HRC/31/57, Para. 54-57.

gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking”¹¹⁴. General Comment 3 on the application of Article 14 of the CAT Convention, also has the term ‘*domestic violence*’ explicitly mentioned in a specific provision that requires States parties to take “*specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress*”¹¹⁵ for the crimes committed against them.

3.2 The Importance of Explicit Terminology

The legally binding nature of the UN treaties mean that States parties that have signed and ratified a certain treaty will have a legal obligation not to violate any provision in said convention. The same can be said for any of the regional treaties. Despite not having the term ‘*domestic violence*’ explicitly mentioned in CEDAW, the General Recommendations have filled in the gaps, providing meaning to the treaty’s provisions. Even though these General Recommendations are by themselves not treaties, thus not legally binding, they contain authoritative interpretations of human rights obligations as laid out in the provisions and provide direction for the practical implementation of said provisions, giving them their highly authoritative character with legal basis.

It is however, up to each individual State to draft, reform, and implement the relevant national legislation in order to fulfill their legal obligations. Germany is a state party to the relevant legal instruments mentioned in this chapter¹¹⁶, having ratified the CEDAW

¹¹⁴ UN Committee Against Torture (CAT Committee), General Comment no 2, (24 January 2008), UN Docs CAT/C/GC/2, Para. 18.

¹¹⁵ UN CAT Committee, General Comment no 3, (13 December 2012), UN Docs CAT/C/GC/3, Para. 33.

¹¹⁶ *Reporting Status for Germany*, UNOHCHR, (n 34). Germany is a State party to the ICCPR and the ICESCR (ratified 17 December 1973), and CAT (ratified 1 October 1990).

Convention on 10 July 1985¹¹⁷ and recently ratified the Istanbul Convention on October 12, 2017 making 3 reservations (impacts to victims of migrant background will be discussed in Chapter 5), with the Convention having entered into force for Germany in February 2018¹¹⁸. With this in mind, Germany has a legal obligation to protect victims from DV, to provide them with the necessary measures to seek redress, along with adequate prevention and intervention strategies and actions.

Germany's recent ratification of the Istanbul Convention, which was drafted in 2011 and entered into force on August 1st, 2014, initially with 10 ratifications, eight of which were CoE Member States, indicated a major development in terms of legal protection against GBV and VAW, DV included. It is worth mentioning that the Istanbul Convention also has a monitoring mechanism, GREVIO. However, since Germany has only recently ratified the instrument, there is no available reports that have been submitted by the state party to the monitoring body of the CoE¹¹⁹.

This means that as a state, Germany is subject to greater accountability and responsibility in order not to violate the convention's provisions given that the Istanbul Convention covers a wider scope and is more explicit in the protection that it offers. It establishes legally binding standards to help achieve CoE's objectives in the protection of victims from violence of all forms, which include GBV and DV. Additionally, the convention is more comprehensive than the CEDAW convention in that it provides a legal framework at pan-European level for the protection, prevention and prosecution of these acts with the aims of

¹¹⁷ Ibid. Germany also ratified CEDAW Optional Protocol (OP) in 2002.

¹¹⁸ *'Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence'*, Council of Europe (CoE), (n 35).

¹¹⁹ *'Country-monitoring work'* in *'CoE Istanbul Convention Action against violence against women and domestic violence'*, CoE, <https://www.coe.int/en/web/istanbul-convention/country-monitoring-work> (accessed 30 June 2018).

eliminating them, along with explicit usage of the term ‘*domestic violence*’. Without going into a debate about the interpretation, scope, application, and effectiveness of the Istanbul Convention, DV is also recognized as a crime that does not discriminate against gender and highlights that children are victims of DV.

The scope and applicability of any relevant provision does not come into question when such provisions are being put into practice simply by having defined ‘*domestic violence*’¹²⁰ and other relevant terms associated to it clearly, as exemplified in various provisions in the Istanbul Convention. Additionally, any interpretations made in the future are done without substantive confusion as to what DV really is, who victims of DV are, and what sorts of violent acts it constitutes. Without explicit definition and terminology, wide interpretation can be applied to the meaning of any provision. Lack of substantive protective legislation, and in combination with inadequate or inefficient implementation of policies, programs, and laws result in continued prevalence of DV due to the little protection afforded to the victims, in particular, and with detrimental effects to minority and immigrant women¹²¹. Simply put, poor implementation and/or inadequate legislation weakens state responses in addressing GBV, VAW, and DV¹²².

¹²⁰ The Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, also known as), CETS No.210., Art 3 (b).

¹²¹ In her country visit to the United States of America (USA), the Special Rapporteur on violence against women highlighted this specific issue and included it as part of her findings. See UNGA Statement by R.Manjoo, (n 92), p. 5, and UN Human Rights Council (HRC), Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum, Mission to the USA, (6 June 2011), UN Docs A/HRC/17/26/Add.5. Without going into a comparative legal analysis between the legislative framework of both State parties, parallels can be drawn here, in comparison to the situation in Germany, where there is also a lack of substantive protective legislation as shown in Grafe, Bianca & Hagemann-White, Carol (n 26), p. 2, and will be discussed in greater detail in Chapter 3.

¹²² UN Doc CEDAW/C/GC/35, (n 71), Para. 7.

3.3 When Implicit Legal Protection Becomes A Challenge

Despite making such positive legal progress and hitting milestones, at a national level, DV seems to have entered a stage of stagnation in Germany. In spite of the recent ratification of CoE's Istanbul Convention, and having it entered into force nationally on February 2018, there is still a long way to go for Germany with regards to combating DV¹²³. One of the most important points to raise is that from a legislative perspective, there is still no official legal definition of DV¹²⁴ even though it has been recognized as an issue that needs addressing.

There are several legislation that deal with DV in Germany, namely Protection Against Violence Act (*Gewaltschutzgesetz* - **GewSchG**¹²⁵), the Act on Court Procedure in Family Matters and Jurisdiction over Non-Contentious Matters (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit* - **FamFG**), and the German Criminal Code (*Strafgesetzbuch* - **StGB**). Applicable for those of migrant background would include the additional legislation found in the German Residence Act (*Aufenthaltsgesetz* - **AufenthG**) and for matters involving children, the German Civil Code (*Bürgerliches Gesetzbuch* - **BGB**)¹²⁶.

The **GewSchG** was enacted as part of the “*Act to Improve Civil Jurisdictional Protection against Violent Acts and Stalking and to Ease the Abandonment of the Marital Home in*

¹²³ See Chapter 5.

¹²⁴ TrustLaw Connect, A Landscape Analysis of Domestic Violence Laws, (n 36).

¹²⁵ ‘Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen (GewSchG)’, Bundesministerium der Justiz und für Verbraucherschutz, <http://www.gesetze-im-internet.de/gewschg/BJNR351310001.html> (accessed 30 June 2018).

¹²⁶ BMFSFJ, ‘Greater Protection in Cases of Domestic Violence - Information on the Act on Protection Against Violence’ (Berlin, August 2017, 5th Edition), <https://www.bmfsfj.de/bmfsfj/service/publikationen/mehr-schutz-bei-haueslicher-gewalt/81936> (accessed 25 June 2018). Information on children can be found on p. 20, and information for foreigners can be found on p. 23.

Cases of Separation”¹²⁷. It contains only four sections outlining protection mechanisms and the rights available to victims of ‘*violence*’. The provisions enable the victim the right to seek protection from the perpetrator, similar to court issued interim protection measures such as legal protection orders or restraining orders in various jurisdictions worldwide¹²⁸. The validity of the court order is limited but can be extended and includes protection measures such as prohibiting the perpetrator from contacting the victim, bringing about a meeting with the victim, and appearing at places where the victim often frequents, in order to maintain physical distance between the victim and the perpetrator¹²⁹. Penalties for criminal manifestations of DV are covered under the **StGB**, however, since there is no express legal definition for DV, the acts are criminalized as manifestations of violence and not under any particular context. This causes an added challenge for DV cases by placing the burden of proof to the victim, which *can* discourage victims from reporting DV incidences¹³⁰ since not all DV manifestations are punishable crimes¹³¹.

In cases where both share a residence, the perpetrator may be forced to vacate for a certain period, and thus enabling the victim sole usage of the shared residence. However, in cases where children have been mistreated by their parents, making them the victims, the **GewSchG** does not apply but the **BGB** does instead. Additionally, the **BGB** covers issues regarding shared residence for married couples and for couples who are going through a

¹²⁷ TrustLaw Connect, A Landscape Analysis of Domestic Violence Laws, (n 36), p. 126.

¹²⁸ Examples provided in Ibid., include Cambodia, p. 20; UK, p. 89; Japan, p. 188; Singapore, p. 311; South Africa, p. 328; Taiwan, p. 374.

¹²⁹ GewSchG 1

¹³⁰ See Chapter 5.

¹³¹ D. Tuerkheimer, (n 52), p. 966.

divorce. However, for non-married couples, the German Civil Partnership Act (*Lebenspartnerschaftsgesetz* – **LPartG**) applies¹³².

In the **GewSchG**, which is considered to be the central piece of legislation to protect victims against acts of DV, the only given phrase, presumably to define an act of violence (without any context), written as “*If a person intentionally violates another person’s body, health, and freedom unlawfully, ...*”¹³³ can be loosely interpreted or even misinterpreted due to a lack of clarity. Similarly, this lack of clarity is also exhibited in the **BGB**, “*If the spouse against whom the application is directed has unlawfully and intentionally injured the body, health or liberty of the other spouse or unlawfully threatened such an injury or injury to life, ...*”¹³⁴.

Even though a supplementary document drawn up by the BMFSFJ, which provided more information along with the definition of the term ‘*violence*’, while explicit and written, *presumably* in the context of DV, it is unfortunately not legally binding.

Violence within the meaning of the Act on Protection against Violence means any unlawful physical assault, impairment to the health of or encroachment on the freedom of another with intent, regardless of whether the acts take place within or outside the context of a joint household. Psychological violence is also covered by the Act on Protection against Violence: explicitly in the case of threats and unreasonable harassment, and indirectly when it

¹³² BMFSFJ, ‘Greater Protection in Cases of Domestic Violence - Information on the Act on Protection Against Violence’, (n 126), p. 11-13.

¹³³ GewSchG, (n 129).

¹³⁴ BGB 1361b (2).

*has led to psychological or physical impairment to the health of another person*¹³⁵.

If an interpretation of the above were to be made, one can assume that DV is included in the phrase “*regardless of whether the acts take place within or outside the context of a joint household.*” While the above definition covers some manifestations of psychological and physical abuse, the actions perpetrated **must** lead to injury of the body, health or personal freedom of the victim, which shows that proof must exist; and must be manifested “*with intent*”, which is very hard to prove. In any case, bodily injury *can* be defined as any “*unlawful physical assault*”, psychological abuse *can* include “*threat or unreasonable harassment*”, and violence can also include “*encroachment on the freedom of another*”. There is however no explicit mention of other manifestations of DV such as sexual violence or economic violence, or even the term ‘*domestic violence*’.

Although such a document can be useful to victims in providing information, regardless of how comprehensive it is, it only acts as a document which provides answers to questions and doubts any person might have regarding the topic of DV, similar to that of a “Q & A” publication. Additionally, elaborations and clarifications can be said to be of procedural in nature. Any interpretation or definition provided in the document are also not legally binding. Even though soft law publications are considered to be non-legally binding, they can have the potential to aspire standards to become hard law at a later stage. However, as a document that is neither hard- nor soft- law, it has no legal application, except for informational purposes. This lack of clarity in terminology, especially in legislation, *can* have adverse legal ramifications, which *can* be a contributing factor to victims’ reporting behaviors.

¹³⁵ BMFSFJ, ‘Greater Protection in Cases of Domestic Violence - Information on the Act on Protection Against Violence’, (n 126), p. 10.

A quick look back at **GewSchG** 1 and **BGB** 1361b (2) will show this lack of clarity. The following phrases, “*if a person intentionally violates another person’s body, health, and freedom unlawfully*” and “*has unlawfully and intentionally injured the body, health or liberty of the other spouse or unlawfully threatened such an injury or injury to life*” are the only explicit definitions, *if they may even be rendered as definitions*, that can be interpreted to be of relevance in the context of DV. There are also no further clarifications on the acts or manifestations of what becomes unlawful injury to another person’s body, health, and freedom. Although, the **StGB** does include some manifestations of DV which are criminalized, such as insults or defamatory statements that have been made in writing¹³⁶, harassment¹³⁷, deprivation of liberty¹³⁸, assault¹³⁹, stalking¹⁴⁰, duress¹⁴¹, and sexual offenses¹⁴², they hardly cover the full spectrum of all manifestations that could occur in DV cases.

In theory, from a legal framework standpoint, such actions are criminalized by having them as explicitly stated in the **StGB**. However, because there is no specific definition of DV, including a clarification of what constitutes DV, and what makes an act a DV act, there is also no opportunity for specific punishment or penalty for non-criminal DV acts in that regard since penalties for each individual criminal DV act falls under the **StGB** instead. This can severely limit the criminalization of DV and subsequently also indirectly hurt any efforts done to combat GBV, VAW and thus DV itself by only criminalizing a limited

¹³⁶ StGB 185

¹³⁷ StGB 241

¹³⁸ StGB 239

¹³⁹ StGB 223, 224

¹⁴⁰ StGB 238

¹⁴¹ StGB 240

¹⁴² StGB 174, 176, 177

number of actions that would otherwise occur in DV situations. As elaborately explained in Chapter 2 of this thesis, DV is extremely complex and occurs in multiple stages. As such, actions that would normally occur in DV cases cannot be listed exhaustively in any criminal code. This stifles the implementation of any prevention and intervention programs Germany might have and from a legal framework perspective, it stifles the criminalization and prosecution of DV.

Additionally, in Germany, the burden of proof (which will be discussed in Chapter 5), which rests on the victim, becomes an issue during prosecution as there is often a lack of evidence in most DV cases. Only in cases of sexual assault, following the “No means No” (*nein heißt nein*) campaign, has the burden of proof shifted to the perpetrators’ behavior instead of solely being dependent on the victims’ resistance to the sexual act¹⁴³.

The next chapter of this thesis will explore the role of non-state actors in the various prevention and intervention programs Germany has, as laid out in the National Action Plan II to combat gender-based violence. While DV is included as part of a targeted issue to be addressed, as mentioned throughout the plan, there is much that leaves to be desired. As highlighted by the CEDAW Committee¹⁴⁴, there is a strong case that the German legal framework needs to be further strengthened.

¹⁴³ StGB, (n 142). Also see ‘NO means NO – Germany takes big legal step against Violence against women’, *European Women’s Lobby*, 13 July 2016, <https://www.womenlobby.org/NO-means-NO-Germany-takes-big-legal-step-against-Violence-against-women> (accessed 1 July 2018).

¹⁴⁴ UN Doc CEDAW/C/DEU/CO/7-8, (n 13).

4. CIVIC INVOLVEMENT IN COMBATING DOMESTIC VIOLENCE

As a crime with multifaceted dimensions, DV requires both criminal and civil remedies, as well as a thorough understanding from an interdisciplinary perspective. As discussed in the previous chapters, not all manifestations of DV are acts that can be criminalized¹⁴⁵ and many DV victims suffer at the hands of their perpetrators long before they even reach out for assistance, if they end up doing so¹⁴⁶. Unfortunately, legislative framework alone is not sufficient to combat such a complicated crime. Research has suggested that DV victims who have been exposed to “*potentially lethal*” violence are more likely to seek help from the police or healthcare professionals, however only a small fraction of DV victims were redirected and referred to the relevant network of support systems and service providers available for them to successfully enter the intervention system¹⁴⁷. Due to the the varying nature and severity of DV manifestations, not all acts can be considered “*potentially lethal*”, making DV a severely under-reported crime, and further highlights the importance of non-legal prevention and intervention strategies.

In Germany, further research has suggested that the “*systematically high dark figure of domestic violence is attributable to the under-reporting*”. It was found that more than 80% of female DV victims interviewed “*did not eventually wish to press charges against their abuser*”, with 55% of them having not reported the incident’s to the police at all. Common reasons provided include fear of increased aggression by the perpetrator, stigmatization during the trial, safety and security concerns, lack of faith in support systems due to DV

¹⁴⁵ D. Tuerkheimer, (n 52).

¹⁴⁶ See Chapter 2.

¹⁴⁷ M. Nessel et al, 'Factors Associated With Police Decisions on Immediate Responses to Intimate Partner Violence', *Journal of Interpersonal Violence*, vol. 0, no. 0, 2017, p. 2-3.

still being considered a taboo topic, and a lack of faith in the justice system with the belief that the courts were pro-offender¹⁴⁸.

When trying to understand the issue of reporting behaviors, it is important that any intervention strategies are efficient, especially since the responsibility or burden of reporting comes directly from the victims themselves. The tendency for victims to ‘shut down’ also makes it extremely difficult for both state-actors (SAs) and NSAs to intervene¹⁴⁹. Additionally, the success of intervention is greatly influenced by the extent and quality of the network of referral system. Personal references are always preferred by victims due to the sensitive nature of DV¹⁵⁰. Aside from language barriers, especially for victims of migrant backgrounds, there is also a need to see if there are additional systemic and cultural barriers that further encourage negative reporting behavior. As such, this chapter will only focus on the four main intervention routes taken by victims, as detailed below, when seeking assistance, since they have a direct impact towards victims’ reporting behaviors.

4.1 Unsustainable Intervention Routes and Network of Referral System

In Germany, there is a heavy reliance on a national network of organizations in providing aid as laid out in the National Action Plan II to combat GBV, with more than 130 measures in various areas¹⁵¹. However, due to the multiple lines of coordination, reporting structures have become ‘lost’ and it becomes no longer clear who or which organization or authority

¹⁴⁸ H. Kury and U. Smartt, ‘Domestic Violence: Recent Developments in German and English Legislation and Law Enforcement’, *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 14, no. 4, 2006, p. 389.

¹⁴⁹ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 5.

¹⁵⁰ Ibid., p. 4.

¹⁵¹ UN CEDAW Committee, ‘List of issues and questions in relation to the combined seventh and eighth periodic reports of Germany - Addendum, Replies of Germany’, (11 January 2017), UN Doc CEDAW/C/DEU/Q/7-8/Add.1, Para. 47.

is responsible for the upkeep and functioning of these support providers¹⁵², making these intervention systems unsustainable and unmanageable in the long-run due to the high dependency on the building and maintenance of these system of networks¹⁵³.

There are three main routes with a recently available fourth new route in which victims of DV can take in order to enter the intervention system in Germany. The first one begins by the victim actively seeking assistance through a nearest local women's shelter (*Frauenhaus*) or women's counselling centre (*Beratungsstelle*). The second route begins when the police is contacted and called to the residence. The third route begins when the victim is actively seeking ways to escape the violence. And finally, the fourth new route begins by having either the victim or someone concerned about the victim contacting the 24-hour Telephone Helpline which recently established by federal law and went into service in March 2013¹⁵⁴. Unfortunately, all routes above place a high level of responsibility from the victim to come forward herself in order to stop the cycle and liberate herself and her children (if any) from the ordeal¹⁵⁵. As clarified in Chapter 2, this is not always possible because not all victims will feel empowered to do so, with many preferring to suffer in silence out of fear. Also, many do not know that what they are facing is indeed DV and this level of 'normal' violence is further perpetuated in migrant cultures¹⁵⁶.

¹⁵² This can be seen in the fact that the responsibility for the upkeep of Frauenhäuser (women's shelter) is still unknown. See UNOHCHR 'CEDAW discusses situation of women in Germany, Sri Lanka, Rwanda and Micronesia with civil society representatives', (20 February 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21208&LangID=E> (accessed 2 July 2018).

¹⁵³ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 6.

¹⁵⁴ Ibid., p. 2-4.

¹⁵⁵ Ibid., p. 8.

¹⁵⁶ Ibid., p. 11-15.

As noted in the previous chapter, in accordance to the **GewSchG**, perpetrators have to leave when the police are called to the residence and violence was found to have occurred. Due to their duty to protect, the police can be viewed as ‘*door openers to the help system*’¹⁵⁷. Police can issue a civil “go-order” to the perpetrator, which becomes a criminal issue once breached¹⁵⁸. However, professional dilemmas arise for the police officers called, due to the uncertainty of whether what had happened was indeed DV or whether they would cause unnecessary disturbance to the family by issuing the “go-order”. Further repercussions, both positive and negative also have to be considered before issuing the “go-order”, bearing in mind the safety of the victim and the children (if any)¹⁵⁹. Additionally, the length and level of enforcement of the “go-order” varies regionally in the different *Länder* (states/municipalities) in the country¹⁶⁰, making for an unstandardized protection mechanism for victims.

For the valid and more serious DV cases, criminal prosecution, however, is not always possible due to the lack of evidence or the unwillingness of the victim to testify¹⁶¹. This route also places the added pressure on the victims, requiring their further cooperation to go through the justice system which can take a long time from start to finish¹⁶². Additionally, prosecution also almost always only ends up in monetary penalties, often at the cost of the victim where she ends up paying for the violence, gets back with her perpetrator, and the cycle begins again¹⁶³.

¹⁵⁷ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 7.

¹⁵⁸ H. Kury and U. Smartt, (n 148), p. 398.

¹⁵⁹ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 16.

¹⁶⁰ Ibid., p. 7.

¹⁶¹ Ibid., p. 21.

¹⁶² See Chapter 5.

¹⁶³ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 23.

In situations where victims (and her children, if any) engage in the intervention system through counseling and manages to escape to a shelter, her location must be kept hidden in order to protect her. However, some institutional processes and procedures have unfortunately left paper-trails, allowing her to be located and at risk for further violence by her perpetrator¹⁶⁴. Counselors and social workers are also faced with the dilemma in their approach to empowering the victims because of the direct risk to the victims' safety in the event the perpetrators discover that assistance has been provided in cases where a victim has been put in touch with a counselor¹⁶⁵.

There is a significant intersection between shelter and protection orders, even though they are provided by different actors or parts of a State system. Experience shows that shelters continue to be necessary even when effective legislative protection against violence exists. Not every victim of violence wishes to turn to the police and the judicial system and bring legal charges or seek protection orders; some prefer to go to a refuge. There are cases where women who are at high risk need safe accommodation during the separation process because the law and protection orders are not capable of providing complete protection against violence. Some women cannot or do not wish to remain at home due to the trauma they have suffered or because their partner's relatives live next door, or because the lease has been terminated or is not in their name (see A/HRC/32/42/Add.2, para. 69).

- Para 63, Special Rapporteur Dubravka Šimonović, A/HRC/35/30 (2017)¹⁶⁶

¹⁶⁴ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 17.

¹⁶⁵ Ibid., p. 20.

¹⁶⁶ UN HRC, Report of the Special Rapporteur on violence against women, its causes and consequences, 35th Session, Item no. 3, (13 June 2017), UN Doc A/HRC/35/30, Para. 63.

Despite the severe need, many women's shelters (*Frauenhäuser*) in Germany still remain underfunded with bed shortages¹⁶⁷, resulting in many women victims being rejected due to a lack of space. Seeking refuge at a women's shelter is considered to be one of the oldest and often, the only route for many DV victims¹⁶⁸, making the continued existence and upkeep of these shelters not only out of necessity, but also a legal obligation, as highlighted in the Report of the Special Rapporteur on violence against women¹⁶⁹.

Where children are involved, custody rights between the victim and perpetrator also add further complications. There is an inherent need by youth welfare officers to ultimately protect and uphold the interests of the child with the central practical dilemma of balancing between parental custody rights and rights of parents to access their children, as well as the protection of the victim and the children from the perpetrator¹⁷⁰.

Often, if a DV victim has suffered bodily injuries, she will go to the hospital or a doctor to seek some form of medical treatment. This normally would theoretically enable healthcare professionals to intervene. However, due to the code of confidentiality being extremely strong in the area of healthcare, victims might only be provided with information and encouraged to seek help, if the hospital belongs to a network referral system. However, if the hospital is not part of such a system, victims will only be treated of their injuries and no other forms of assistance outside the line of healthcare will be provided¹⁷¹. Other times,

¹⁶⁷ UNOHCHR 'CEDAW discusses situation of women in Germany, Sri Lanka, Rwanda and Micronesia with civil society representatives', (n 152).

¹⁶⁸ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 4.

¹⁶⁹ UN Doc A/HRC/35/30, (n 166), Para. 19.

¹⁷⁰ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 19-20.

¹⁷¹ Ibid., p. 4-5.

some healthcare professionals decline to even ask the victims out of their own personal reservations¹⁷².

As mentioned, the recently established 24-hour Telephone Helpline by the federal law, as part of the National Action Plan II went into service in March 2013. It is “*an around-the-clock, multilingual and anonymous advisory service that helps callers to find local support facilities*”. This process involves the caller, which can be the victim herself, or her family, friends, and can even be organizations who the victim has been directly turning to and confiding in, making the call. The caller “*will be given advice and referred to appropriate sources of help in the area where they live*”¹⁷³. This has been reportedly “*well received by victims of violence, their friends and relatives, and professionals*”¹⁷⁴. However, it was highlighted that violence is not stopped just by making one anonymous phone-call since the central responsibility on the victim to seek intervention and follow through with the recommendations provided still stands.¹⁷⁵ As illustrated above, the violence does not always stop even after a criminal prosecution.

4.2 Additional Obstacles for Migrant Victims

According to Germany’s most recent periodic reports submitted to the CEDAW Committee, “*...many migrant women do not appear to benefit from measures against domestic violence or to receive information about possible protection...*”¹⁷⁶. Migrant DV victims face several added challenges. Some of the basic challenges include language barriers, not knowing

¹⁷² Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 20.

¹⁷³ Ibid., p. 4.

¹⁷⁴ UN Doc CEDAW/C/DEU/Q/7-8/Add.1, (n 151), Para. 47.

¹⁷⁵ See Chapter 5.

¹⁷⁶ UN CEDAW Committee, ‘Consideration of reports submitted by States parties under article 18 of the Convention Seventh and eighth periodic reports of States parties due in 2014 Germany’, (21 October 2015), UN Doc CEDAW/C/DEU/7-8, Para. 129.

what their rights are whilst in Germany, and a lack of familiarity in understanding the German legal system. They are also unfamiliar with the existing intervention and support systems, causing many of them to resort to suffering in silence because DV is also considered the norm in their culture¹⁷⁷.

Aside from the ‘regular’ integration courses, the Federal Government funds special low-threshold courses (women courses) directed towards immigrant women who have a permanent residence title as part of the National Action Plan II. These courses aim to empower these migrant women “*to fulfill their function as bridges between their families and society*” by addressing DV protection and prevention topics such as the “*...different roles of women, questions regarding their rights, conflicts in the family and suitable conflict resolution strategies...*”, but the open-discussion of such sensitive topics need an “*atmosphere of trust*”, something that takes years to build, and not normally discussed with strangers, even though “*the women teaching these courses take advanced training courses on domestic violence and forced marriage so they can refer victims to qualified advice centres and other assistance*”¹⁷⁸.

It is worth to mention that efforts to intensify the integration of women from a migrant background into the labor market¹⁷⁹, while it is not directly linked to the protection and prevention of DV, can have an indirect positive effect since these women have the opportunity to become financially independent and no longer be socially isolated. Studies have suggested that financial independence provides DV victims with a sense of

¹⁷⁷ This view in UN Doc CEDAW/C/DEU/7-8, (n 176), is also shared by the Leiterin of the *Frauenhaus*, as expressed during the interview conducted. However, these challenges are not only faced by migrant DV victims, they are faced by DV victims in general, with the exception of the language barrier. This is mainly because the intervention system requires victims to be the one ‘actively seeking’ for assistance. See Chapter 5.

¹⁷⁸ UN Doc CEDAW/C/DEU/7-8, (n 176), Para. 191-192.

¹⁷⁹ Ibid., Para. 193-196.

empowerment and security, further enabling them to liberate themselves from the cycle of violence¹⁸⁰.

DaMigra e.V., a non-governmental organization (NGO), under the umbrella of the Federal government, with long-time assistance from the BMFSFJ, was formed in September 2014 to promote “*the legal, political and social equality of migrant women*”. The organization represents women of migrant backgrounds, with membership open to women of all backgrounds, in bringing migration and women’s issues to the forefront, at the federal level, and also provides networking support to this group of people¹⁸¹. It serves as a platform for the victims, their families and friends, as well as the various relevant NSAs involved in the fight against GBV and VAW to voice out their concerns. One of the current issues highlighted came after Germany’s recent ratification of the Istanbul Convention. Even though it was considered a huge step forward, this has some adverse effects for the migrant population, because the ratification came with some reservations¹⁸², which *could* contribute to negative victims’ reporting behavior.

¹⁸⁰ D. Conner, Financial Freedom: Women, Money, and Domestic Abuse, *William & Mary Journal of Women and the Law*, vol. 20, no. 2, 2014, p. 340-341.

¹⁸¹ UN Doc CEDAW/C/DEU/Q/7-8/Add.1, (n 151), Para. 123-124.

¹⁸² D. Atmaca, (Dr.), ‘Wo stehen wir heute?’ in ‘Dokumentation der Jahreskonferenz von DaMigra’, DaMigra e.V., (09 June 2017), Berlin <http://www.damigra.de/publikationen/> (accessed 26 June 2018), p. 6. More on this will be discussed in Chapter 5.

5. IMPLEMENTATION OF LAWS & CURRENT PROGRAMS

In order to truly understand why DV remains under-reported especially within the migrant communities in Germany and to assess whether the existing system is actually efficient in encouraging positive reporting behavior, it is important to look at the actual application of laws, the implementation of currently available prevention and intervention programs, as well as the connection and relationship between the two, which include both legal and civic involvement. Any gaps and challenges must be critically analyzed and understood, not just from the legal perspective, but also through the lens of both state- and non-state actors who are involved in the implementation of available strategies and programs.

The previous chapters have shown how complicated DV is as a crime and the importance of viewing it through an interdisciplinary perspective. Explicit legal protection is also imperative to safeguard the human rights of DV victims. The weakening of legislation *can* not only hamper the application of any provision at the time of implementation but also negatively impact reporting behaviors. Additionally, while civic remedies and actors play an important role in combating DV, any disconnect or disorganization within the network system, as well as unresolved practical challenges *can* also lead to negative reporting behaviors.

In order to further assess the efficiency of the existing system, three separate interviews were conducted in the German state of North-Rhein Westphalia (NRW) as an initial gateway to understanding the problem especially with a special interest in the migrant communities. The first interview was a telephone interview with Herr Ebbing*, a Polizeikommissar (police commissioner); the second, a face-to-face interview with Frau Holl*, a Leiterin (female lead-coordinator) from a Frauenhaus; and the third, a face-to-face interview with Nadia*, a DV survivor who came from Albania with her family. *All names

have been changed to protect their identities due to the sensitive nature of the topic and no tape recordings were done in all interviews at the request of all interviewees due to identity, data protection, and security concerns. Responses from the interviews are embedded throughout this chapter, with the exception of Nadia's interview, which serves as a case study, also in this chapter. Responses are to be used as supplements, shedding some light and providing information through the lens of those who are directly involved in the network system.

5.1 A Gap Not Bridged

As mentioned in the previous chapter, there are four main routes available for victims of DV to access intervention. All these routes however, are focused on the victims being the one responsible to take action. However, as discussed in Chapter 2, due to the complex nature of DV, many victims normally endure their situation for years before deciding to reach out for help and actively seek assistance¹⁸³. Some victims also refuse to bring about or pursue any legal action against their perpetrators for various reasons including fear for their own safety and perceived feelings of love for him, or in many cases of immigrant victims, fear of financial instability, fear of being deported out of Germany, among many other fears. Also, when the context of culture is added, some victims do not receive the moral support needed in order to escape their situation. Many remain in the clutches of culture, where even their direct family members reaffirm that what they are experiencing is '*normal*'¹⁸⁴.

¹⁸³ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 11-15.

¹⁸⁴ Ibid.

Issues with the GewSchG

Frau Holl who shared her experiences of over eight years, highlighted the current challenges they have within this space. She expressed her worries that they have reached a point of stagnation in dealing with DV in Germany in general, and the gap between existing laws and the actual range of protection it offers with fears that it remains unbridged if things do not change soon.

“The laws are not bad, of course, but they are insufficient,” explained Frau Holl. “More often than not, when the police are contacted, they will need witnesses in order to file a formal complaint, and if there are no witnesses, a case will not be taken up. Reports may be made but nothing legal actually happens.”

Herr Ebbing confirmed this, *“Usually, we receive calls for very minor issues. Sometimes the man ‘only’ shouts at the woman. Sometimes it is ‘only’ a light slap across her face. The problem is that we don’t have evidence - it is almost always he-said-she-said.”* Even if there seemed to have a ‘light’ manifestation of DV such as a light slap or a verbal altercation, it was hard to determine and prove that it did occur due to a lack of evidence. And if the situation was not serious enough, the police would normally not even make a report, but only a verbal warning would be given instead. The level of discretion the police have is very high, to determine whether a situation is considered DV or not. *“Usually, if there is a slight injury, or something obvious like a bruise on her arm, or some bleeding on her face, then we will immediately ask the man to leave because we can see an injury, there is some proof, and it is required by the law for us to protect.”*

Herr Ebbing also raised an interesting issue where some victims, in order to gain an upper-hand from her perpetrator, calls the police against them even when nothing actually happened. *“They abuse this protection and call us, sometimes several times a day. Usually*

this happens when they are trying to get sole custody of the children. This causes confusion for us because we sometimes find it really hard to detect if it's actually DV or not. By law, we are required to protect and take action, but because there is no proof, we cannot do anything. And when they call many times and abuse this protection, when they call again in future, we will think they are not taking it seriously.”

The **GewSchG**, while it does provide some relief and protection to DV victims, also has its gaps and limitations, which poses a legal challenge. From a practical application standpoint, inconsistencies and loopholes exist. One example is having the victim and perpetrator only sitting no more than two meters apart from each other in a custody hearing when the court had ordered for them to be at least 20 meters from each other¹⁸⁵. Such accidental loopholes in the law need to be addressed accordingly in order to ensure adequate protection is provided to the victim.

Frau Holl further explained how the **GewSchG** can have its limitations from her perspective as a practitioner. In accordance with the **GewSchG** which gives the police the authority to expel the offender for 10 days (14 days in some *Länder*) from the shared domicile by taking the keys away, very similar to the interim measures such as restraining orders or protection orders offered in many countries¹⁸⁶ as a form of protection towards the victim. *“In theory, this is a good protection. But, in reality, this rarely works. Many times, the offender does not respect this (order), and there are also times when the victims themselves make a duplicate copy of the keys and pass them back to the perpetrator, allowing them back in. By this time, there is very little the police can do to enforce this,”* Frau Holl further clarified. *“For those that really benefit from this (order), and follow it, are*

¹⁸⁵ D. Atmaca, ‘Migrantinnen* auch! Nein zu Gewalt an Migrantinnen* und geflüchteten Frauen*!’, (n 33), p. 20.

¹⁸⁶ TrustLaw Connect, A Landscape Analysis of Domestic Violence Laws, (n 128).

often afraid and still do not feel safe in their own apartments because the offenders will loiter around the premises and cause a nuisance.”

“It is not that we don’t take the problem seriously. If we have checked up on the residence once a day, then after we have left, the man shows up. Then it would not have made sense. We cannot be there around-the-clock. The police also have other works to do,” explained Herr Ebbing.

High Threshold for Prosecution & Burden of Proof Issues

Clarity in legislation is also important to strengthen legal protection afforded to DV victims, as argued in Chapter 3 of this thesis. Due to the varying manifestations of DV, where not all acts can be criminalized, it is even more important have explicit legislative framework for DV protection, which reduces subjective interpretations, misinterpretations of any provisions, and reliance on the discretion of relevant authorities when implementing these laws. A DV context is also set in which the manifestation has occurred, even if such manifestations are non-criminal in nature and have little to no proof, such as in verbal abuse. In an attempt to improve DV prosecution, India, for example, has made such legislation amendments, thus establishing DV itself as an offense, in response to the difficulties of proving such a crime had occurred. Evidentiary rules were also amended in order to shift the burden of proof from the victim to the perpetrator¹⁸⁷.

“I see this all the time. A lot of women hope the man gets some punishment but either they don’t have enough proof or they are not hurt ‘enough’. There was no actual bodily injury,” said Herr Ebbing explaining the issue of high threshold in prosecution of DV.

¹⁸⁷ UN HRC, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 20th Session, Item no. 3, (23 May 2012), UN Doc A/HRC/20/16, Para. 98.

In order for proceedings to take place, either the victim has to come forward herself or if the victim does not come forward to report, secured evidence is needed. In the latter case, a statement is required from the victim regardless, in order to move the prosecution forward. Often, due to poor documentation made at point of first intervention, evidence is poor. However, the most important legal obstacle is *“if the woman declares in court that she will make use of her right not to testify against her husband or partner, no previous statements that she may have made can be used in the proceedings”*¹⁸⁸.

“The moment they choose to retract from their statements, we have no case. Unless there was actual bodily harm, where we see it visibly, there is nothing more we can do unfortunately,” explained Herr Ebbing.

Because the criminalization of DV depends highly on the criminalization of only the criminal manifestations of DV, as per the **StGB**, *“most women are deterred from even contacting the police because they have the impression that the police don’t do anything,”* explained Frau Holl. *“The threshold to prove DV is very high and more often than not, even when all evidence is collected and there is a strong case, the perpetrator only gets a fine, and nothing more. This is after all the lengthy procedures the victim herself has to go through and agree to”*¹⁸⁹.

Istanbul Convention Reservations

Even though Germany’s recent ratification of the Istanbul Convention was considered to be a commendable achievement, three reservations were also made, out of which two have

¹⁸⁸ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 21.

¹⁸⁹ Ibid., p. 22-23.

direct and adverse impacts to DV victims of migrant backgrounds¹⁹⁰. In accordance with Article 78 (2) of the Istanbul Convention, a State Party is legally allowed to make reservations to certain provisions of the Convention. Of relevance specifically to the migrant DV victims, making a reservation not to apply Article 59, paragraphs 2 and 3, can be interpreted as the possibility that these DV victims *can* be expelled from Germany if the women have been married for less than three years to their perpetrator husbands. Due to the difference in German law between obtaining residence permits for family reasons and humanitarian grounds, the burden of proof also rests on the woman to prove that she needs to stay in the country on humanitarian grounds¹⁹¹.

This undoubtedly presents more than a legal challenge for migrant DV victims. Not only are there language barriers, most migrant victims are largely unaware of their rights, protection possibilities, and the German legal system. This is further aggravated by the fact that violence is considered '*normal*' in their home culture. Unfortunately, through these reservations, migrant DV victims are presented with very limited choices, mostly ending up with them staying with their perpetrator husbands and to tolerate the situation until the three year marriage rule has been met, which *can* be seen as an acquiescence of the government, thus creating a climate that is conducive to DV¹⁹². However, it is important to also note that States Parties are indeed legally allowed to make such reservations, all in accordance with the Istanbul Convention itself, raising a potential issue of the strength of the Convention. All these discrepancies *can* lead to weakening of legal protection, which *can* then

¹⁹⁰ 'Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence', CoE, (n 35).

¹⁹¹ D. Atmaca, 'Migrantinnen* auch! Nein zu Gewalt an Migrantinnen* und geflüchteten Frauen*!', (n 33), p. 20-21.

¹⁹² UN Doc A/HRC/31/57, (n 113), Para. 56.

contribute to negative reporting behavior, confirming research views that most victims have little faith in the justice system.

5.2 Balancing Between Protection and Empowerment

Practical and Ethical Issues

“One of the greatest problems in DV is that victims/survivors do not come forward,” declared Frau Holl. *“Usually, they don’t look for help when they have just experienced an isolated incident. The women hide it or they simply don’t tell the truth. And in most cases, they wait until it’s way too late - and often times, it is usually one event that is very tragic or that involves the safety of the children that they finally come forward to report.”*

Frau Holl mentioned that many times, the victims do not come forward themselves on their own to a *Frauenhaus*. It is usually with the help of a friend or family member that they are finally able to be coaxed to seek assistance¹⁹³. Even when victims do come forward, many times, they are unsure of what it is that they truly want to do. Frau Holl said that this behavior, which is very common amongst victims who have even lower self-esteem, makes their work also ethically challenging. *“We cannot force the victims to stay at the Frauenhaus. We also know that the violence they are enduring is wrong. However, we cannot intervene if they refuse help. It is only when there is severe bodily harm or it really impacts the children, then we can get the authorities in. Otherwise, we are really stuck ourselves, and this explains the high threshold needed when it comes to DV.”*

Herr Ebbing also explained that for the police, since their mandate is to protect, it is also very rare that they would refer the victims to a *Frauenhaus*. *“In the event that we issue the ‘go-order’, we tell the woman that she can stay with her children in the apartment. Only*

¹⁹³ This view is in line with Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 12, where some extended family networks can become a great resource and provide support to migrant DV victims trying to escape.

sometimes, we will tell them of their alternative options and mention that there is a Frauenhaus nearby. But this is not always a possibility if a Frauenhaus is too far away. Most times the victims are too shocked that the man has to leave.”

“Victims with migrant backgrounds also have an added challenge when trying to get a slot in the Frauenhaus. Because of the cost per night, they will need to be registered at the job center to be able to find work and thus pay back what they owed. This keeps the Frauenhaus operational and running. However, without proper paperwork, this becomes an added challenge. Additionally, there is a general lack of space and some shelters have no space just for the time being or there is a shelter that is unreachable for the victim. This means the Frauenhaus will turn them away and when this happens, they will be forced to endure their predicament and suffer in silence because they have nowhere else to go,” Frau Holl explained further.

When viewed from a human-rights based approach, Frau Holl said that this is simply unacceptable. Unfortunately for this class of victims, they remain truly trapped. *“It is also ironic that we need victims to remain open and functioning when we are supposed to receive government support to remain open in order to be there for these victims,”* said Frau Holl.

“We had a round-table trying to tackle the reporting issue and one of the topics on the agenda was how to reach victims discreetly at hospitals¹⁹⁴. One idea was to leave pocket-sized pamphlets in the women’s toilet. We thought it was a good idea because it was so discreet, allowing the women to take one and hide it in their pockets, in case they were

¹⁹⁴ Physicians have been identified as a first-point of contact for DV victims because of minor injuries sustained. BMFSFJ, ‘Health, Well-Being and Personal Safety of Women - A Representative Study of Violence against Women in Germany’, (n 18), p. 18.

abused and had nowhere to turn to. We had hoped it was going to be a successful project due to its extremely discreet character, but we were sadly disappointed because it did not work. The pamphlets were left untouched,” Frau Holl shared. “We don’t know why the women did not take them but it is rather unfortunate. Of course there are doctors who want to help but they were unable to or had no time to provide the kind of assistance that only a licensed psychologist who has had experience in dealing with DV cases could give, and most of the time, doctors are busy with their own jobs.”

The Need to Break Down the Cultural Barrier

“In my experience, victims who come from migrant backgrounds really have it harder. Their background subconsciously dictates that the men must be more aggressive, have more power, and thus appear to be in charge. This creates a stable illusion in the household even if the wife is being beaten behind closed doors, testing the concept of public vs. private even further,” said Frau Holl. “And when these women try to talk to their family or friends, they are being turned down. Even worse when their own mothers force them to stay¹⁹⁵. So, not only do they have a difficult time accessing aid because they don’t understand the protection mechanisms, their own culture hinders them!”

“There were some calls where we responded to, the wife was the more verbally aggressive one and the husband was physically aggressive, while the children are watching TV. It is really considered ‘normal’ for them. Even it stumps me sometimes. And for some of these households, we have received many calls from them before, to the extent where even

¹⁹⁵ This view is in line with Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 12, where extended family networks can sometimes heighten the danger for a migrant DV victim trying to escape.

sometimes we think it is a nuisance because no one got physically hurt,” said Herr Ebbing¹⁹⁶.

The same challenge is shared by men-victims due to the added stigma that comes with being a victim of DV. Since men are supposed to be the stronger gender, when they become victims, according to Frau Holl, they internalize the issue and remain silent. *“They will never look for help. They very rarely will talk about it too. And as per my knowledge, there is only one shelter that is for men and that is in Niedersachsen,”* she continued.

In the last two years or so, Frau Holl shared that there has been an increase in migrant women requesting for a spot at the *Frauenhaus*. *“But this still does not mean the problem is over. Out of the several that do come forward seeking help, there are still many that don’t. Also, almost always, and within the first few weeks, they will return to their husbands because they do not know what will happen due to their refugee status,”* Frau Holl continued. *“Many are very poorly educated, some cannot even read or write. We cannot force them to stay (here). They stay for a little bit, and then they decide to go back to their husbands, with the hopes that things will change, but unfortunately, things remain the same.”*

Frau Holl said that despite their efforts as counsellors to try and empower these women, their deeply rooted mindset is hard to break. *“Some of these women just cannot comprehend that violence is not ok. Many say that it is normal and claim that they are doing fine. Some who stayed here, who have kept in touch with their families, of course without revealing their location, still manage to get influenced by their families eventually, to return to their*

¹⁹⁶ Professionals unfortunately build some forms of prejudices and preconceptions on migrant groups, based on their day-to-day work experience. See Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 15.

husbands. How do we break this culture and mindset? I don't know. But we must think of something quick."

5.3 Prevention Through the Protection of Children

Despite excellent legal protection afforded to children in general¹⁹⁷, children who have been exposed to DV have a much higher risk of either being victims or being DV perpetrators in the future¹⁹⁸. Other negative psychological effects are also carried with these children throughout their lives, well into adulthood. *"Even though there are cases where the children may become upstanding citizens, how do we actually know they will be fine? We see the psychological impacts DV has to victims/survivors - children are much more impressionable,"* said Frau Holl, expressing her worries when it comes to children.

"In my experience responding to calls, most migrant victims have more children. This means they are more exposed since young to this type of violent upbringing. This carries a high risk that the same community, if prevention or intervention does not take place, that the cycle will continue," said Herr Ebbing. *"Additionally, we always hope that if there are children involved, we can 'try' to coax the woman, tell them this violence is not normal, through the depiction of the hurt their children is suffering. Some women will 'buy' this idea. But especially in migrant families, they say that this type of beating itself is 'normal' in their culture"*¹⁹⁹.

Typically, when children are involved, Frau Holl refers to the *'Sorgerecht'* (custody rights, colloquially) where both parents have 50-50 rights over the children will apply. Most of the

¹⁹⁷ BGB 1666.

¹⁹⁸ U. Till-Tentschert, (n 83), p. 1875.

¹⁹⁹ This view is also illustrated in Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 9.

time, based on her experience, victims with children rarely come forward to report and when they do, they fear losing their children due to the fact that they highly rely on their husbands financially. *“The custody is not simply awarded to the non-violent parent. A judge is always concerned with whether the children will be safe and have a proper upbringing. When this happens, the victims often go back to their partners and the cycle repeats itself. Only this time, they don’t report again because they fear losing the children,”* explained Frau Holl further. *“First of all, this causes an immediate danger to the entire family. Second, if there are very young children, they might become collateral damage. In cases where the family breaks apart, and the danger cannot be countered in any other way, the children are taken away completely and the State has the right to do so”*²⁰⁰.

“We usually see if there is harm done to the children. If so, youth services are contacted. In worse cases, the children get taken away by their parents. This is the one thing that is good with the German legal system,” said Herr Ebbing. However, despite this high level of protection, questions on ethical issues arise. *“On the one hand, the children will grow up in a better environment. But on the other hand, they might suffer from other psychological impacts that stem from them having been taken away. This is another issue that cannot be overlooked.”*

5.4 Case Study: Nadia’s Journey

As a recent migrant into Germany, Nadia came with her husband and their three children from rural Albania. Nadia is a survivor of DV and her story began from the time she was forced into marriage with her now ex-husband (Shahi). She not only almost lost her life, but also had difficulty obtaining the necessary assistance after their move to Germany. The interview was conducted voluntarily, and in the safe space, within the confines of a

²⁰⁰ BGB 1666a.

Frauenhaus in the North-Rhine Westphalia (NRW) state of Germany. Nadia only shared what she felt comfortable sharing. Names have all been changed to protect the privacy of the persons involved, due to the highly sensitive nature of DV.

A Different Culture

As a child, Nadia grew up in a stable and happy family where she was not acquainted at all to violence. However, all that changed as she started a family of her own. *“I am really sorry for my children, that they never had the chance to experience a childhood just like the one I had, because of the violence we all had to endure because of my ex-Mann (ex-husband),”* Nadia said as she tried hard to hold back tears. *“I remember my childhood to be a very happy one. My parents never argued. My father never hit my mother. I had never seen or known violence at all. So, when it came to my own family, I only thought this was the way it was and that everything was normal - not only because I had no clue about violence or domestic violence, but my sister tells me this is normal in our culture. Men are this way. But now, I know better.”*

It all began when Nadia met Shahi through one of her friends back in Albania. He was not only good-looking, but seemingly a good person, with a good background, and came from a good family. And of course, just like anyone, Nadia fell in love, even though she admitted that he wasn't really her 'type'. However, being in a traditional community, talks of marriage soon came up. Nadia however was not convinced on the idea of marriage to Shahi. *“I remember telling my father that I didn't want to get married, but no one was listening to me. I did not get any help,”* Nadia lamented. *“Our family thought it was a going to be a good union. He came from a good family and he could be good for me.”*

Despite her uncertainties about getting married, she never really protested because in her mind, how bad could a marriage be, how bad could following her parents' footsteps be, and

how bad could listening to them be. It did not end well for her unfortunately. They got engaged.

“I remembered one day, I was out with my sister and all of a sudden, his family came and took me by force. They grabbed me and shoved me into a car, and drove me to their village where we were forcefully married,” Nadia explained further. *“Ever since then, my life changed. But I had no way out. It was all that I knew. And it was all that I had.”*

After hearing the news of her marriage, her own family, due to cultural influences, had not thought much of it. Of course, they were not happy that she was married by force but seeing as the pair were engaged, and soon to be married anyway, they let the whole incident slide. Also, in their minds, he came from a good family. They had, however, no idea what was in store for Nadia after the marriage.

After the rushed marriage ceremony, Nadia lived with Shahi and his mother, in their village, which was a little further away from her family’s village. She was hence separated from her family and he made sure she remained separated by limiting her visits, and ultimately, cutting off her contact with them²⁰¹. During the day, she would work and when her day ended, she would have to come home and serve her husband like a normal wife ‘should’²⁰². *“Every night, he would come home very late, around 2 a.m., or even 3 a.m., always drunk. And as a wife, it was my duty to wait for him until he came back home, even if I had to wake up early, at around 5 a.m. or 6 a.m. the following day. This was my life, on a daily basis, for many years,”* Nadia continued. *“I worked in a local corner restaurant,*

²⁰¹ Isolation is an element of control that is almost always present in DV cases where the ‘stronger’ seeks to control the ‘weaker’. In Nadia’s case, this enabled Shahi to abuse Nadia in a multitude of ways until Nadia began to believe what he told her, further lowering her self-esteem and disempowers her. See Chapter 2.

²⁰² Gender stereotypes are manifested in a multitude of ways, and are more so prevalent in migrant communities. See Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 14.

cooking, washing dishes, serving. I am always on my feet, standing up. So I got very little rest even when I got home, because at home, I have to be a good wife. Shahi demanded this of me.”

The Cycle of Abuse

“What did he do? Many things. Too many things. From the time we got married, to the time when we started having children. Well, there was once when he scolded me very harshly for locking the door at night and demanded that I kept our apartment door unlocked so he could enter when he came home at night,” Nadia shared. “I never felt safe in our apartment that late at night. The children were already asleep. I wanted to sleep too, while waiting for him to come home. But he wanted the doors unlocked. If I locked it, he would bang at the door and scream and shout, creating a ruckus!”

“Another instance, he scolded me, saying that I had insulted him by going to the bathroom (because I had to ‘pee’ so badly) while he was having his meal. He said he was the man of the house and he should be respected. And if I wanted to use the bathroom, I should have waited until he was done. But he normally takes 2-3 hours just to sit and enjoy his meal. From the starter, to the main dish, to the dessert, and then drinks after dessert, and then tea. How could I have waited? But he reprimanded me for this,” Nadia shared.

These were just two major examples of the many manifestations of DV that Nadia and her children had to put up with over the years. Shahi had insulted her, belittled her, hit her, shamed her, threatened her, among many things other things. Day by day, month by month, as the years went by, Nadia became more and more withdrawn, and had lost all her self-confidence and self-esteem. Shahi would also often take money from her to feed his alcoholism and expected her to work more if money was short.

“But this was my life. This was my husband. This is what a wife has to do to respect her husband. Our culture says so,” Nadia explained further. *“He never felt he was at fault for anything. This was the way it was at home all the time.”*

Fast forward to around three years ago, in 2015, when the family moved to Germany, first to a smaller town, also in NRW, where they continued to endure Shahi’s abuse. Shahi continued to be an alcoholic. *“There was once when Shahi even threw our son, Saleem, out of the house in the middle of the night, during one of his regular outbursts,”* Nadia said as she looked down at her hands.

“I was always alone. I was not allowed to chat with anyone. I was not allowed to make any friends,” Nadia said. Shahi also did not like that their children had made friends with their neighbor’s children, who originally came from Kosovo. Despite this, Nadia had managed to keep a ‘secret and low-profile’ friendship with the wife, Mdm. Rosa.

The pattern of abuse and the cycle never changed. Until one evening when Nadia was in tremendous pain and had no choice but to go to the doctor. Thankfully, Shahi was not at home. Mdm. Rosa was able to accompany her due to the fact that Nadia spoke very limited German. She only knew very basic German and needed translation help and also assistance to navigate the healthcare system. *“I was in so much pain but even the doctors could not identify what was wrong. I thought I had cancer, or some sort of disease,”* Nadia expressed while shaking her head. The doctors had no idea that Nadia was suffering from DV in silence, because she hid it so well, and because there were no obvious bruises. Even during the appointment, they could not detect what was wrong. Nadia only said her back was in a lot of pain. It was until two days later when the test results came back that she received a call from the doctor, who had asked her to come back for a visit. It was then that they had made the discovery that what she had could affect her spinal cord. Eventually, the pain

became so severe that Nadia had to be hospitalized. *“I was so anxious as to what will happen to my children, with me gone in the hospital,”* Nadia said again.

Getting Assistance

Mdm. Rosa has had her suspicions the entire time while they were friends that Nadia was suffering in silence but did not dare to interfere, for fear of putting Nadia in greater danger, and for fear of the cultural repercussions²⁰³. *“Eventually, I confessed to Mdm. Rosa that Shahi had hit me, and beat me to the point where I had sustained this injury down my back. I didn’t even think anything of it because this was normal for me,”* Nadia explained. *“I remember Mdm. Rosa tried very hard to keep asking me if I was ok, and if I needed help. I did not know what she was trying to do at first. But when I finally confessed to her that Shahi had hit me, Mdm. Rosa had told me that she wanted to hear it directly from my mouth that I was suffering from DV.”*

Nadia had no idea that first and foremost, what she was going through was indeed a classic case of DV and that her children were constantly exposed to danger, as much as she was. She also did not think that she needed assistance because all of it was ‘normal’ for her. Additionally, when she was urged by Mdm. Rosa to seek help after she had confessed to being hit by Shahi, Nadia had no clue what she should have even done, what she could have done, that help was even available for her case, that such a place as a *Frauenhaus* even existed. *“I could not reach out to anyone. I didn’t even know that I could get help. I barely spoke German. I didn’t even know there was such a thing as a Frauenhaus,”* Nadia said.

²⁰³ In certain communities, DV is viewed as ‘normal’. Talking about it considered uncommon. See Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 13-14.

“Initially, it was difficult for me to even get a bed in the Frauenhaus in the town where we lived, because I have a son and two daughters. So, the Frauenhaus would have had to separate us and I did not want us to be separated. In the next towns over, there were no beds available. It was very hard to seek refuge and run away. But somehow, we came (here) and was able to get away. Eventually, we had to engage with lawyers and the entire ordeal took about a year or so. It was all so complicated, even until today, I did not even understand all the procedures and honestly, I could not have done it on my own,” Nadia elaborated²⁰⁴.

It was not easy to access help and Nadia even mentioned that the police could not do anything when they were contacted because there was no actual crime that had occurred. Many times, Nadia felt like her situation was hopeless and that it was much easier to just give up than push forward. Despite all odds, Nadia managed to remain optimistic only through the guidance she received from the *Frauenhaus* and the staff members there, the constant encouragement from Mdm. Rosa, as well as the constant pleas of her children to get out of their situation. *“I still remember my youngest daughter, Laila, she said ‘stop mama... enough’. And my children begged me, saying it was enough, that they couldn’t take it anymore. And that compelled me to persevere,”* Nadia clarified.

And Life Continues...

“Before, I felt so worthless. All the years of insults and verbal abuse, I started to believe I was worthless. But now, I am slowly starting to feel so much better!” Nadia said, with a tiny smile on her face. Nadia has indeed come a very long way on her journey to independence

²⁰⁴ The worries and concerns that Nadia had were in line with behaviors of migrant DV victims, as described in Chapter 2. Navigating such a complexed system of help, as clarified in Chapter 4, would have been extremely difficult for a DV migrant victim who had very little resources of her own, in addition to the existing cultural challenges, as well as language and systemic barriers DV victims of migrant backgrounds have in Germany.

and she is still recovering from the ordeal. *“Had it not been for Mdm. Rosa, I don’t know what would have happened to me and my children. We were asylum seekers in Germany. We had no idea what would have happened to us.”*

The entire situation had left not only physical but deeply rooted mental scars but she remains optimistic towards the future, propelled forward by her children and new friends. Since then, Nadia and her children have managed to obtain asylum in Germany and remain living in the NRW state until today.

“Why did I stay? I did not know any different. This has always been the way my life has been since the day we got married. I had no way out,” Nadia said.

6. RECOMMENDATIONS & CONCLUSION

As illustrated from the previous chapters, including the case study and inputs from a practical perspective, there is much need for improvement in the combating of DV in Germany. The answer to the research question, '*why does DV remain under-reported, especially within the migrant population in Germany?*' can be explained through an understanding of the factors which encourage or discourage reporting behaviors through the chapters analyzed in this thesis; namely, the strength of legal protection afforded as discussed in Chapter 3, the efficiency of the civic network of prevention and intervention system as explored in Chapters 4 and 5, and finally, the thorough understanding of the nature of DV as a crime itself, as clarified in Chapter 2.

Throughout all the chapters, one constant remains - there is a profound need to empower the DV victims themselves in order to seek assistance since the 'help system' relies on them actively seeking it in order for them to be protected²⁰⁵. However, as discussed extensively in Chapter 2, due to the complexed nature of DV, victims are often not always easily empowered. Many have extremely low self-esteem and adding the element of culture, for victims of migrant communities, further complicates the issue, contributing to existing negative reporting behavior. Along with legal and practical challenges, as examined in Chapters 3, 4, and 5, victims of migrant communities *may* have less incentive to seek help through civic means, let alone institutional means.

Through the following recommendations, improvements can be made and thus, hopefully, achieve the desired outcome of not only the improvement of reporting numbers, but also ultimately, preventing further DV occurrences within this population in the future through changing their perception of DV.

²⁰⁵ Grafe, Bianca & Hagemann-White, Carol, (n 26), p. 8.

6.1 The Need For Normative Certainty

In order for DV to be better addressed, first of all there is a need to further define DV and have it explicitly mentioned in legislation either by amending the **StGB** or by expanding the **GewSchG** to include various offenses which put into context that such acts had occurred in the context of DV, or to provide clearer definitions to certain relevant terms. Alternatively, an entirely new '*Law on Domestic Violence*' could be established, similar to those of other countries which have express legal definition of DV and clear DV legislation²⁰⁶. However, the first step in the right direction could be to provide some clarity to the term '*domestic violence*', which is currently lacking in legislation.

By having clear definitions and clear terminologies with clear meaning, there is less room for subjective interpretations, misinterpretations and less questions on what actions or manifestations are considered DV or not. Additionally, when the mandate is clear, state actors have clearer guidelines to implement certain provisions and even smaller, non-criminal manifestations of DV can actually be 'criminalized', further targeting the perpetrator, making him responsible for his actions instead of placing the sole responsibility on the victims to make a report and go through such an arduous process, all while experiencing the emotional burden at the same time. Both criminal and non-criminal manifestations of DV will also be given a context to its occurrence.

6.2 Bridging The Gap

There is a need for programs to have better management and sustainable strategies, along with a certain standardization across all *Länder* (states/municipalities) in order to ensure that the same level of assistance, and access to help, is provided, without discrimination, to all victims. The 24-hour hotline, while helpful in providing anonymous advice and

²⁰⁶ TrustLaw Connect, 'A Landscape Analysis of Domestic Violence Laws', (n 36).

counseling at the initial stages, is not a permanent fix to the problem of under-reporting of DV within the migrant communities, and in general. As per the recommendations made by the CEDAW Committee, there is a need for Germany to “*enhance its efforts to combat all forms of gender-based violence against women, and take steps to develop a comprehensive prevention strategy to address domestic violence, including through awareness-raising campaigns*”²⁰⁷ Strategies developed need to truly empower victims ‘from within’ so that they can be confident in coming forward to report the incident.

Additionally, there is a need for all staff members at all levels to apply gender- and culture-sensitive approaches at all intervention stages. This minimizes the discrepancy gaps and builds an element of trust that is almost always lacking in such situations. Especially since DV is highly sensitive in nature, there is an increased risk for victims to ‘shut-down’ when they feel threatened or provoked. Inexperienced and poorly-trained practitioners *can* indirectly sabotage the reporting process, and even hurt the recovery process, by indirectly taking away the courage that some victims might have taken some time to build, resulting in a retraction of their desire to pursue ‘a way out’.

6.3 Further Research

An additional component that is needed in order to encourage positive reporting behavior is a mindset change - to shift the long-standing mentality that violence is ‘normal’, that women are ‘weak’, and that it is simply a ‘marriage problem’. A study to understand civic populations’ perceptions of DV, VAW and GBV can be a good start to address the issue

²⁰⁷ UN Doc CEDAW/C/DEU/CO/7-8, (n 13), Para. 26(a).

with a community-based view in mind, similar to the study done in Australia²⁰⁸. By understanding the community's perceptions and threshold for DV, not just of those directly or indirectly affected by DV, and not just by conducting victimization surveys, more can be understood on ways to better address DV through better prevention and intervention strategies that could actually work for the long-term.

6.4 Concluding Remarks

There is much improvement for Germany within the DV space. Beginning with the legal framework. Unfortunately, there seems to still be a gap in implementation which leads to negative reporting behavior. By looking at all aspects and facets of DV, it is now understood that this is a crime which requires an interdisciplinary approach. This is especially important in cases of DV within the migrant communities where culture plays a huge role in creating a DV conducive environment, which distorts the reality for many DV victims.

From the legal perspective, not having an express legal definition leads to subjective interpretations, misinterpretations, and high threshold to prosecute DV cases. From a civic intervention perspective, the network of system is unmanageable, unsustainable, and not 'friendly' enough to empower survivors. Just like a domino effect, it leads to negative reporting behavior, which leads to low reporting rates, because DV victims simply do not have enough confidence in the existing system, legal and civic support alike. Through the recommendations laid out above, at the very least, migrant- and non-migrant DV survivors *will* hopefully become more encouraged and empowered to come forward to report.

²⁰⁸ M. Pavlou and A. Knowles, (n 80). This study showed that provocation by the victim to the perpetrator led to attributions of greater responsibility towards the victim than perpetrator and less sympathy for the victim. The study also showed that respondents who had more conservative attitudes towards women attributed more responsibility towards women (victims) than the perpetrator. Through an understanding of community attitudes towards DV, a more targeted formulation can be designed to alter mindsets and perceptions, instead of applying a one-size-fits-all approach in campaigns to combat DV.

Prevention and intervention strategies *can* be more efficient, and thus mitigating DV further.

Through an in-depth analysis of existing national laws, prevention and civic intervention programs, as well as the operationalization and implementation of both laws and intervention programs, a clearer picture has been painted. DV victims of migrant communities continue to face various challenges which ultimately led to negative reporting behaviors. From this point on, moving forward, any updates to the framework, legal or otherwise, need to be designed with the goal of promoting positive reporting behavior since the aspects that promoted negative reporting behavior have thus been established.

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