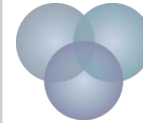


## **Empirical Analysis of Mediation Cases in Intercultural Settings in Norway, the United Kingdom and Germany**

### **Empirische Fallanalysen aus der Praxis interkultureller Mediation in Norwegen, Vereinigtem Königreich und Deutschland**

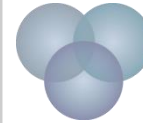
Clara Rigoni

Max Planck Institute for Foreign and International Criminal Law  
Freiburg, Germany



Definition of “honor-based violence” (*UN Developing legislation on violence against women and girls, 2011*):

1. Control, or desire to exert control, over a woman’s behavior  
Kontrolle über das Verhalten der Frau
2. A male’s feeling of shame over his loss of control, or perceived loss of control, over her behavior  
Scham wegen des Verlustes der Kontrolle
3. Community or familial involvement in augmenting and addressing this shame  
Rolle der Familie/Community



### Elements

- Collective character
- Agnation
- Premeditation
- Honor discourse

### Examples

- Forced marriages
- Controlling behavior
- Domestic violence
- (Sexual violence)

### Elemente

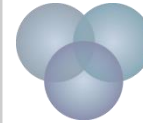
- Kollektive Natur
- Agnation
- Vorsatz
- Ehre

### Beispiele

- Zwangsheirat
- Kontrollverhalten
- Häusliche Gewalt
- (Sexuelle Gewalt)

## Why HBV?

### Warum Gewalt im Namen der Ehre?

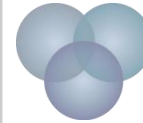


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- Currently taking place mainly within minorities in Europe:  
conflicting values and discourses on human rights  
Zurzeit verbreitet unter Minderheiten in Europa: Wertkonflikte  
und Menschenrechte
- Particularly evident in girls from 2<sup>nd</sup> or 3<sup>rd</sup> generation migrants  
Hauptbetroffene: Mädchen der 2. oder 3. Migranten-  
Generation
- It involves family issues (field in which minority groups claim  
autonomy/mediation is often used)  
Betrifft den Familienkreis (Bereich in dem Minderheiten  
Autonomie fordern und in dem Mediation genutzt wird)

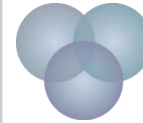
## Why HBV?

### Warum Gewalt im Namen der Ehre?

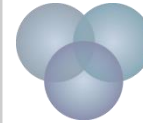


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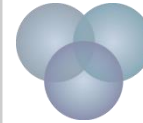
- It reflects the organization of certain societies:
  - Communitarian
  - Patriarchal
  - Honor/Shame
  - Alternative Dispute resolution
- It becomes a way to keep the integrity of the group in the foreign country and of forcing the “deviant” individual into these groups dynamics
- Die spiegelt die Organisation manchen Gesellschaften wider:
  - Kommunitaristisch
  - Patriarchialisch
  - Ehre/Scham
  - Alternative Streitbeilegungsmethoden
- Mittel um die Community zusammenzuhalten und die Gruppendynamik zu schützen



- RJ for domestic/sexual/family violence is disputed (but recent developments)
- Most HBV policies (and organizations) reject its use (intersectionality, vulnerability, victims' young age, power imbalance, etc.)
- Skepticism related to ADR/RJ within migrant groups
- Die Anwendung von RJ bei häuslicher/sexueller/familiärer Gewalt ist umstritten (aber neue Entwicklungen)
- G-N-E Policies (und Organisationen) raten von der Anwendung ab (Opfer-Verletzbarkeit, etc.)
- Zweifel bzgl. der Anwendung von ADR/RJ unter Minderheiten



- Very few HBV victims report to the police
  - Underrepresentation of migrant communities within the law enforcement agencies
  - Community structures and leaders often addressed
  - Need for services within communities
  - Even after reporting a contact with the family is needed
- Wenige Anzeigen
  - Ethnische Minderheiten nicht (genug) vertreten in Strafverfolgungsbehörden
  - Community leaders oft angesprochen
  - Bedarf an Community Unterstützung
  - Kontakt mit der Familien notwendig



### 1. Normative aspects

What rights and principles of Western (criminal) justice systems are threatened by a “logic of honor” and by the use of ADR/RJ? (human rights in an inter-normative context)

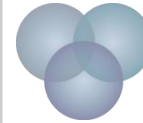
Potential clashes: equality-freedom-justice-autonomy-access to justice-rule of law-monopoly of the State-individual responsibility

### 1. Normative Aspekte:

Welche Rechte und Prinzipien unseres (Straf)rechtssystems werden von der “Ehrenlogik” und der Anwendung von ADR/RJ gefährdet?

Potentielle Konflikte: Gleichheit-Freiheit-Gerechtigkeit-Autonomie-Zugang zur Justiz-Rechtsstaatlichkeit-Staatsmonopol-strafrechtliche Verantwortlichkeit



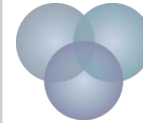


## 2. Descriptive aspects:

- How do these programs work?
- What “normativities” play a role there?
- Differences between formal and informal mechanisms?
- How do they interact with the formal criminal justice system?

## 2. Deskriptive Aspekte:

- Wie funktionieren diese Programme?
- Welche “normativities” spielen hier eine Rolle?
- Gibt es Unterschiede zwischen formellen und informellen Mechanismen?
- Wie interagieren sie mit dem Strafrechtssystem?

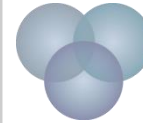


### 3. Analytical aspects:

- Are the mentioned rights/principles infringed?
- If so, are we ready to accept that?

### 3. Analytische Aspekte:

- Werden die oben erwähnten Rechts/Prinzipien verletzt?
- Wenn ja, sollten wir das tolerieren?



## Norway

Restorative justice applied by the National Mediation Service with the supervision of the police

- Pilot project of the Ministry of Justice
- Initiatives of single agencies/police offices

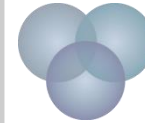
## United Kingdom

“Mediation” rejected at the official level but practiced by community bodies:

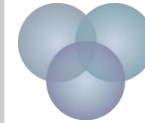
- Sharia Councils and Muslim Arbitration Tribunal
- London Kurdish Peace Committee
- NGOs

## (Germany)

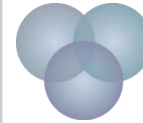
So called “Paralleljustiz”. Informal –religious and secular- mediation practiced for civil and criminal cases (including HBV).



- RJ for HBV practiced by the National Mediation Service (institutionalized)
- Cases received from the police (pre-trial, trial, detention)
- Mediators receive special training by Farwha Nielsen
- Cross-cultural transformative mediation
- Cooperation among agencies (police, child welfare service, etc.)
- RJ bei G-N-E vom National Mediation Service angewandt
- Fälle kommen von der Polizei (alle Prozessstadien)
- Mediatoren bekommen ein spezielles Training (Farwha Nielsen)
- Cross-cultural transformative Mediation
- Kooperation unter verschiedene Agenturen (Polizei, Jugendhilfe, etc.)



- RJ rejected at the official level and by NGOs for security reasons
  - Some accept to set up a dialogue with the families
  - Contacted from the girls (sometimes from families)
  - Training-HBV (sometimes direct experience)
  - Cooperation with the police, women shelter, courts
  - Participation in family meetings (e.g. Jirgas)
  - Religious aspects
- RJ abgelehnt aus Sicherheitsgründen
  - Manche NGOs versuchen einen Dialog mit der Familien herzustellen
  - Die werden von den Mädchen kontaktiert (manchmal von Familien)
  - Training-GNE (manchmal direkte Erfahrung)
  - Zusammenarbeit (Polizei, Frauenhäuser, Gerichte)
  - Teilnahme an Familientreffen
  - Religiöse Aspekte



### Risk assessment:

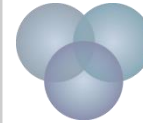
- Shortcomings of “normal” DV/Family Violence models
- Each agency develop its own
- Much attention paid to the families
- Level of publicity of the conflict/gossip
- NGOs often asked by the police to help in the R.A. phase

### Risikoabschätzung

- Mangel der “normalen” Häusliche/Familiengewalt-Modellen
- Jede Agentur entwickelt ihr eigenes Modell
- Beachtung der Familien
- Gossip Niveau
- NGOs nehmen oft an der Risikoabschätzung der Polizei teil

## Challenges II

### Herausforderungen II



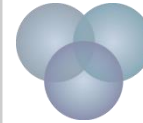
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### Language:

- If an interpreter is needed: phone interpreter or somebody from another country/community (shame)

### Sprache

- Wenn ein Dolmetscher nötig ist: Telephondolmetscher oder Dolmetscher aus einem anderen Land/Community (Scham)



#### Mediators' training:

- Need for specific training or knowledge of the culture
- When possible two mediators with different backgrounds (sometimes one man and one woman)
- In informal settings “mediators” are usually people from the same community (sometimes former victims)

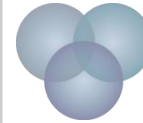
#### Training der Mediatoren:

- Spezielles Training oder Kenntnisse der Kultur nötig
- Wenn möglich zwei Mediatoren mit verschiedenen Hintergründen (manchmal ein Mann und eine Frau)
- Oft in informellen Rahmen kommen die Mediatoren aus der Community (manchmal ehemalige Opfer)



## Challenges IV

### Herausforderungen IV



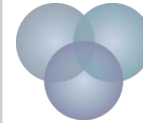
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#### Values/Principles discussed:

- Law in the background (used sometimes as an incentive)
- Concepts of honor/shame/obedience
- What is allowed and what is not allowed in different cultures
- Different interpretations of cultures and traditions
- Communitarian vs. individualist ideas of life (autonomy)
- Equality between sexes

#### Werte/Prinzipien:

- Gesetz im Hintergrund (als Druckmittel)
- Ehre/Scham/Gehorsam
- Was ist erlaubt/unerlaubt in verschiedenen Kulturen
- Unterschiedliche Interpretationen der Kulturen/Traditionen
- Kommunitarismus vs. Individualismus
- Gleichberechtigung Mann/Frau



#### Religion:

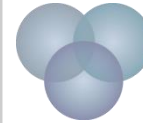
- New rhetoric from culture to religion (as a justification)
- NGOs often asked to involve religious scholars

#### Religion:

- Neue Argumentation: von Kultur zu Religion (starker Grund)
- Zusammenarbeit mit religiösen Autoritäten

## Challenges VI

### Herausforderungen VI



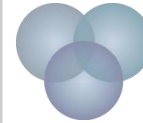
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#### Admission of responsibility:

- Not common in certain cultures
- Men will rarely excuse themselves in front of women

#### Anerkennung der Verantwortung:

- Nicht üblich in manchen Kulturen
- Männer werden sich selten vor Frauen entschuldigen

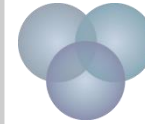


#### Trust:

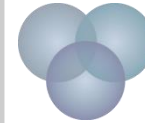
- Building trust during mediation is sometimes difficult
- Lying is more common in certain cultures
- Parents lying in order to get the girl back home
- Often other people (e.g. uncle) are involved

#### Vertrauen:

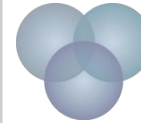
- Vertrauen zu gewinnen ist oft schwierig
- Lügen ist “normal” in manchen Kulturen
- Die Eltern lügen oft um die Mädchen zurück nach Hause zu bringen
- Andere Leute (z.B. Onkel) spielen oft eine Rolle



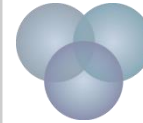
- Accessibility
  - Discussion on values and rights
  - Girls' empowerment
  - Cooperation of the families (≠police)
  - Separation between dialogue (mediator) and power (police)
  - Procedures perceived as more fair (procedural justice)
  - Long term monitoring of the victim
- Erreichbarkeit
  - Diskussion über Werte und Rechte
  - "Empowerment" der Mädchen
  - Zusammenarbeit mit der Familien (≠ Polizei)
  - Trennung zwischen Dialog (Mediator) und Macht (Polizei)
  - Verfahren werden als berechtigt betrachtet
  - Langfristige Beobachtung der Opfer



- Risk assessment
  - Individual meetings
  - Common meetings
  - Special attention to the arrangement
  - Someone from the mediation office or the child welfare might speak for the girl
  - The process can last months or years
  - Common agreement signed. Often the girl comes home
- Risikoabschätzung
  - Individuelle Gespräche
  - Gemeinsame Gespräche
  - Sorgfältige Vorbereitung
  - Ein(e) Vertreter(in) redet manchmal für das Mädchen
  - Das Verfahren kann mehrere Monate oder Jahre dauern
  - Ein Gesamtvertrag wird untergeschrieben. Die Mädchen kommen oft nach Hause



- Written agreement
- Some girls are ready to renounce some of their rights to be able to come back home or to be accepted back in the community
- Parents often give up on some of their requests
- In most cases the violence stops
- Schriftlicher Vertrag
- Manche Mädchen geben einige ihrer Rechte auf um nach Hause (oder in die Community) zurückzukommen
- Die Eltern stellen einige ihrer Forderungen zurück
- In der Mehrheit der Fälle wird die Gewalt gestoppt

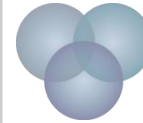


- Solutions might include a larger group of people (relatives, friends, etc.)
- In most severe cases a solution such as “exile” is found but mediators sometimes keep passing messages from one side to the other
- In a few cases a change is impossible
- Andere Leute können eine Rolle spielen (Verwandte, Freunden, etc.)
- In den schwersten Fällen werden Lösungen wie “Exil” von der Familie bevorzugt. Manchmal wird der Mediator die Kommunikation zwischen den zwei Seiten offen halten
- In einigen Fällen ist eine Änderung unmöglich



## Conclusions

### Conclusion ?

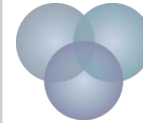


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- Potential clashes mentioned at the beginning include issues of equality-freedom-justice-autonomy-access to justice-rule of law-monopoly of the State-individual responsibility
- The programs analyzed try to respect as much as possible these rights and principles, however a certain degree of compromise is sometimes necessary in order to reach an agreement.
- Oben erwähnte potentielle Konflikte: Gleichheit-Freiheit-Gerechtigkeit-Autonomie-Zugang zur Justiz-Rechtsstaatlichkeit-Staatsmonopol-strafrechtliche Verantwortlichkeit
- Die analysierten Programme versuchen diese Rechte und Prinzipien zu respektieren. Trotzdem sind manchmal Kompromisse nötig um eine Vereinbarung zu erreichen

## Conclusions II

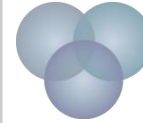
### Conclusion II



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- Are we willing to accept this degree of compromise?
- Should we consider formalizing this possibility (like in Norway) to avoid the proliferation of informal community initiatives?
- Should we use community expertise in such cases and encourage the involvement of community organisations?
- Sind wir bereit diese Kompromisse zu akzeptieren?
- Sollten wir diese Programme formalisieren um die Verbreitung informeller Initiativen in der Communities zu begrenzen?
- Sollten wir die Kenntnisse und Erfahrung der Communities benutzen und zusammen mit Community Organisationen arbeiten?

# Contact Details



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