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DIFFERENT FORMS OF VIOLENCE

Introduction

There are different forms of violence against women and men. These differences in forms potentially have implications for their measurement. This chapter addresses the nuances required for the measurement framework to take these differences into account, although it is important not to overstate the differences.

The typology of forms of violence proposed here is based in international legal instruments, as discussed in Chapter Two. These include the UN *Declaration on the Elimination of Violence against Women* (DEVAW)¹³⁶ and the UN *Convention on the Elimination of Discrimination against Women* (CEDAW)¹³⁷. There is attention to the regional Conventions on gender-based violence, including the Council of Europe *Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence*¹³⁸ and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, ‘*Convention of Belem do Para*’¹³⁹.

¹³⁶ UN General Assembly (1993) *Op cit.* Footnote 30.

¹³⁷ UN (1979) *Op cit.* Footnote 28.

¹³⁸ Council of Europe (2011) *Op cit.* Footnote 47.

¹³⁹ Organisation of American States (1994) *Op cit.* Footnote 48.

While this book focuses on violence, the boundary between violence and non-physical coercion is often unclear, so both are – at least initially – included in the framework in order that they can be measured in relation to each other. Coercion may take non-violent forms but could also include physical force; hence, it straddles the violence/not-violence boundary.

Specific forms of violence or coercion are addressed in this chapter, which affords most attention to homicide/femicide; assault; sexual violence including rape; and female genital mutilation (FGM). The chapter addresses definition, measurement unit, data collection and implications for measurement. It also discusses the categories of ‘domestic violence’ and ‘violence against women’.

Physical violence: homicide/femicide

Introduction

Physical violence is a distinctive form of violence. This section discusses homicide/femicide and assault.

Definition

Homicide is the illegal killing of women and men.

While the main contours of homicide might appear clear, there are nonetheless issues concerning the boundary of the concept. These include the boundary between legal and illegal killings; the continuum of intentionality; violence oriented to one’s own body; age limits and the exclusion of children; and whether data initially recorded is revised as better information becomes available. While these issues can be relevant to other forms of violence, they are particularly sharply drawn in the case of killing.

Illegal killings: Killing by soldiers acting under orders in war and killing in self-defence are usually excluded from homicide, though they would be relevant if legal violence were to be included. However, international law on war crimes means that not all actions in war are

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legal. Further, the boundary between illegal and legal can be hard to determine in practice in conflict zones.

Intent: Gradations in intent to kill are relevant in determining the type of homicide. There are gradations in intent that differentiate homicide, murder, manslaughter and death due to reckless behaviour leading to unintentional homicide (such as death by dangerous driving). This gradation may be gendered in cases of domestic homicide, where the use of violence in 'the heat of the moment' tends to be treated more leniently than violence used in a premeditated act, even if it was a defensive response to prior violence.

Crimes related to a person's own body: Issues here include illegal abortion and assisted suicide, the legality of which varies between countries.

Consistent dates and location of recording: While these technical issues are relevant to all violent crime, they are often more sharply drawn in the case of homicide. The date of homicide may be the date of its discovery or the estimated date of death. The location may be where the killing took place or where the body was found. A record may be permanent or subject to revision as better information comes to light; for example, the removal of cases that investigation reveals to be natural deaths, or those that are later proven in court not to be homicides, or where the victim dies later. There are also differences as to whether only completed or both attempted and completed homicides are included.

Issues concerning the gender dimensions include the sex of the victim; the sex of the perpetrator; the gender-saturated context of an intimate partner or other family member; where there is a sexual aspect; and gendered motivation.

These gender dimensions are associated with different approaches to gender and homicide: the killing of women and girls regardless of motive or perpetrator status; the killing of women in gender-saturated contexts, especially but not only by male intimate partners; and the intentionally misogynist killing of women and girls by men, in association with patriarchy. There is much debate over the meaning of the term 'femicide' and whether it applies to all or only some of

these types of killing. The term femicide¹⁴⁰ challenges the gender neutrality of the concept of homicide. Whether the term should be defined broadly or narrowly is much debated: is it the homicide of any woman, or is it restricted to the killing of women in gender-saturated contexts or when there is a gendered motivation¹⁴¹?

¹⁴⁰ Introduced by Russell during the proceedings of the First International Tribunal on Crimes against Women in 1976 (Radford, J. and Russell, D. (1992) *Femicide: The Politics of Woman Killing*. Woodbridge, Wayne Publishing: xiv).

¹⁴¹ Recent discussions include: the UN (2013) General Assembly Resolution (68/191) on taking action against gender-related killing of women and girls; contributions to the UNODC/UN Statistical Division SD (2015) event at the Commission on the Status of Women; the WHO (2012) report WHO/RHR/12.38; the UN 2012 Symposium on Femicide, the *Handbook on European Homicide Research* and the EU COST Network on Femicide. UN General Assembly (2013) *Resolution 68/191 (A/RES/68/191) Taking Action against gender Related Killings of Women and Girls*. www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2010-2019/2013/General_Assembly/A-RES-68-191.pdf [November 2016]; UNODC/UNSD (2015) *Data and Information on Violence against Women to Target Effective Policies*. Side Event to the 59th Session of the Commission on the Status of Women, Italy, UNODC United Nations Statistics Division (UNSD) New York, 16 March. Conference Agenda. <http://esango.un.org/SideEvents/documents/985> [November 2016]; WHO (2012) *Understanding and Addressing Violence against Women: Femicide*. Geneva, World Health Organisation; Russell, D. (2012) *Defining Femicide*. Speech given at the UN Symposium on Femicide: A Global Issue that Demands Action, Vienna, November 2012. www.dianarussell.com/defining-femicide-.html [November 2016]; Francis, B. and Sothill, K. (2012) 'Homicide in England and Wales', in Liem, M. & Pridemore, W. (eds) *Handbook of European Homicide Research: Patterns, Explanations, and Country Studies*. Berlin, Springer: 287–300; Corradi, C. and Stöckl, H. (2014) 'Intimate partner homicide in 10 European countries: statistical data and policy development in a cross-national perspective', *European Journal of Criminology*, 11(5): 601–18; Corradi, C. (2014) 'Il femminicidio in Italia: dimensioni del fenomeno e confronti internazionali [Femicide in Italy: national characteristics and international comparisons]' in Cimagalli, F. (ed.) *Politiche contro la violenza di genere nel welfare che cambia*. Milan, Franco Angeli: 157–69; Weil, S. (2014) *What is Femicide? Concepts and Definitions*. Proceedings of Working Group 1 on Definitions, COST Action IS 1206 Femicide across Europe, Jerusalem, The Hebrew University of Jerusalem, 24 October; Consuelo, C., Marcuello-Servos, C., Boira, S. and Weil, S. (2015) 'Theories of femicide and their significance for social research', *Current Sociology*. Epub ahead of print, January 2016. DOI: 10.1177/0011392115622256.

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Sex of the victim

When the victim of homicide is female, the term female homicide is used more often than that of femicide in mainstream criminology¹⁴².

Others use the term femicide to refer to the same concept of the homicide of women¹⁴³. For example, for Campbell and Runyan, femicide 'refers to all killings of women, regardless of motive or perpetrator status'¹⁴⁴.

The United Nations Office on Drugs and Crime (UNODC) International Classification of Crimes for Statistical Purposes (ICCS)¹⁴⁵ does not include the sex of the victim within its mandatory coding scheme for homicide; it is only included as an optional 'tag'.

¹⁴² Pridemore, W. and Freilich, J. (2005) 'Gender equality, traditional masculine culture and female homicide victimisation', *Journal of Criminal Justice*, 33: 213–23; Titterton, V. (2006) 'A retrospective investigation of gender inequality and female homicide victimisation', *Sociological Spectrum*, 26: 205–6; Stamatel, J. (2014) 'Explaining variations in female homicide victimisation rates across Europe', *European Journal of Criminology*, 11: 578–600.

¹⁴³ Mouzos, J. (1999) 'Femicide: an overview of major findings', *Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice*, 124: 1–6; Campbell, J., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharp, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J., Frye, V. and Laughon, K. (2003) 'Risk factors for femicide in abusive relationships', *American Journal of Public Health*, 93(7): 1089–97; Lezzi, D. (2010) 'Intimate femicide in Italy: a model to classify how killings happened', in Palumbo, F., Lauro, C. and Greenacre, M. (eds) *Data Analysis and Classification*. Berlin, Springer-Verlag: 85–91; Muftic, L. and Bauman, M. (2012) 'Female versus male perpetrated femicide: an exploratory analysis of whether offender gender matters', *Journal of Interpersonal Violence*, 27: 2824–44; Bonanni, E., Maiese, A., Gitto, L., Falco, P., Maiese, A. and Bolino, G. (2014) 'Femicide in Italy: national scenario and presentation of four cases', *Medico-Legal Journal*, 82: 32–7; Corradi, C. (2014) 'Il femminicidio in Italia: dimensioni del fenomeno e confronti internazionali [Femicide in Italy: characteristics and international comparisons]', in Cimigalli, F. (ed) *Politiche contro la Violenza di Genere nel Welfare che Cambia*. Milan, Franco Angeli: 157–69.

¹⁴⁴ Campbell, J. and Runyan, C. (1998) 'Femicide: guest editors introduction', *Homicide Studies*, 2(4): 347–52.

¹⁴⁵ UNODC (2015) *Op cit*: 33, 100. Footnote 33.

Sex of the perpetrator

The sex of the perpetrator is relevant to the analysis of the gender dimensions of violence. In particular, discussions of femicide often focus on killings where the perpetrator is male and the victim is female. Little data is systematically presented on the sex of the perpetrator, even though this information is almost always recorded somewhere in administrative systems where there is a suspected or proven perpetrator.

The UNODC ICCS¹⁴⁶ includes the sex of the perpetrator only as an optional tag; it is not a mandatory code.

Relationship between perpetrator and victim

Intimate partners are the most frequent perpetrators of the homicide of women¹⁴⁷. Some use the term 'intimate partner homicide' for this violence, implying that this is a subset of the more general field of homicide studies¹⁴⁸. Others use the term 'intimate partner femicide'

¹⁴⁶ UNODC (2015) *Op cit.* Footnote 33.

¹⁴⁷ Caputi, J. and Russell, D. (1992) 'Femicide: sexist terrorism against women', in Radford, J. and Russell, D. (eds) *Femicide*. Cengage Gale, Farmington Hills: 13–21; Campbell, J. (1992) "'If I can't have you no one can': power and control in homicide of female partners", in Radford, J. and Russell, D. (eds) *Femicide*. Cengage Gale, Farmington Hills: 99–113; Wilson, M. and Daly, M. (1992) 'Till death do us part', in Radford, J. and Russell, D. (eds) *Femicide*. Cengage Gale, Farmington Hills: 83–98.

¹⁴⁸ Dugan, I., Nagin, D and Rosenfeld, R. (2003) 'Exposure reduction or retaliation? The effects of domestic violence resources on intimate partner homicide', *Law & Society Review*, 37: 169–98; Campbell, J., Glass, N., Sharps, P., Laughon, K. and Bloom, T. (2007) 'Intimate partner homicide: review and implications for research and policy', *Trauma, Violence and Abuse*, 8: 246–69; Stöckl, H., Devries, K., Rotstein, A., Abrahams, N., Campbell, J., Watts, C. and Garcia Moreno, C. (2013) 'The global prevalence of intimate partner homicide: a systematic review', *The Lancet*, 382: 859–65; Corradi, C. and Stöckl, H. (2014) *Op cit.* Footnote 141.

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for the same type of violence¹⁴⁹, while others attempt to merge the two approaches; for example, Stout¹⁵⁰ defines femicide as the killing of women by male intimate partners without special reference to misogyny, maintaining that 'there is no single cause of homicide, violence against women, or intimate femicide' and suggesting an ecological framework that allows 'the opportunity to merge feminist world views with more traditional models on homicide'¹⁵¹.

The UNODC ICCS¹⁵² recommends optional tags, not mandatory codes, for the relationships between perpetrator and victim in the case of homicide (these were listed in Chapter Three).

Sex-murder

A homicide may be gender saturated if it takes place in the context of sexual assault. A sexual murder occurs if there is evidence of sexual assault; rape; mutilation of the sexual areas of the victim's body; masturbation over the body; an absence of clothing; or an arrangement of clothing that indicates a sexual motive¹⁵³.

The UNODC ICCS¹⁵⁴ recognises sexual assault as an additional disaggregation of intentional homicide in relation to the mechanism of the killing, but sexual assault is only recognised within the category of 'force'. The legal boundary to sexual assault is 'consent', not 'force'. In addition, this distinction is merely an optional tag, not a mandatory code, and is thus highly problematic.

¹⁴⁹ Frye, V., Sandro, G., Tray, M., Bucciarelli, A., Putnam, S. and Wilt, S. (2008) 'The role of neighbourhood environment and risk of intimate partner femicide in a large urban area', *American Journal of Public Health*, 98: 1473–9; Dixon, L., Hamilton-Giachritsis, C. and Brown, K. (2008) 'Classifying intimate partner femicide 2008', *Journal of Intimate Partner Violence*, 23: 74–93; Taylor, R. and Jasinski, J. (2011) 'Femicide and the feminist perspective', *Homicide Studies*, 15: 341–62.

¹⁵⁰ Stout, K. (1992) 'Intimate femicide: an ecological analysis', *Journal of Sociology and Social Welfare*, 29: 29–50.

¹⁵¹ Stout, K. (1992) *Op cit*: 30. Footnote 150.

¹⁵² UNODC (2015) *Op cit*: 103. Footnote 33.

¹⁵³ Dobash, R. and Dobash, R. (2015) *When Men Murder Women*. Oxford, Oxford University Press.

¹⁵⁴ UNODC (2015) *Op cit*: 104. Footnote 33.

Gender motivation

'Intentional', when applied to violent crime, typically means that the victim was targeted by the perpetrator either in the heat of the moment or as a result of some degree of planning and/or that the perpetrator desires the consequences of their act or acquiesces to these consequences¹⁵⁵. In the context of femicide, there can be a more narrowly targeted meaning¹⁵⁶. Radford defines femicide as 'the misogynous killing of women by men', motivated by hatred, contempt, pleasure or a sense of ownership of women and thus to be investigated 'in the context of the overall oppression of women in a patriarchal society'¹⁵⁷. She extends femicide to many different forms: racist femicide; lesbicide; deliberate transmission of HIV virus by rapist; death resulting from botched abortion, infanticide and deaths of baby girls from neglect and starvation¹⁵⁸. The Academic Council of the United Nations (ACUNS) also distinguishes between forms of femicide including murder, honour killing, dowry-related killing, infanticide and gender-based prenatal selection¹⁵⁹.

The UNODC ICCS¹⁶⁰ lists several motivations for homicide under its description of intentional homicide, including 'honour killing', 'dowry-related killings' and 'femicide', which may be regarded as forms of gender-motivated homicide. However, these are neither separately distinguished within its coding scheme nor even in its secondary tag options, despite the referencing of UN documents as authoritative sources of definitions. The UNODC ICCS¹⁶¹ further

¹⁵⁵ Smit, P., Rinke, R. and Bijleveld, C. (2013) 'Homicide data in Europe: definitions, sources and statistics', in Marieke, L. and Pridemore, W. (eds) *Handbook of European Homicide Research*. New York, Springer: 5.

¹⁵⁶ Radford, J. and Russell, D. (1992) *Femicide*. Cengage Gale, Farmington Hills; Stout, K. (1992) *Op cit*. Footnote 150.

¹⁵⁷ Radford, J. and Russell, D. (1992) *Op cit*: 3. Footnote 156.

¹⁵⁸ Radford, J. and Russell, D. (1992) *Op cit*: 7. Footnote 156.

¹⁵⁹ Domazetoska, S., Platzer, M. and Plaku, G (eds) (2014) *Femicide: A Global Issue that Demands Action*. Volume 2. Vienna, ACUNS; Laurent, C., Platzer, M. and Idomire, M. (2013) *Femicide*. Volume 1. Vienna, ACUNS; Filip, A. and Platzer, M. (eds) (2015) *Femicide: Targeting Women in Conflict*. Volume 3. Vienna, ACUNS.

¹⁶⁰ UNODC (2015) *Op cit*: 33. Footnote 33.

¹⁶¹ UNODC (2015) *Op cit*: 102. Footnote 33.

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notes the significance of the situational context of intentional homicide, including the possibility of sociopolitical homicide motivated by social prejudice concerning sex and gender, but also proposes this merely as an optional ‘tag’ rather than a mandatory code.

Units of measurement

The units of measurement should include event, victim and perpetrator.

Data collection and coordination

Homicide is the form of violence on which official statistics are more robust than any other. It is recorded by administrative authorities, including the police and health services. Homicide is the only type of violence for which data from administrative records is close to the real level of violence. Surveys are obviously not the main source of data, since surveys usually interview victims. The exception is in conflict zones, where those still alive can be surveyed to ask how many of the people they knew – as family members, neighbours and friends – died as a consequence of the conflict.

Sources of data

The main sources of data are national criminal justice systems, including police, courts and national health systems, though there are additional mechanisms including coroners’ courts or mortuaries. These data are available at national, European and international levels. Global datasets on homicide are available from the UNODC¹⁶² and World Health Organization (WHO)¹⁶³. However, producing data on homicide that is exactly comparable is still challenging¹⁶⁴ – though

¹⁶² UNODC. *Global Homicide Statistics*. <https://data.humdata.org/dataset/unodc-global-homicide-statistics> [November 2016].

¹⁶³ WHO. *Mortality Data Set*. www.who.int/healthinfo/mortality_data/en/ [November 2016].

¹⁶⁴ Smit et al. (2013) *Op cit*. Footnote 155.

there are initiatives, such as the European Homicide Monitor, to address this¹⁶⁵.

Police records are the source of the majority of national statistics on homicide. Across Europe, police statistics differ in whether they report on suspected or only on convicted perpetrators¹⁶⁶. In addition, crime statistics might only report the victim–offender relationship in respect to perpetrators of homicides and not victims of homicide, which can be problematic in cases of multiple victims. Some might include attempted homicides; others, only completed homicides.

Court data is based on sentenced homicide perpetrators. Some countries, including the UK, update their national statistics based on police reports with court data¹⁶⁷. Court records allow better establishment of the motive of the crime – but are limited to those cases that end in court convictions, missing those where evidence was missing or flawed or where the killer committed suicide (homicide–suicides are associated with intimate partner homicides¹⁶⁸) – and have more information about the perpetrator than the victim. Court data is also time-consuming to examine¹⁶⁹.

Health systems record homicide through the WHO classification system, the International Classification of Diseases (ICD-10). The UNODC suggests that the relevant codes (ICD-10 X85 to Y09: injuries inflicted by another person with intent to injure or kill) are

¹⁶⁵ Ganpat, S., Granath, S., Hagstedt, J., Kivivuori, J., Lehti, M., Liem, M. and Nieuwebeerta, P. (2011) *Homicide in Finland, the Netherlands and Sweden: A First Study on the European Homicide Monitor Data*. Stockholm, The Swedish Council for Crime Prevention.

¹⁶⁶ Smit et al., (2013) *Op cit.* Footnote 155.

¹⁶⁷ Smith, K., Osborne, S., Lau, I. and Briton, A. (2012) *Homicides, Firearm Offences and Intimate Violence 2010/11: Supplementary Volume 2 to Crime in England and Wales*. London, Home Office.

¹⁶⁸ Large, M., Smith, G. and Nielsens, O. (2009) 'The epidemiology of homicide followed by suicide: a systematic and quantitative review', *Suicide and Life-Threatening Behavior*, 39: 294–306.

¹⁶⁹ Podreka, J. (2014) 'Intimate partner homicides in Slovenia and their gender-specific differences', *Journal of Criminal Investigation and Criminology/Ljubljana*, 65: 60–73.

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‘generally corresponding to the definition of intentional homicide’¹⁷⁰, although the data are not identical.

Homicide data is published in a form disaggregated by the sex of the victim in most countries around the world, from the UNODC and WHO as well as national sources. It is further disaggregated by whether the perpetrator is an intimate partner or domestic relation in some countries, including around half of EU Member States, although there are some variations in the definition of ‘intimate partner’ and ‘domestic’. Very few countries publish data on sexual homicides. Very few publish data on the motive of the killing, including gendered motivation. Data on the age of the victim is often published. Some countries produce detailed reviews of domestic homicide cases in order to learn how to improve official responses. However, in some countries the data collected is little more than that which can be derived from the dead body. Data on intimate partner homicide may be collected using different definitions of intimate partners, including spouses, cohabitees, former as well as current partners and same-sex partners¹⁷¹. Even when the data is normally collected, there may be gaps¹⁷²; indeed, an average of 20% of missing data has been found in this regard¹⁷³, though there are practices to minimise this¹⁷⁴.

Considerably more data is collected than is published. The various agencies that deal with homicide usually have more detailed internal administrative records, but these might only be available in print, in the

¹⁷⁰ UNODC (2013) *Op cit.* Footnote 1.

¹⁷¹ Smith et al., (2012) *Op cit.* Footnote 167.

¹⁷² Quinet, K. and Nunn, S. (2014) ‘Establishing the victim-offender relationship of initially unsolved homicides: partner, family, acquaintance, or stranger?’ *Homicide Studies*, 18: 271–97; Regoeczi, W. and Riedel, M. (2003) ‘The application of missing data estimation models to the problem of unknown victim/offender relationships in homicide cases’, *Journal of Quantitative Criminology*, 19: 155–83.

¹⁷³ Stöckl, H. et al., (2013) *Op cit.* Footnote 148.

¹⁷⁴ Kivivuori, J. and Lehti, M. (2012) ‘Social correlates of intimate partner homicide in Finland District or shared with other homicide types’, *Homicide Studies*, 16: 60–77; Lehti, M., Kääriäinen, J. and Kivivuori, J. (2012) ‘The declining number of child homicides in Finland, 1960–2009’, *Homicide Studies*, 16: 3–22; A good example to improve national statistics on the victim offender relationship is Finland, where a police investigation file cannot be closed if all fields in the electronic form are not filled.

local language or on request¹⁷⁵. Data may not always be representative for the whole country; for example, it may be collected regionally or by local police stations, courts or mortuaries¹⁷⁶. This may be due to a lack of interest, weak or outdated reporting systems or a lack of cooperation between institutions collecting the data.

There is an emerging field of research on femicide¹⁷⁷ and a developing literature on lethal intimate partner violence¹⁷⁸; women homicide offending¹⁷⁹; women victims of lethal violence¹⁸⁰, women dying from intimate partner violence¹⁸¹ and fatal intimate partner violence¹⁸². Femicide can also be associated with non-lethal forms of violence, such as battering and assault, occurring prior to femicide¹⁸³. Empirical studies in Europe indicate that femicide happens mainly in intimate partnerships and domestic/family relationships¹⁸⁴. The majority (65–70%) of intimate partner femicides in the USA have

¹⁷⁵ Corraldi, C. and Stöckl, H. (2014) *Op cit.* Footnote 141.

¹⁷⁶ Stöckl, H. et al. (2013) *Op cit.* Footnote 148; Leth, P. (2009) 'Intimate partner homicide', *Forensic Science, Medicine and Pathology*, 5: 199–203.

¹⁷⁷ Femicide research is active in Australia, Canada, Central and South America, South Africa and the US (Path, E. (2009) *Strengthening Understanding of Femicide*, Using Research to Galvanise Action and Accountability Meeting, Washington DC, April 2008) as well as in Europe (Weil, S. (2014) 'What is Femicide? Concepts and definitions'. *Proceedings of Working Group 1 on Definitions, COST Action IS 1206 Femicide Across Europe*. Jerusalem, The Hebrew University of Jerusalem, 24 October 2013).

¹⁷⁸ Dobash, R. and Dobash, R. (2011) 'What were they thinking? Men who murder an intimate partner', *Violence against Women*, 17(1): 111–34.

¹⁷⁹ Dewees, M. and Parker, K. (2003) 'Women, region and type of homicide: are there regional differences in the structural status of women and homicide offending?' *Homicide Studies*, 7: 368–93.

¹⁸⁰ Dobash, R., Dobash, R., Cavanagh, K. and Juanjo, M. (2007) 'Lethal and nonlethal violence against an intimate female partner: comparing male murders to nonlethal abusers', *Violence against Women*, 13: 329–53.

¹⁸¹ Abrahams, N., Jewkes, R., Martin, L., Matthews, S., Vetten, L. and Lombard, C. (2009) 'Mortality of women from intimate partner violence in South Africa', *Violence and Victims*, 24: 546–56.

¹⁸² Pereira, A., Duarte, N. and Magalhaes, T. (2013) 'Fatal intimate partner violence against women in Portugal: a forensic medical national study', *Journal of Forensic and Legal Medicine*, 20: 1099–107.

¹⁸³ Dobash, R. and Dobash, R. (2015) *Op cit.* Footnote 153.

¹⁸⁴ Leth, P. (2009) *Op cit.* Footnote 176; Haller, B. (2014) 'Intimate partner killing: convictions in Australia from 2008 to 2010', *SWS-Rundschau*, 54: 59–77; Stöckl, H. et al. (2013) *Op cit.* Footnote 148.

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been shown to be preceded by partner violence¹⁸⁵. There are studies that address multiple levels of causation¹⁸⁶. Another approach consists of taking detailed analyses of female homicides from different sources, such as police and court files, mortuary data and newspaper reports¹⁸⁷.

Implications for measurement

Despite difficulties in producing data that is exactly comparable between countries, homicide data is the most robust measure of violence. Among all forms of violence, homicide has the most developed data collection on the five gender dimensions. It is currently globally available disaggregated by the sex of the victim; however, there is significant variation in the extent to which data on the further four dimensions are collected and/or presented. Further development of data collection and presentation using comparable definitions and the remaining gender dimensions is needed.

Homicide – disaggregated by the five gender dimensions, starting with the sex of the victim – is the best candidate for an indicator of changes in violence over time and comparing countries.

¹⁸⁵ Campbell, J. et al. (2007) *Op cit*: 247. Footnote 148.

¹⁸⁶ Stout, K. (1992) *Op cit*. Footnote 150; Dugan, L. et al. (2003) *Op cit*. Footnote 148; Muftic, L. and Baumann, M. (2012) *Op cit*. Footnote 143; Stamatel, J. (2014) *Op cit*. Footnote 142.

¹⁸⁷ Ministère de l'Intérieur (2011) '*Etude nationale sur les morts violentes au sein du couple: Année 2010*' ('National study on violent deaths in couples: 2010'), Ministère de l'Intérieur: Delegation aux victimes, Direction Generale de la police nationale, Direction generale de la gendarmerie nationale; Ministerio de Sanidad Servicios Sociales e Igualdad (2013) *5th Annual Report by the National Observatory on Violence against Women 2012*. Madrid, Ministerio de Sanidad, Servicios Sociales e Igualdad; Bugeja, L., Butler, A., Buxton, A., Buxton, E., Ehrat, H., Hayes, M., McIntyre, S. and Walsh, C. (2013) 'The implementation of domestic violence death reviews in Australia', *Homicide Studies*, 17: 353–74.

Physical violence: assault

Introduction

Assault is non-lethal physical violence. A distinctive set of measurement challenges concern the boundary between assault and not-violence when there are few or no physical injuries. In most respects, the measurement issues are similar to those of homicide, except that administrative data is not an accurate measure of the extent of physical assaults since only a minority of these is reported to administrative bodies such as police or health services.

Definition

In some countries, assault that does not lead to visible injury is not treated as a violent crime. Hence, the definition of assault requires clarity and harmonisation. The *Istanbul Convention* does not make distinctions within the category of physical violence. The UNODC ICCS¹⁸⁸ distinguishes two levels of assault: serious assault – ‘intentional or reckless application of serious physical force inflicted upon the body of a person resulting in serious bodily injury’ (020111) – and minor physical force – ‘no injury or minor bodily injury’ (020112).

The potential gender dimensions of assault are the same as for other forms of violence: sex of victim; sex of perpetrator; relationship between perpetrator and victim; sexual aspect; and gender motivation.

It is important to include a category of assault separately from that of domestic violence (discussed later). Indeed much assault against women is perpetrated by acquaintances and some by strangers, as are many assaults against men¹⁸⁹.

¹⁸⁸ UNODC (2015) *Op cit*: 37. Footnote 33.

¹⁸⁹ Walby, S., Towers, J. and Francis, B. (2014) *Op cit*. Footnote 90.

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Implications for measurement

All assaults should be included in the measurement framework, whether or not they caused visible physical injury. All three measurement units are important: event, victim and perpetrator. Unlike homicide, the majority of assaults are not reported to the authorities, so administrative statistics will not deliver an accurate picture of the extent of this form of violence. Surveys are thus important means of generating data. In victim-focused surveys, attention needs to be paid to ensuring the full counting of events and perpetrators as well as victims.

Sexual violence, including rape

Introduction

Sexual violence is a specific form of violence concerning contact with the body in the absence of consent that violates sexual autonomy. Rape is a subset of sexual violence that includes penetration of the body. A distinctive set of measurement challenges concern the articulation of consent. In the context of few successful prosecutions of rape¹⁹⁰, there have been attempts to reform the legal framework¹⁹¹. This has implications for the categories in which statistics on rape and other forms of sexual violence are collected.

Definition

The international legal standard for the definition of rape is established by UN-authorized courts drawing on the *Universal Declaration of Human Rights*. In the 47 Member States of the Council of Europe,

¹⁹⁰ Lovett, J. and Kelly, L. (2009) *Different Systems, Similar Outcomes: Tracking Attrition in Reported Rape Cases across Europe*. London, Child and Woman Abuse Studies Unit, London Metropolitan University.

¹⁹¹ McGlynn, C. (2008) 'Rape as "torture"? Catherine MacKinnon and questions of feminist strategy', *Feminist Legal Studies*, 16: 71–85; Yung, C. (2014) 'Rape law fundamentals', *Yale Journal of Law & Feminism*, 27: 1–46.

the European Court of Human Rights has developed jurisprudence to implement the *European Convention of Human Rights*, itself based on the *Universal Declaration of Human Rights*. In conflict zones, the jurisprudence of specially established International War Crimes Tribunals draws additionally on the Rome Statute of the International Criminal Court and other international conventions concerning conduct in war.

The definitions of rape used by national legal systems and by administrative and survey sources have been adapting to these international legal developments, but often with a time lag. As a consequence, there are variations in the definition of rape used in administrative and survey statistics in the EU¹⁹², wider Europe¹⁹³ and beyond, with implications for the quality of comparative data¹⁹⁴. The realignment of statistical categories to meet the standards laid down in international law and jurisprudence is required.

The definition of rape now centres on the lack of consent to penetration of the body that violates sexual autonomy. The concept of the non-consensual violation of sexual autonomy is at the heart of the definition of rape. The definition of rape also deems the penetration of some orifices of the body to be inherently sexual, thereby distinguishing it from bodily harm in assault and thus recognising the damage to the sexual autonomy of the victim.

The focus on consent entails the rejection of the notion that force is necessary to the definition of rape and includes issues concerning

¹⁹² EC (2010) *Feasibility Study to Assess the Possibilities, Opportunities and Needs to Standardise National Legislation on Violence against Women, Violence against Children and Sexual Orientation Violence*. Brussels, EC; Lovett, J. and Kelly, L. (2009) *Op cit.* Footnote 190.

¹⁹³ Aebi, M., Akdeniz, G., Barclay, G., Campistol, C., Caneppele, S., Gruszczńska, B., Harrendorf, S., Heiskanen, M., Hysi, V., Jehle, J., Jokinen, A., Kensey, A., Killias, M., Lewis, C., Savona, E., Smit, P. and Pórisdóttir, R. (2014) *European Sourcebook on Crime and Criminal Justice Statistics*. 5th ed. Helsinki, HEUNI.

¹⁹⁴ Harrendorf, S. (2012) 'Offence definitions in the European Sourcebook of Crime and Criminal Justice Statistics and their influence on data quality and comparability', *European Journal on Criminal Policy and Research*, 18: 23–53; Walby, S., Olive, P., Towers, J., Francis, B., Strid, S., Krizsán, A., Lombardo, E., May-Chahal, C., Franzway, S., Sugarman, D., Agarwal, B. and Armstrong, J. (2015) *Stopping Rape: Towards a Comprehensive Policy*. Bristol, Policy Press.

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inability to consent. The gendering of rape has also been changing: both de-gendering (through the inclusion of a wider range of pertinent body parts and rejection of the marital exemption) and re-gendering (by the introduction of legal distinctions between victims on the grounds of their sex).

Rape is the penetration of the body in the absence of consent that violates sexual autonomy. In international law, rape does not require the use of force, threat or coercion. Inability to consent through unconsciousness or intoxication or abuse of authority meets the criteria of absence of consent. Coercion in conflict zones obviates the need to prove lack of consent.

The definition of sexual assault shares with rape the component of touching without freely given consent that violates sexual autonomy. Unlike rape, it does not require penetration.

Consent not force

The European Court of Human Rights¹⁹⁵ ruled that sexual intercourse without genuine free consent violates protection of the sexual autonomy of the victim and is rape. The absence of force, struggle, blackmail, terror or threat from the perpetrator or lack of physical resistance by the victim is held not to constitute proof of non-consent to intercourse.

The *Istanbul Convention* defines rape as ‘engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object’¹⁹⁶. The foregrounding of consent in defining rape that is invoked in contemporary human rights case law can be traced through centuries of legal tradition. For example, in England, consent has been recognised as the defining difference between rape and consensual sexual intercourse since 1285¹⁹⁷. Consent was central to one of the first published legal

¹⁹⁵ *M.C. v Bulgaria*, ECtHR 2004, no. 39272/98.

¹⁹⁶ Council of Europe (2011) *Op cit.* Footnote 47.

¹⁹⁷ Pollock, F. and Maitland, F. (1895) *The History of English Law before the Time of Edward I: In Two Volumes*. Indianapolis, Liberty Fund (2012).

definitions of rape: 'ravishing of a woman, dame or damsel whether ... neither assented before or after'¹⁹⁸. This continues in current law: when a person 'agrees [to intercourse] by choice, and has the freedom and capacity to make that choice' (section 74)¹⁹⁹. Circumstances that mean consent is not possible in law have included the use of violence or fear of violence, the victim being asleep, unconscious or having been administered a stupefying substance and where disability prevents the victim from being able to communicate consent²⁰⁰.

Developments in legal rulings on consent not force have been supported politically, though unevenly. For example, the European Parliament 2009 Resolution states that lack of consent should be central in domestic rape legislation and jurisprudence: 'agreement by choice when having the freedom and capacity to make that choice'²⁰¹. Nevertheless, some European countries have retained force and violence as constituents of their rape definitions²⁰² and are thus out of alignment with the *European Convention on Human Rights*, of which they are signatories.

While the earlier definition of rape still applies in conflict zones, it is also recognised that the generally coercive environment means it is not necessary to separately prove the lack of consent of the victim. For example, the International Criminal Tribunal on Yugoslavia (ICTY) Appeal Chamber recognised rapes as 'serious violations of sexual autonomy [which] are to be penalised'²⁰³ and defined rape and consent with regard to the intention (*mens rea*) of the perpetrator in criminal rape:

¹⁹⁸ Hale, M. (1736) *Historia Placitorum Coronæ (The History of the Pleas of the Crown): In Two Volumes*. 1st ed. London, Savoy Nutt and Gosling: 627.

¹⁹⁹ HM Government (2003) *Sexual Offences Act 2003*. www.legislation.gov.uk/ukpga/2003/42/contents [November 2016].

²⁰⁰ Lovett, J. and Kelly, L. (2009) *Op cit*: 43. Footnote 190.

²⁰¹ European Parliament (2009) *Resolution 1691 on the Rape of Women, including Marital Rape Following Assembly Debate on 2 October 2009*.

²⁰² Forowicz, M. (2010) *The Reception of International Law in the European Court of Human Rights*. Oxford, Oxford University Press.

²⁰³ *Prosecutor v. Kunarac, Kovac and Vukovic*, ICTY 2002, nos. IT-96-23 and IT-96-23/1-A.

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where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim²⁰⁴.

The International Criminal Tribunal for Rwanda (ICTR) in the Muhimana case in 2005²⁰⁵ ruled that 'coercion is an element that may obviate the relevance of consent as an evidentiary factor in the crime of rape' in the context of war and conflict. The ICTR judgment in Akayesu²⁰⁶ defined rape as 'a physical invasion of a sexual nature committed on a person under circumstances which are coercive', where coercive can be understood as 'inherent in ... armed conflict or military presence of threatening forces on an ethnic basis'²⁰⁷.

Age

There are variations in the age at which the victim is considered legally able to consent to sex, younger than which the victim may be treated as raped. There are also variations in the age at which a person can be regarded as criminally responsible. Statutory rape is understood in law as intercourse with a child below the age at which they cannot legally consent. The *Lanzarote Convention*²⁰⁸ protects children and young people from sexual abuse up to the age of 18. However, in practice, within Europe the age of consent varies from 13 to 17 and there are

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Prosecutor v. Furundzija, ICTY 1998, no. IT-95-17/1-T.

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Prosecutor v Muhimana, ICTR 2005, no. ICTR-95-1B-T.

206

Prosecutor v Jean-Paul Akayesu, ICTR 1998, no. ICTR-96-4-T.

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MacKinnon, C (2006) *Op cit*: 237. Footnote 106.

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Council of Europe (2007) *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse Treaty Series: No. 201*. Lanzarote, signed 25 October. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680084822> [November 2016].

gradations in the offence of rape that take the relative ages of victim and perpetrator into account²⁰⁹.

Body parts

The traditional definition of rape was inherently gendered in the restriction of the relevant body parts to penis and vagina. The range of body parts that can be penetrated has been increased to include the vagina, mouth or anus and the addition of fingers and objects as well as a penis engaged in the penetration has removed the gendered nature of rape as involving a man's penis and a woman's vagina. This extension in the range of objects and orifices within the concept of rape de-genders the definition of rape in relation to both the victim and the perpetrator.

This extension of relevant body parts in the legal definition of rape has been adopted unevenly and slowly in different countries²¹⁰.

Relationship

Historically, the gender-saturated relationship of marriage was legally exempted from the law on rape, so a husband could violate the sexual autonomy of a wife with impunity. Over recent decades, the special treatment of marriage in the law on rape has been reduced around the world. Indeed, there has been the near-elimination of any exemption based on marital or partnership status in Europe. Criminalisation of marital rape across Europe was legislated in Sweden in 1965 (as a sexual violation); Ireland in 1990; England and Wales in 1991; France in 1992, Germany and Hungary in 1997 and Greece in 2006 (as a form

²⁰⁹ Aebi, M. et al. (2014) *Op cit.* Footnote 193; Lovett, J. and Kelly, L. (2009) *Op cit.* Footnote 190.

²¹⁰ Stern, V. (2010) *The Stern Review*. London, Government Equalities Office. http://webarchive.nationalarchives.gov.uk/20100418065537/http://equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf [November 2016]; Aebi, M. et al. (2014) *Op cit.* Footnote 193.

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of domestic violence)²¹¹. Other areas followed a little later (after 2000), including Cambodia, Thailand, Rwanda and Ghana²¹². Nevertheless, marital rape remains legal in many countries²¹³.

Sex of victim

The crime category of rape is re-gendered by a new distinction between rape of women and rape of men, introduced at the level of legal codes. Data is thus necessarily collected on this basis, thereby providing counts of the number of recorded rapes of women and rapes of men.

This innovation constitutes a precedent in providing a mechanism that enables the easy and accurate disaggregation of violence against women and men. It is highly recommended and should be replicated for all other forms of violence.

Implications for measurement

Statistical categories used by the UN (UNODC ICCS) and European entities (European Sourcebook) are not in alignment with international and European law and jurisprudence. They should be. For example, the definition of rape used by the European Sourcebook for gathering statistics is 'sexual intercourse with a person against her/his will (per vaginam or other)'²¹⁴. This does not match international legal definitions; the concept of 'consent' is absent and the list of 'body parts' is insufficient. The UNODC ICCS still distinguishes between rape with force and rape without force:

Sexual penetration without valid consent or with consent as a result of intimidation, force, fraud, coercion, threat, deception,

²¹¹ EC (2010) *Op cit.* Footnote 57; Lovett, J. and Kelly, L. (2009) *Op cit.* Footnote 190.

²¹² Walby, S. et al. (2015) *Op cit.* Footnote 194.

²¹³ Walby, S. et al. (2015) *Op cit.* Footnote 194.

²¹⁴ Harrendorf, S. (2012) *Op cit.*: 29. Footnote 194.

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use of drugs or alcohol, abuse of power or of a position of vulnerability, or the giving or receiving of benefits where Sexual penetration, at minimum, is the penetration of the vulva, anus or mouth with any body part or object²¹⁵.

This reference to force should be removed and a single category, as in international law, should be in use.

In cases of statutory rape, both the UNODC and European Sourcebook collect data based on the age of consent in each State, despite the recommendation of the *Lanzarote Convention*²¹⁶. Further, the current exclusion of sexual assault of a child without force²¹⁷ should be addressed in European rape statistics.

Circumstances in which victims cannot give consent are currently covered by the European Sourcebook as 'sexual intercourse without force with a helpless person' and are collected in all countries²¹⁸. The UNODC definition includes rape 'as a result of intimidation, force, fraud, coercion, threat, deception, use of drugs or alcohol, abuse of power or of a position of vulnerability, or the giving or receiving of benefits'²¹⁹. In light of jurisprudence and developments in legislation, international statistical definitions should be updated to include rape where the victim was 'asleep, unconscious, or otherwise at risk of harm.' Another aggravating factor is perpetrators who stop a woman with an impairment or health condition from withdrawing her consent by taking away equipment she uses to be independent, or by using the victim's impairment or condition to sexually penetrate her when consent cannot be freely given.

In the ICCS²²⁰, the definition of rape excludes 'Acts of abuse of a position of ... trust ... for profiting financially, physically, socially or politically from the – prostitution or sexual acts of a person' which

²¹⁵ UNODC (2015) *Op cit*: 50. Footnote 33.

²¹⁶ Council of Europe (2007) *Op cit*. Footnote 208.

²¹⁷ Aebi, M. et al. (2014) *Op cit*: 385. Footnote 193.

²¹⁸ Aebi, M. et al. (2014) *Op cit*: 384. Footnote 193.

²¹⁹ UNODC (2015) *Op cit*: 50. Footnote 33.

²²⁰ UNODC (2015) *Op cit*. Footnote 33.

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are only classified as sexual exploitation or ‘injurious acts of a sexual nature,’ rather than being classified as rape. The European Court of Human Rights (ECtHR)²²¹ is clear that consent is impossible in detention, war and genocide, so sexual penetration in the circumstances presented earlier should not be excluded from the rape definition. Rape in coercive circumstances could be included in the UNODC classification.

Rape in marriage is now recognised in international law and in all EU Member States, but the European Sourcebook includes these crimes as ‘violent intra-marital sexual intercourse’. They should instead be categorised as rape.

Future data collection should use definitions of rape that are in alignment with international law. However, rape is still under-reported to administrative bodies and conviction rates remain low, so administrative data alone is not an appropriate source of data on the rate of rape.

FEMALE GENITAL MUTILATION

Introduction

Female Genital Mutilation (FGM) refers to procedures to partially or totally remove the external female genitalia, or other injury to the female organ, for non-medical reasons²²². FGM²²³ is a form of violent crime in need of specific measurement, even though it could be subsumed within ‘assault’, because of its serious and distinctive harms. The definition of FGM is intended to be workable for statistical purposes, while being rooted in international law. Particular challenges

²²¹ *Aydın v Turkey*, ECtHR 1997, no. 23178/94.

²²² WHO (1997) *Eliminating FGM: An Interagency Statement*. OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, WHO. Geneva, WHO. www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf [November 2016].

²²³ EIGE (2013) *Female Genital Mutilation in the European Union and Croatia*. Vilnius, EIGE.

concern the minimum threshold and a definition for use across criminal justice, health, education and social services²²⁴.

The legal and policy framework of FGM is under development within the UN²²⁵, Council of Europe²²⁶ and the EU²²⁷ and FGM is increasingly recognised as a criminal act. In some states, a specific criminal law has been introduced to address FGM (for example, the UK and Sweden) whereas other countries (for example, France) have included FGM in existing legislation, either as a subcategory within another form of violence or by applying existing legal provisions dealing with bodily injury; serious bodily injury; voluntary corporal lesions; mutilation; and/or the removal of organs or body tissue²²⁸. There is also legislation requiring the reporting of FGM to the police in the UK and Sweden.

The tension between naming and making a specific form of violence visible in order to combat it and the risk that this stigmatises the group in which it is prevalent should be recognised; this is parallel to that concerning forced marriage and other forms of intersectional violence against women²²⁹.

²²⁴ EIGE (2015a) *Estimation of Girls at Risk of Female Genital Mutilation*. Vilnius, EIGE.

²²⁵ UN (2009) *Overview of Legislation in the European Union to Address Female Genital Mutilation: Challenges and Recommendations for the Implementation of Laws*. Expert paper prepared by Els Leye and Alexia Sabbe, UNDAW/UNECA. www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Els%20Leye_.pdf [November 2016].

²²⁶ Council of Europe (2001) *Female Genital Mutilation*. Parliamentary Assembly Resolution 1247; Council of Europe (2011) *Op cit*. Footnote 47.

²²⁷ European Parliament (2008) *European Parliament Resolution Towards an EU Strategy on Rights of the Child*. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0012+0+DOC+XML+V0//EN> [November 2016]; European Parliament (2009) *European Parliament Resolution on Female Genital Mutilation*. www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P5-TA-2001-0476&format=XML&language=EN [November 2016]; EIGE (2013) *Op. Cit*. Footnote 223; EIGE (2015a) *Op. Cit*. Footnote 224; EIGE (2015b) *Estimation of Girls at Risk of Female Genital Mutilation in the EU: A Step-by-Step Guide*. Vilnius, EIGE.

²²⁸ UN (2009) *Op cit*. Footnote 225; EIGE (2013) *Op cit*. Footnote 223.

²²⁹ Crenshaw, K. (1991) *Op cit*. Footnote 126; Strid, S., Walby, S. and Armstrong, J. (2013) 'Intersectionality and multiple inequalities: visibility in British policy on violence against women', *Social Politics*, 20: 558–81.

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Definition

FGM practices are variously referred to as mutilation, circumcision, cutting, genital surgery and related terms. Johnsdotter and Essen²³⁰ argue the terms 'cutting' or 'circumcision' are less stigmatising than 'mutilation', as is the term 'surgery'²³¹. 'Mutilation' is more widely used by researchers in the social sciences, law and criminology, by activists and in policy documents in western countries and by the WHO, since it emphasises the violating nature of and injury caused by these practices²³², which are a violation of women's human rights in the *European Convention of Human Rights* (ECHR); the *EU Charter on Human Rights*; the *Convention on the Elimination of Discrimination against Women* (CEDAW); the *International Covenant on Civil and Political Rights* (ICCPR); the *International Convention on Economic, Social and Cultural Rights* (ICESCR), the *Convention on the Rights of the Child* (CRC) and the *Convention Against Torture* (CAT).

For measurement purposes, several definitional issues emerge. Should FGM be defined in the widest possible sense so as to capture the full range of practices, or more narrowly so as to target specifically injurious types? Should the definition focus on force and perpetrator, or injury and victim? And what are the implications of either a wide or a narrow definition of FGM for reporting and recording data, for developing indicators and for the law?

The *Istanbul Convention* (Article 38) defines FGM as:

²³⁰ Johnsdotter, S. and Essen, B. (2015) 'Cultural change after migration: circumcision of girls in Western migrant communities', *Best Practice & Research Clinical Obstetrics & Gynaecology*, 32: 15-25.

²³¹ Public Policy Advisory Network on Female Genital Mutilation Surgeries in Africa (2012) 'Seven things to know about female genital surgeries in Africa', *Hastings Centre Report*, 6: 19-27; Obermeyer, C. (1999) 'Female genital surgeries: the known, the unknown and the unknow-able', *Medical Anthropology Quarterly*, 13: 79-106; Johnsdotter, S. (2012) 'Projected cultural histories of the cutting of female genitalia', *History and Anthropology*, 23: 91-114; Johnsdotter, S. and Essén, B. (2015) *Op cit.* Footnote 230.

²³² EIGE (2013) *Op cit.* Footnote 223.

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a excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris; *b* coercing or procuring a woman to undergo any of the acts listed in point *a*; *c* inciting, coercing or procuring a girl to undergo any of the acts listed in point *a*²³³.

The focus is on coercion.

The World Health Organisation²³⁴ focuses on harm and identifies four types:

1. the partial or total removal of the clitoris and/or the prepuce (clitoridectomy);
2. the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision);
3. the narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation);
4. 'unclassified': all other harmful procedures to the female genitalia for nonmedical purposes, for example, pricking, incising, scraping and cauterisation.

Types 1, 2 and 3 pose significant health problems while Type 4 may cause health problems, but not necessarily. All four types may be relevant to offences arising under national legislation (for example, the UK FGM Act 2003, the 1982 Swedish Act).

Three parallel trends are also relevant: first, the policy shift towards banning (in African countries) and criminalisation (in the EU); second, the decrease in the overall levels of FGM²³⁵ and a shift towards

²³³ Council of Europe (2011) *Op cit.* Footnote 47.

²³⁴ WHO (1997) *Op cit.* Footnote 222; WHO (2011) *An Update on WHO's Work on female Genital Mutilation*. Progress report. Geneva, WHO; WHO (2014) *Op cit.* Footnote 14.

²³⁵ Johnsdotter, S. and Essen, B. (2015) *Op cit.* Footnote 230; Yoder, P. and Khan, S. (2008) *Numbers of Women Circumcised in Africa*. DHS working paper 38. Geneva, World Health Organisation. http://www.who.int/reproductivehealth/publications/fgm/dhs_report/en/.

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‘milder forms’ of FGM²³⁶; and third, the increase in the number of mutilated women within the EU due to increased migration from FGM-practicing countries²³⁷. There is a trend towards the practice of ‘milder’ forms (Type 4) of FGM following migration²³⁸.

The increasing practice of female genital cosmetic surgery in western cultures also needs to be considered²³⁹, as this practice can be regarded as Type 4 FGM. Considering milder forms of practices as FGM while excluding ‘western’ practices such as piercing, tattooing and labiaplasty/plastic genital surgery raises issues of double standards and cultural relativism. Arguments used in favour of distinguishing between the two include that, in the former case, the practice (regardless of type) is almost exclusively performed on underage girls (with or without consent is irrelevant as the girls are underage and therefore cannot consent in the meaning of the law), the consequences are physically harmful and sometimes life-threatening and the purpose or intent is to control girls’ and women’s sexuality and maintain girls’ purity in preparation for marriage²⁴⁰. In cases of piercing or labiaplasty, the purpose is rather the opposite: to enhance women’s self-esteem and sexual experiences (see Lowenstein et al.²⁴¹ for physicians’ attitudes on

²³⁶ Hodes, D., Armitage, A. and Dykes, A. (2014) ‘G165 female genital mutilation in London and the UNICEF report: a local perspective on worldwide statistics’, *Archives of Disease in Childhood*, 99(1): A73–A73.

²³⁷ Avalos, L. (2014) *Female Genital Mutilation and Designer Vaginas in Britain: Crafting an Effective Legal and Policy Framework*. University of Arkansas research paper: 14–25; European Parliament (2009) *Op cit*. Footnote 201.

²³⁸ UNICEF (2013) *Female Genital Mutilation: A Statistical Overview and Exploration of the Dynamics of Change*. UNICEF Publications, 184; EIGE (2015a) *Op cit*. Footnote 224.

²³⁹ Avalos, L. (2014) *Op cit*. Footnote 237; Barbara, G., et al., (2015) “‘The first cut is the deepest’: a psychological, sexological and gynaecological perspective on female genital cosmetic surgery”, *Acta Obstetrica et Gynecologica Scandinavica*, 94(9): 915–920; Kelly, B. and Foster, C. (2012) ‘Should female genital cosmetic surgery and genital piercing be regarded ethically and legally as female genital mutilation?’ *BJOG: An International Journal of Obstetrics and Gynaecology*, 119: 389–92.

²⁴⁰ EIGE (2015a) *Op cit*. Footnote 224.

²⁴¹ Lowenstein, L., Salonia, A., Schechter, A., Porst, H., Burri, A. and Reisman, Y. (2014) ‘Physicians’ attitude towards female genital surgery: a multinational survey’, *The Journal of Sex Medicine*, 11: 33–9.

this issue). The practice is generally performed on consenting adults, although there are exceptions²⁴².

A wide definition of FGM includes any procedures and surgery performed on genitalia for non-medical reasons. Such a definition would include female genital cosmetic surgery, tattoos and piercings. Where these practices involve children this may also be a breach of the CRC²⁴³. However, a wide definition misses the distinctions and nuances between forced and voluntary, between alteration and injury. A disadvantage of a broad definition is the issue of reporting: health practitioners report difficulty in recognising FGM and in distinguishing it from natural variations²⁴⁴.

FGM can be more narrowly defined as procedures involving the partial or total removal of the external female genitalia or any other injury to the female genital organs for non-medical reasons²⁴⁵. Here, the focus is on injury and the victim. The definition of FGM could focus even more narrowly on the use of force; that is, 'forced FGM', as in the Council of Europe²⁴⁶ Article 38, in which the Council urges states to criminalise the coercion of a woman to undergo the excising, infibulating or performing of any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris (see Nussbaum²⁴⁷ for the use of physical force on children as the key moral issue with FGM). The advantage of a narrow definition is the improvement in ability to recognise that FGM has taken place and thus also in the consistency and accuracy of measurement.

Units of measurement

The units of measurement should include event, victim and perpetrator. The current focus is on the number of victims. Some attention is paid

²⁴² Saracoglu, M., Zengin, T., Ozturk, H. and Genc, M. (2014) 'Female genital mutilation/cutting type 4', *Journal of Andrology and Gynaecology*, 2: 5–10.

²⁴³ European Parliament (2008) *Op cit.* Footnote 227.

²⁴⁴ Hodes, D. et al. (2014) *Op cit.* Footnote 236.

²⁴⁵ WHO (1997) *Op cit.* Footnote 222.

²⁴⁶ Council of Europe (2011) *Op cit.* Footnote 47.

²⁴⁷ Nussbaum, M. (1999) *Sex and Social Justice*. Oxford, Oxford University Press.

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to the perpetrators, but the identification of perpetrators is complex. While the focus of the authorities is usually on the parents, since they are the ones who decide a girl is to be cut (though it might be difficult to identify the decision-making powers of each parent), the ‘cutter’ will (usually) not be the parent²⁴⁸.

FGM is also not necessarily a one-off event. When women are re-infibulated after giving birth, FGM is a repeat event.

Data collection and coordination

The issues in data collection at national levels concern: a general lack of existing data on non-permanent residents, in some cases due to what are perceived as ethical issues in registering data; sample size, the numbers being too small to be statistically relevant in survey data; obligatory/non-obligatory reporting by health practitioners; self-reporting; and repeat injury/mutilation (re-infibulation).

FGM is not necessarily named as such in the penal code, but can be ‘hidden’ under crime codes such as ‘aggravated assault’, ‘grave bodily injury’ or other applicable categories or codes.

There is little robust data at national level on the prevalence of FGM²⁴⁹, though there are methods for producing estimates of the number of girls at risk²⁵⁰. The most common method is to apply the national FGM prevalence rate for specific age groups in the country of origin (respectively origin of parents) and apply these to the number of women/daughters of migrant residents in the country, region or city of immigration²⁵¹. However, this ignores the (significant) effects of migration on the practice²⁵².

²⁴⁸ EIGE (2015a) *Op cit.* Footnote 224.

²⁴⁹ EIGE (2013) *Op cit.* Footnote 223.

²⁵⁰ EIGE (2015a) *Op cit.* Footnote 224; EIGE (2015b) *Op cit.* Footnote 227.

²⁵¹ EIGE (2013) *Op cit.* Footnote 223.

²⁵² Johnsdotter, S. and Essen, B. (2015) *Op cit.* Footnote 230; EIGE (2015a) *Op cit.* Footnote 224.

Implications for measurement

There are three main challenges for measuring FGM²⁵³.

First, data collection is fragmented across different bodies: child protection; health/medical/hospital; police, justice and immigration authorities. The estimation of the scale of FGM requires fine-grained knowledge of nationality, country or region of origin or ethnicity, since these different collectivities have different rates of FGM. This information is also hard to gain with accuracy. The estimation of FGM also requires information about the age at which FGM is performed in the country of origin, which may not accurately reflect the age at which FGM is performed in host countries. Data from administrative bodies is unreliable and data collection through surveys poses difficulties in a European context, since the sample would need to be representative of the many different migrant communities (taking ethnicity into account) living in the country/region. Randomised surveys would be unlikely to capture the relevant minority communities. Furthermore, self-reporting by women has proven inaccurate; women often do not know which type – following the WHO definition – of FGM they have²⁵⁴.

Second, active detection of FGM by health professionals by means of gynaecological examinations or check-ups poses ethical issues. There are difficulties in recognising and categorising FGM by health practitioners²⁵⁵, in addition to evidence that FGM actually may be carried out by health professionals²⁵⁶.

Third, data on FGM is currently rarely collected, even when detected in health or education settings. There are advantages to making the collection of this data more consistent through mandatory reporting; for example, the new UK FGM Data Enhanced Collection

²⁵³ EIGE (2015a) *Op cit.* Footnote 224; EIGE (2015b) *Op cit.* Footnote 227.

²⁵⁴ Simpson, J., Robinson, K., Creighton, S. and Hodes, D. (2012) 'Female genital mutilation: the role of health professionals in prevention, assessment and management', *British Medical Journal*, 344: e1361.

²⁵⁵ Obermeyer, C. (2005) *Op cit.* Footnote 231.

²⁵⁶ Paliwal, P. (2014) 'Management of type III female genital mutilation in Birmingham, UK: A retrospective audit', *Midwifery*, 30: 282–8.

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means that NHS healthcare professionals will be legally obliged to submit information on every woman with FGM attending the NHS²⁵⁷. However, even though data will not be released to third parties such as the police, the mandatory submission of highly sensitive information without patient consent risks damaging trust in health professionals²⁵⁸.

FGM needs to be named as such in policy and criminal law. Since any type of FGM constitutes injury and a violation of human rights, it might appear logical to adopt a broad definition. However, even though milder forms of FGM (for example, pricking or incising) remain injurious and a breach of human rights, 'counting' their occurrences does not seem realistic since the injury is often not visible post factum and the victim does not necessarily know it has happened to them. The large-scale estimates of FGM prevalence in countries of origin do not include Type 4 practices; thus, Type 4 (following the WHO definition) should be excluded from the definition and from data collection. This means also excluding genital cosmetic surgery.

Further forms to be taken into account

Introduction to further forms

There are several further forms of violence and coercion, named in the Istanbul and other relevant Conventions, which need to be taken into account: stalking, forced marriage, sexual harassment, trafficking in human beings, forced prostitution, and forced sterilisation. A brief definition of each is given below.

²⁵⁷ Home Office (2015) *Mandatory Reporting of Female Genital Mutilation: Procedural Information*. London, Home Office.

²⁵⁸ Bewley, S. (2015) 'Mandatory submission of patient identifiable information to third parties: FGM now, what next?' *British Medical Journal*, H5146; Dyer, C. (2014) 'Acute hospitals in England will have to report cases of female genital mutilation from September', *British Medical Journal*, 348: 1433.

Stalking

Stalking is defined in Article 34 of the *Istanbul Convention*²⁵⁹ as 'repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety'. It is a course of conduct made up of a series of events. Stalking crosses the threshold of violence as a consequence of the threat that causes fear for safety. It is a crime in many countries. Measurement needs the use of all three units of event, victim and perpetrator. Data is currently collected from both the criminal justice system (since it is a crime) and some population surveys; for example, the Crime Survey for England and Wales (CSEW).

Forced marriage

A forced marriage is one in which one or both people do not, or cannot, consent to the marriage. This is not the same as an arranged marriage to which both parties consented. The force can be physical violence or non-physical coercion. In 2013, the UN Human Rights Council passed a Resolution against child, early and forced marriages, naming these as a violation of human rights. The *Istanbul Convention* also names forced marriage as a form of violence. Many countries have legislated against forced marriage; for example, the UK made forced marriage a criminal offence in The Anti-Social Behaviour, Crime and Policing Act 2014²⁶⁰.

There are attempts to measure forced marriage²⁶¹. The unit of measurement is most often victims: those forced to marry. Most statistics are disaggregated by the sex of the victim and also by the age of the victim in order to separate child marriage from forced marriage

²⁵⁹ Council of Europe (2011) *Op cit.* Footnote 47.

²⁶⁰ UK Government (2014) *Anti-Social Behaviour, Crime and Policing Act 2014*. www.legislation.gov.uk/ukpga/2014/12/contents/enacted [November 2016].

²⁶¹ Walby, S., Armstrong, J. and Strid, S. (2012) 'Developing measures of multiple forms of sexual violence and their contested treatment in the criminal justice system', in Brown, J. and Walklate, S. (eds) *Handbook on Sexual Violence*. London, Routledge: 90-113.

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of adults. For example, the UN Children's Fund (UNICEF) publishes statistics on child marriage²⁶². Individual countries publish statistics drawn from administrative sources, including the UK Forced Marriage Unit²⁶³. There are small-scale studies and also attempts to use survey methods to measure forced marriage in countries where this is more common, including South Asia²⁶⁴. While the focus on victims should be maintained, the unit of measurement should additionally include events (marriages) and perpetrators. There are likely to be multiple perpetrators operating in complex systems of family and kin. Whether the other partner in the marriage is also a perpetrator depends on whether they know their spouse was forced.

While most current statistics derive from administrative authorities, additional sources could include data from services for victims and victim surveys.

Sexual harassment

Sexual harassment is defined in the *Istanbul Convention* as 'any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment'. It is illegal in most countries, though usually under employment law rather than criminal law. It may be conceptualised more usually as coercion than as violence. The US Equal Employment Opportunity Commission (EEOC) states: '[I]t is unlawful to harass a person (an applicant or employee) because of that person's sex.' Sexual harassment is illegal in the EU since it is included

²⁶² UNICEF. *Child Marriage*. <http://data.unicef.org/child-protection/child-marriage.html> [November 2016].

²⁶³ Home Office (2016) *Forced Marriage Unit Statistics 2015*. London, Home Office. www.gov.uk/government/uploads/system/uploads/attachment_data/file/505827/Forced_Marriage_Unit_statistics_2015.pdf [November 2016].

²⁶⁴ For example, a national survey of forced marriage in South Asia: SALCO (South Asian Legal Clinic of Ontario) (2012) *Forced Marriage National*. www.springtideresources.org/resource/forced-marriage-national-survey-south-asian-legal-clinic-ontario [November 2016].

within the definition of discrimination in Directive 2002/73/EC Equal Treatment in Access to Employment²⁶⁵. In the EU, a distinction is made between sexual harassment and gender harassment; both are illegal under employment law.

Because it is illegal, some statistics on sexual harassment that are reported to authorities are available from administrative sources. In addition, trade unions and other employee organisations²⁶⁶, civil society organisations²⁶⁷ and other bodies²⁶⁸ conduct surveys of sexual harassment in specific contexts, though reliable national-level data is under-developed. Sexual harassment is typically measured by number of victims; however, the unit of measurement should be expanded to also include events and perpetrators.

Trafficking in human beings

Trafficking in human beings entails the control and exploitation of one person by another and is a crime under international law²⁶⁹, the Council of Europe, the EU and most countries. Trafficking does not include force as a necessary part of its definition. The coercion may take non-violent forms; hence, it can straddle the boundary of violence/not-violence.

Trafficking is most often measured through a focus on victims. Sometimes these statistics are disaggregated by the sex and age of the victim in order to identify children. For example, Eurostat²⁷⁰ publishes data on the number of victims of trafficking identified in EU Member

²⁶⁵ European Commission (2007) *Directive 2002/73/EC: Equal Treatment in Access to Employment*. www.equalrightstrust.org/content/eu-directive-200273ec-equal-treatment-access-employment [November 2016].

²⁶⁶ See, for example, Trades Union Congress (TUC) (2016) *Still Just a Bit of Banter?* London, Trade Union Congress. www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf [November 2016].

²⁶⁷ See, for example, the End Violence Against Women (EVAW) coalition's survey of sexual harassment: www.endviolenceagainstwomen.org.uk/sexual-harassment [November 2016].

²⁶⁸ EU Agency for Fundamental Rights (2014) *Op cit.* Footnote 68.

²⁶⁹ UN (2000) *Op cit.* Footnote 32.

²⁷⁰ Eurostat (2015) *Trafficking in Human Beings*. Statistical Working Paper. Brussels, Eurostat.

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States disaggregated by the sex of the victim, the form of trafficking and the age of the victim.

Trafficking usually involves several perpetrators since it is a form of serious and organised crime, often drawing on complex systems of kin, communities and criminals. Statistics on perpetrators are available from criminal justice authorities and published in various formats by national statistical offices, UNODC and Eurostat²⁷¹.

There are ongoing developments to address the serious challenges involved in measurement²⁷². These include devising survey methodologies in source countries to estimate the number of victims and innovative statistical techniques to improve estimates from fragmentary data²⁷³.

Forced prostitution

Forced prostitution entails the control of one person over another to force or coerce that person into non-consensual sexual activity; it is illegal in most countries. Forced prostitution is named in the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* 'Convention of Belem do Para'²⁷⁴. Forced prostitution overlaps with trafficking for sexual exploitation since it is the exploitation of the prostitution of others. Both forced prostitution and trafficking for sexual exploitation are criminally illegal in international and most national law.

Measurement challenges are similar to those for trafficking in human beings. There are useful though limited statistics from criminal justice sources and small-scale studies. Defining the boundary distinction between forced and non-forced prostitution is a major challenge.

²⁷¹ Eurostat (2015) *Op cit.* Footnote 270.

²⁷² Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J. and Tunte, M. (2016) *The Gender Dimension of Trafficking in Human Beings*. Brussels, European Commission.

²⁷³ For example the capture-recapture method.

²⁷⁴ Organisation of American States (1994) *Op cit.* Footnote 48.

Forced sterilisation

Sterilisation that is practiced without full, free and informed consent is forced (also termed coercive or involuntary). Forced sterilisation severely limits or removes the fertility and reproductive rights of women and girls. It occurs when the procedure is carried out despite a woman expressly refusing, without her knowledge or when there is no opportunity to provide or withhold consent. Coerced sterilisation occurs when financial or other incentives, misinformation or intimidation are used to compel a woman to undergo the procedure.

The practice of sterilisation without consent constitutes a fundamental rights and a human rights violation²⁷⁵. Forced sterilisation breaches the right to health; bodily integrity; autonomy; privacy; security; found a family; and decide on the number and spacing of children²⁷⁶. Protections against forced sterilisation as torture and cruel, inhuman or degrading treatment also extend into the individual or private sphere²⁷⁷.

International conventions²⁷⁸ name forced sterilisation as a form of violence against women²⁷⁹ because it disproportionately affects the rights, protections, freedoms and health of women and girls as a group. Forced sterilisation is also recognised as a form of medical and social

²⁷⁵ UN (1995) *Op cit.* Footnote 31.

²⁷⁶ UN (1999) *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and Practices that Impact Women's Reproductive Rights and Contribute to, Cause or Constitute Violence against Women*, Report of Radika Coomaraswamy, 55th Session (UN Doc. E/CN.4/1999/68/Add.4, para. 51). New York, UN.

²⁷⁷ UN General Assembly (2008) *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak (UN Doc A/63/175). New York, UN.

²⁷⁸ Council of Europe (2011) *Op cit.* Footnote 47.

²⁷⁹ UN (1992) *Op cit.* Footnote 29.

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control²⁸⁰ when it is perpetrated as part of systematic discrimination against groups with protected characteristics²⁸¹.

Domestic violence

Introduction

Domestic violence is named in the title of the *Istanbul Convention*, but is not identified as a specific form of violence in the same way as other forms. It is distinctive because of the relationship between perpetrator and victim. It potentially encompasses all of the forms of violence discussed in this chapter.

Definition

Domestic violence is challenging to define and measure because it straddles several of the conceptual distinctions conventionally made when measuring violence. It centres on violence from intimate partners and other family members, but may extend beyond this. Domestic means a current or former intimate partner (spouse, cohabitee, boyfriend/girlfriend) or family member. Violence includes all those forms defined and discussed in this chapter and defined in international and criminal law. In most countries, there is no single category in criminal law that exclusively captures all of the phenomena that together make up domestic violence. Domestic violence includes repetitions that challenge the traditional assumptions of one victim, one perpetrator and one event, as well as alignment between the action

²⁸⁰ UN Human Rights Council (2008) *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak. A/HRC/7/13 (paras. 38, 39). New York, UN.

²⁸¹ UN Committee Against Torture (2009) *Concluding Observations: Slovakia* (UN Doc. CAT/C/SVK/CO/2, para 14); Czech Republic (UN Doc. CAT/C/CR/32/2, para 6(n)); Commissioner for Human Rights (2010) *Human Rights of Roma and Travellers in Europe*. Strasbourg: Council of Europe.

and the harm in both seriousness and temporality. There are challenges as to where the boundary between violence and not-violence is to be drawn. There are acts that only reach a criminal threshold when repeated. There are acts of coercion that may not cross the threshold of violence but do cross a criminal one, as in the case of 'coercive control', which has been demarcated as a 'crime' in some countries.

One approach to addressing the complicated nature of this assemblage is to attempt to create a new category in law to reflect the phenomenon; for example, coercive control. A different approach is to identify a core that is recognisable in traditional categories with limited revisions; for example, violence disaggregated by the relationship between perpetrator and victim and by the sex of the perpetrator and victim. There is active discussion as to whether domestic violence, or more particularly intimate partner violence, can be defined distinctively as a course of coercive conduct²⁸² or is better understood as a series of repeated acts, many of which are separate crimes²⁸³. In administrative statistics, a report for the European Commission finds that both approaches – a special category of crime and a particular aspect of existing crimes – exist in Member States²⁸⁴.

The measurement of intimate partner violence in surveys is also varied; a specialised typology, the Conflict Tactics Scale²⁸⁵, has been widely used in standalone surveys, while disaggregated crime categories are more frequently used when the relevant questions are asked as part of general crime surveys²⁸⁶. The variation between surveys in methodology and units of measurement as well as in the typology of forms has rendered comparisons between countries exceptionally

²⁸² Myhill, A. (2015) 'Measuring coercive control', *Violence against Women*, 21: 355–75.

²⁸³ Walby, S., Towers, J. and Francis, B. (2014) *Op cit.* Footnote 90; Farrell, G., Phillips, C. and Pease, K. (1995) 'Like taking candy: why does repeat victimization occur?' *British Journal of Criminology*, 35: 384–99.

²⁸⁴ European Commission (2010) *Op cit.* Footnote 57.

²⁸⁵ Straus, M. (1999) 'The National Family Violence Surveys', in Straus, M. and Gelles, R. (eds) *Physical Violence in American Families*. 2nd ed. New Brunswick, Transaction Publishers: 3–16.

²⁸⁶ Walby, S., Towers, J. and Francis, B. (2014) *Op cit.* Footnote 90.

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challenging. There have been attempts to address these challenges internationally²⁸⁷ as well as in the EU²⁸⁸.

There are variations in the definition of domestic violence that follow some of the same contours discussed earlier. The *Istanbul Convention* refers to violence against women and domestic violence (which includes violence against men). The violence might be restricted to that which is gender-motivated, or not. The treatment of domestic and intimate partner violence in both law and statistics may be a special unique category, or it may be constituted by the disaggregation of violent crime by the relationship between perpetrator and victim and by the sex of the victim.

Domestic violence: seriousness and repetition

Conflict Tactics Scale or crime codes

The Conflict Tactics Scale (CTS) is designed to measure differences between actions. Crime codes are designed to measure differences between events that are defined jointly as actions, harms and intentions.

The CTS was created to make distinctions concerning the tactics used to settle disputes in the domestic context. This list of 'tactics' ranged from rational argument to verbal aggression to the use of physical force²⁸⁹. Since its inception, the CTS has been subject to

²⁸⁷ Breiding, M., Basile, K., Smith, S., Black, M. and Mahendra, R. (2015) *Intimate Partner Violence Surveillance and Uniform Definitions and recommended Data Elements*. Version 2.0. Atlanta, Centres for Disease Control and Prevention and National Centre for Injury Prevention and Control. www.cdc.gov/violenceprevention/pdf/intimatepartnerviolence.pdf [November 2016].

²⁸⁸ Martinez, M. and Schröttle, M. with Condon, S., Springer-Kremser, M., Timmerman, G., Hagemann-White, C., Lenz, H., May-Chahal, C., Penhale, B., Reingardiene, P., Honkatukia, P., Jaspard, M., Lundgren, E., Piispa, M., Romito, P., Walby, S. and Westerstrand, J. (2006) *State of European Research on the Prevalence of Interpersonal Violence and its Impact on Health and Human Rights*. Report by the Coordinated Action on Human Rights Violations (CAHRV) to the European Commission, 6th Framework Programme, Project No. 506348.

²⁸⁹ Straus, M. (1999) 'Measuring intrafamily conflict and violence: the Conflict Tactics Scales', in Straus, M. and Gelles, R. (eds) *Physical Violence in American Families*. 2nd ed. New Brunswick, Transaction Publishers: 29–45.

several revisions, with the addition of further actions and distinctions between them; however, its central feature – that it is a graded series of actions – remains constant. In some utilisations, additional sets of questions are included about injuries, but the form of these usually makes it very hard if not impossible to link injury to a specific action.

The CTS has been utilised in modified form in many victimisation surveys in addition to the Family Violence surveys of Straus and Gelles²⁹⁰, including Demographic and Health Surveys (DHS)²⁹¹ carried out in over 25 countries with support from USAid²⁹², the International Violence against Women Surveys²⁹³, the self-completion module on Intimate Violence in the CSEW²⁹⁴ and the Fundamental Rights Agency EU Survey on Violence against Women²⁹⁵. The CTS does not address context²⁹⁶. Many have argued that ignoring context generates spurious gender symmetry in findings generated using this scale²⁹⁷. This context is one in which the violence from men to women is more likely to be frightening, controlling and injurious than that of violence from women to men.

²⁹⁰ Straus, M. and Gelles, R. (1999) *Physical Violence in American Families*. 2nd ed. New Brunswick, Transaction Publishers.

²⁹¹ DHS. Domestic Violence module questionnaire for women. http://dhsprogram.com/pubs/pdf/DHSQM/DHS7_Module_DomViol_EN_15Jun2015_DHSQM.pdf [November 2016].

²⁹² DHS. *Gender Corner*. <http://dhsprogram.com/topics/gender-Corner/index.cfm> [November 2016].

²⁹³ Johnson, H., Ollus, N. and Nevala, S. (2008) *Violence against Women: An International Perspective*. New York, Springer.

²⁹⁴ ONS (2015) *Focus on Violent Crime and Sexual Offences: Intimate Personal Violence and Serious Sexual Assault*. Cardiff, ONS.

²⁹⁵ FRA (2014) *Op cit*. Footnote 68.

²⁹⁶ Dobash, R. and Dobash, R. (1992) *Op cit*. Footnote 16.

²⁹⁷ Dobash, R., Dobash, R., Wilson, M. and Daly, M. (1992) 'The myth of sexual symmetry in marital violence', *Social Problems*, 39: 71–91; Johnson, M. (2008) *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance and Situational Couple Violence*. Lebanon, Northeastern University Press; Johnson, M. (1995) 'Patriarchal terrorism and common couple violence: two forms of violence against women', *Journal of Marriage and Family*, 57: 283–94; Towers, J., Walby, S. and Francis, B. (2014) *Op cit*. Footnote 90; Walby, S., Towers, J. and Francis, B. (2016) *Op cit*. Footnote 6; Planty, M. and Strom, K. (2007), 'Understanding the role of repeat victims in the production of annual US victimization rates', *Journal of Quantitative Criminology*, 23: 179–200.

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There is a further, related problem with the CTS (including its modified forms): its incompatibility with criminal justice categories of crimes. The core categories of the CTS concern actions, not consequences. The concept of crime used in criminal justice systems includes consequences as well as actions. If an assault results in death, it is treated differently from if it leads to physical injury from which the victim can recuperate. Actions do not always align with consequences. In particular, there is a gendered mediation of the relationship between actions and injuries in which a specific action from a man to a woman is more likely to be physically injurious than the same action from a woman to a man. The British Crime Survey found that a minor act led to physical injury in 49% of the cases where the victim was female and 36% where the victim was male, and mental injury among 21% of female victims and 4% of male victims. It found that a severe act led to physical injury in 77% of cases where the victim was female and 56% when the victim was male, and mental injury in 42% of the cases where the victim was female and 11% where the victim was male²⁹⁸. This gendered lack of alignment between actions and harms is highly problematic. It means that actions alone should not be used to define a violent event (as is the case for the CTS).

In contrast, crimes are coded using information about not only actions, but also harms and intentions. The harms are often central to the definition, since these are the easiest to evidence objectively. Crime codes thus take account of the context (intention) and consequences (harms) of actions, thereby addressing a central criticism of the CTS. Crime codes are used throughout the criminal justice system and are widely understood in other policy systems. Crime victimisation surveys typically use crime codes as categories for defining violence; for example, the CSEW Victim Form module is based on crime codes so that the data collected by this part of the survey is comparable with data from the criminal justice system. In contrast, the data collected using the CTS is incompatible with that collected by the criminal justice system.

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Walby, S. and Allen, J. (2004) *Op cit.* Footnote 81.

Thus, the CTS is not a suitable measurement scale. Instead, crime categories provide a better measure of domestic violence, including its seriousness, since they embed the injuries that are consequent on the actions. They also allow the disproportionate gender consequences of actions to be taken into account when measuring violence and for the alignment of findings from survey data with findings from administrative data. In addition, crime categories cover many forms of coercion that are not necessarily physical violence but that need to be included in the measurement framework, such as stalking.

Coercive control: 'repetition' and 'temporality'

Domestic violence is characterised by its repetitive nature; this needs to be addressed by the measurement framework. Collecting data about the repetition of violence against the same victim has been accorded little priority in traditional data collection instruments. The traditional assumption has often been one event, one victim, one perpetrator. Addressing repetition requires attention to the issue of 'temporality': the duration of the action, the duration of the consequences and the nature of the link between them. The temporality is both episodic (actions are events) and continuous (the harms persist over time). How is this to be addressed in the measurement framework? A further issue arises where each of the actions being repeated is small, not-violent and does not cross the criminal threshold, but the cumulative harm is substantial and this harm was intended.

In revising the traditional approach, two options have emerged. One option is to treat all the events as if they constitute a single course of conduct²⁹⁹. The other is to count each of the events and to treat each one as a violent crime when it crosses the criminal threshold³⁰⁰. Each pays attention to repetition and the duration of the harm. They differ in how they treat the multiplicity of the actions.

²⁹⁹ Kelly, L. (1988) *Surviving Sexual Violence*. Cambridge, Polity Press; Schechter, S. *Op cit.* Footnote 92; Stark, E. (2009) *Op cit.* Footnote 92.

³⁰⁰ Walby, S., Towers, J. and Francis, B. (2014) *Op cit.* Footnote 90; Walby, S., Towers, J. and Francis, B. (2016) *Op cit.* Footnote 6.

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For Stark³⁰¹, ‘coercive control’ rather than violence is the key concept and focus. Coercive control is the harmful and unwarranted control of one human being by another, which is caused by a myriad of small actions. Coercive control can be established by the repetition of either physical or non-physical actions. Stark deploys the concept to distinguish between severe and non-severe forms of abuse of women, locating the severity of the abuse in the consequence (control) of the action rather than in the action itself. His focus is on the long duration of the consequences rather than the episodic nature of the repeated actions. Thus, coercive control is the danger, which might occur without physical violence.

Stark drew on the earlier work of Schechter on coercive control³⁰² and Kelly on the continuum of sexual violence³⁰³. Kelly’s concept of continuum captures both the common character of the events loosely characterised as sexual violence and the interconnected nature of its different forms, which defy easy separate categorisation. The focus here is on the implications of many small actions (as well as large ones) for the enduring experiences of women and the overall environment within which women live. Laws on harassment and stalking criminalise repeated unwanted acts of communication that are intended to and do cause harm³⁰⁴. This encodes the concept of ‘course of conduct’ in law. The criminalisation of harassment and stalking was first applied outside of a cohabiting relationship. This is now expanding to cover intimate partnerships; for example, in Britain, recent legislation on coercive control effectively removes the exemption of cohabiting relationships from such criminalisation³⁰⁵.

The implication of the concept of ‘course of conduct’ for measurement is to focus on counting victims and to treat each ‘course of conduct’ as if it were a single event, even though it occurs over a

³⁰¹ Stark, E. (2009) *Op cit.* Footnote 92.

³⁰² Schechter, S. (1982) *Op cit.* Footnote 92.

³⁰³ Kelly, L. (1988) *Op cit.* Footnote 299.

³⁰⁴ For example, HM Government (1997) *1997 Protection from Harassment Act*. www.legislation.gov.uk/ukpga/1997/40/contents [November 2016].

³⁰⁵ Home Office (2015) *Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework*. London, Home Office.

period of time. This approach is consistent with the methodology of 'violence against women' surveys that focus on counting victims and do not count the number of separate events. This means that even though there may be several violent actions spread over a period of time, these are counted as one. This produces a much lower count of violence than more traditional methods of separately counting events.

The alternative approach is to count each violent event – for example, crimes or health episodes – as well as the number of victims³⁰⁶. This approach is more consistent with conventional crime and health statistics.

Implications for measurement

Domestic violence encompasses several different forms of violence and coercion and is distinctively defined by the nature of the relationship between perpetrator and victim. The best approach to the measurement of domestic violence should follow the logic of this definition, seeking to identify all relevant forms of violence and whether the relationship between perpetrator and victim is a domestic one. The range of relevant forms of violence includes all those discussed in this chapter: physical violence (homicide and assault); sexual violence, including rape; FGM; forced sterilisation; stalking; harassment, forced marriage and – where relevant – trafficking in human beings. Repetition is important for the gender patterning of violence; data should be collected on this. The relationship between perpetrator and victim should differentiate between domestic relations (including between intimate partners and other family members) and acquaintances and strangers. Data on all gender dimensions should be collected, using all three measurement units of event, victim and perpetrator.

Gender mainstreaming (UN and EU policy), not gender invisibility (UNODC) or women only (UN Women), should be a principle of data collection. Data collection also needs to include all gender dimensions, not only the sex of the victim, in its mandatory categories.

³⁰⁶

Walby, S., Towers, J. and Francis, B. (2014) *Op cit.* Footnote 90.

4. DIFFERENT FORMS OF VIOLENCE

Collecting data on women alone is not enough to ascertain the gendered patterns of domestic violence. Mainstreaming also requires the collection of data on the number of repetitions of violent events, since this repetition is deeply saturated with gender inequality.

Administrative data will always be insufficient for the measurement of the extent of domestic violence, since such a small proportion of cases are reported to the police and other agencies and that proportion is unknown. Only surveys can potentially measure the extent of domestic violence; this depends on the use of quality methodology (see next chapter). If this reaches an adequate quality threshold over time and across countries, then an indicator on the rate of domestic violence, by gender, would be possible.

Violence against women

Violence against women is named in the title of international legal instruments, including the UN *Declaration on the Elimination of Violence against Women* (DEVAW), the Council of Europe *Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence* and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* 'Convention of Belem do Para'. Thus, 'violence against women' is a category in international law; however, it is rarely used as a category in national criminal law. Violence against women is a category in public policy, especially at the level of the UN, including in the Sustainable Development Goals.

Hence, it is important to produce a measurement framework that is capable of delivering statistics and indicators on 'violence against women'. This requires the gender disaggregation of the sex of the victim of all forms of violence. While the approach of UN Women will deliver this, that of the UNODC does not. The UNODC could easily meet this requirement by changing the status of data collected on the sex of the victim from an optional tag to a mandatory field.

Conclusion

While different forms of violence are recognised in international as well as national law, they share many common features. Most of the features of the proposed measurement framework apply regardless of distinctions in the form of violence; nevertheless, these distinctions need to be respected where they produce relevant differences. The general features of the framework include events, victims and perpetrators, as well as the five gender dimensions: sex of victim; sex of perpetrator; relationship between perpetrator and victim; sexual aspect; and gender motivation. There are also general requirements for consistency in technical rules concerning 'non-completion' and counting.

For physical violence, in relation to homicide/femicide, it is possible to utilise data from administrative sources, especially the criminal justice system. However, there is missing data and there are some challenges in the consistent application of technical rules. For assault, the definitions used in different countries are inconsistent. For rape, there are definitions in use that are out of alignment with international law and much missing data. For other forms of violence, there needs to be careful attention to the definitions used in the framework and further work in developing data collection from both administrative sources and surveys.

With relatively small changes to measurement mechanisms, data, statistics and indicators could be produced for homicide/femicide and domestic violence. In the long term, the development of the measurement framework should enable the production of data, statistics and indicators on all forms of violence named in international law.