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CONCEPTUALISING VIOLENCE AND GENDER

Introduction

Producing a coherent and consistent measurement framework requires a coherent and consistent conceptualisation of violence and gender. This conceptual framework is anchored in the principles embedded in international legal instruments and developed through reviews of research.

Because international legal instruments mobilise general concepts and principles, this approach is not the same as identifying violence with specific national criminal codes. The definition of violence depends on the location of the boundary between violence and not-violence. This depends on the understanding of the nature of the act (and intention) and the harm (and non-consent), although not all approaches have considered all these elements to be essential. In addition, it is necessary to address variations in repetition, duration and seriousness. Consistent units of measurement (event, victim and perpetrator) and technical counting rules are also essential for the measurement framework.

Competing approaches to conceptualising gender relations determine whether the measurement framework for violence makes gender invisible, focuses on women or mainstreams gender. Gender

relations saturate, shape or inflect many aspects of violence; they are not only its context. Taking gender into account is not only an issue of whether victims and perpetrators are individual men or women. Five different dimensions of gender relations relevant to violence are identified here. These include the gender-saturated relationship between perpetrator and victim, any sexual aspect to the violence and any gender motivation of the perpetrator.

What is violence?

The location of the boundary between violence and not-violence is here ontologically anchored in international law and deepened with research findings. The focus of the measurement framework is illegal violence. Violence that is legal (because it is sanctioned by states and international law) is not the focus of this measurement framework, since it requires different methods; it is addressed only briefly. Locating the boundary between violence and not-violence includes considerations of actions (including intention) and harms (including non-consent), physicality and repetition, duration and seriousness. There are technical issues concerning the unit of measurement and recording and counting rules. Variations by form of violence and policy field are considered in subsequent chapters.

Actions (and intentions) and harms (and non-consent)

Violence is a kind of social relationship between perpetrator and victim in the sense that both perpetrator and victim are necessary to the event. Actions (and intentions) and harms (and non-consent) are all necessary to define violence. The concept of crime also requires all these components.

The perpetrator performs the action. The perpetrator is usually an individual person, but may be a group of people or other collective. The action may be intended to harm or not, or may be intended to cause a different degree of harm from that achieved. The intention to perform an action that will cause harm is part of the action. This

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means that even when the action is not completed or does not cause the harm intended, it still counts.

There are five categories of non-completion of an intended violent action that are treated within criminal justice systems as crimes: threats to commit violence; aiding/abetting/accessory; accomplice; conspiracy/planning; and incitement. We recommend following the UNODC⁷⁵, American Academy of Sciences⁷⁶, United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS) and European Sourcebook⁷⁷ in including these as violent crimes while labelling them clearly as not completed. This is consistent with research findings that the characteristics of attempted and completed homicides are very similar⁷⁸. It would be appropriate if statistics produced by Eurostat and the World Health Organization (WHO) were brought into alignment with this.

The harm is that done to the victim. Harm is a detriment to wellbeing. It is most likely to be a physical injury, but may be mental or psychological. Harm is usually understood to have occurred if the victim did not consent. The interpretation of 'consent' in law is discussed further in relation to rape in Chapter Four.

Actions alone are not sufficient to define either violence or crime. Distinctions between forms of violence and between crimes are defined through specific combinations of actions (and intentions) and harms (and non-consent). The action and the harm are often in alignment, when a proportionately harsher action causes a proportionately more devastating harm – but on occasions they are not. When there is alignment between actions, harms and intentions, measurement and analysis is much simpler than when there is divergence between them. If they are in alignment, then one of the three can act as a proxy for

⁷⁵ UNODC (2015) *Op cit.* Footnote 33.

⁷⁶ Reiss, A. and Roth, J. (eds) (1994) *Understanding and Preventing Violence*. Washington, National Academy Press.

⁷⁷ Smit, P., de Jong, R. and Bijleveld, C. (2012) 'Homicide data in Europe: definitions, sources and statistics', in Liem, M. and Pridemore, W. (eds) *Handbook of European Homicide Research*: 5.

⁷⁸ Bikleveld, C. and Smit, P. (2006) 'Homicide in the Netherlands: on the structuring of homicide typologies', *Homicide Studies*, 10: 195–219.

the other two; if not, then they cannot. While there is often a popular assumption of alignment between actions (and intentions) and harms (and non-consent), criminal law often allows for nuance where this alignment is absent. For example, in relation to the action of killing (generally termed 'homicide'), the law in most countries makes distinctions according to the degree of intention to kill: whether it was deliberately planned; intended, but on the spur of the moment; or not intended to have such serious consequences. In relation to the action of assault, there are degrees of severity of the crime that focus on the level of harm caused: whether there is a physical injury or not and whether this is serious/grievous or minor/actual. The consent or lack of consent of the victim matters; the capacity to consent is affected by age (adult/minor), intoxication through use of alcohol or drugs and the abuse of authority, as well as physical force, threat or coercion.

Forms of measurement that focus on only one aspect of action, intention, harm or non-consent are partial and should be rejected. Examples include the measurement of domestic violence through actions alone and the measurement of violence focused on harms without agents.

The Conflict Tactics Scale (CTS) developed by Gelles and Straus⁷⁹ focuses on actions only, excluding harms and intentions. The instrument asks about a series of actions; it does not include the intention of the perpetrator or the harms caused to the victim in the same scale. Hence, some actions are included that are not crimes because there was no intention to harm⁸⁰. Data collected using the CTS is not compatible with data collected using crime codes. Further, the gender asymmetric harm of a given action (the same action from a man to a woman typically causes more injuries than the same action from a woman to a man)⁸¹ is not included in the scale. In

⁷⁹ Straus, M. and Gelles, R. (eds) (1999) *Physical Violence in American Families*. 2nd ed. New Brunswick, Transaction Publishers.

⁸⁰ Ackerman, J. (2016) 'Over-reporting Intimate Partner Violence in Australian survey research', *British Journal of Criminology*, 56: 646–67.

⁸¹ Walby, S. and Allen, J. (2004) *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*. Home Office Research Study 276. London, Home Office: 37–8.

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modified form, the scale has been used in many specialised violence against women surveys, including those of the Fundamental Rights Agency (FRA) EU-wide survey⁸². We conclude that the CTS is not an appropriate instrument to measure violence, since it does not take harms and intentions into account. Other surveys share the exclusive focus on actions rather than harms, although they differ from the CTS in other respects; for example, the WHO multi-country surveys on violence against women⁸³.

Galtung's⁸⁴ concept of structural violence includes harms but not intentions and no exclusions to the possible range of actions. He focuses on social structures rather than individual actions that lead to unnecessary death. These unnecessary deaths may be a result of a variety of causes, from famine to poverty. Unwanted physical contact violence is not a significant part of his account. The level of analysis does not include individuals with their actions and intentions. He is interested in the wider, deeper, more abstract level of the societal production of harms. Galtung's analysis underpins the definitions of indirect and direct violence proposed by the European Institute for Gender Equality (EIGE)⁸⁵ in their Gender Equality Index. Consequently, the EIGE includes an extremely wide range of phenomena as 'indirect violence', extending as far as gender stereotypes in culture. It is hard to find anything that the EIGE considers to *not* be indirect violence; that is, there is no effective distinction between violence and not-violence. For practical purposes, this is not useful, since by blocking the separate identification of violence from other aspects of gender inequality it prevents any effective analysis of the relationship between violence and gender inequality. Investigating the relationship between social systems and violence is an important part of a research programme, but is not definitional. While variations in social structure are relevant

⁸² FRA (2014) *Op cit.* Footnote 68.

⁸³ WHO (2005) *Op cit.* Footnote 45.

⁸⁴ Galtung, J. (1969) 'Violence, peace and peace research', *Journal of Peace Research*, 16: 167–91.

⁸⁵ EIGE (2015) *Op cit.* Footnote 61.

to explaining patterns of violence, they should not be treated as part of the definition of violence.

We conclude that actions (and intentions) and harm (and non-consent) are together necessary for the definition of violence for use in the measurement framework.

Physicality and the threshold of violence

Is physicality – involving the body, the corporeal, contact and touch – an essential component of violence? Or is it sufficient for the action to be abusive, coercive or controlling and/or the harm to be an injury or detriment to mental wellbeing or health? These borderlands especially include non-physical coercion, threats, attempts and other non-completed or indirect actions.

The social science literature is divided into support for a narrow or a wide definition. Among those that use a wide definition, Bourdieu⁸⁶ introduces the concept of ‘symbolic violence’, thereby extending the use of the term ‘violence’ to include cultural power. This would mean that it is not possible to distinguish the distinctiveness of violence as a form of power. Indeed, it can even lead to the aforementioned inclusion of gender stereotypes as a form of violence⁸⁷, thereby preventing an analysis of the relationship between culture and violence. The alternative approach is to identify violence as a specific practice with its own modalities and rhythms, which is not reducible to anything else. This approach, adopted for example by Collins⁸⁸, enables a clear separation between violence and its causes and thus the investigation of the relations between them. Non-violent forms of coercion are not reducible to violent forms of coercion, but they may be connected.

Non-physical coercion may or may not result in injury to mental health; it includes repeated intrusive communications, stalking, sexual

⁸⁶ Bourdieu, P. (1991) *Language and Symbolic Power*. Cambridge, Polity Press.

⁸⁷ EIGE (2015) *Op cit*. Footnote 61.

⁸⁸ Randall, C. (2008) *Violence*. Princeton, Princeton University Press.

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and gender harassment and trafficking in human beings. 'Violence' is here restricted to those events that involve physical contact (including non-consented sexual contact and contact via a weapon) from the perpetrator or physical harm to the wellbeing of the victim. Other forms of criminal coercion also require measurement in a framework, which should be comparable with a measurement framework for violence, but violence and not-violence are not the same and should not be conflated in the same definition. Coercion may be subject to criminal sanction even when there is not a physical component; as such, the boundary between crime/not-crime is not the same as physical/not-physical. Several gendered forms of coercion straddle the physical/non-physical boundary; in particular, stalking, sexual and gender harassment, a course of coercive conduct by an intimate partner or family member and trafficking in human beings. Domestic abuse includes physical and non-physical acts, while domestic violence may be defined more narrowly. These boundary cases are discussed in more detail in Chapter Four.

Non-completed and indirect includes threats to commit violence, attempts at violence that are not completed and aiding, abetting, inciting or conspiring with others to commit violence. Criminal justice systems have developed practices to address the various degrees of completion and indirectness of criminal violence. There are forms of technical guidance and rules that specify these in detail in many countries. The harmonisation of these practices between countries remains an issue to be resolved. This is most advanced, but not finished, in the case of homicide.

Seriousness, repetition and duration

Variations in violence can be found in relation to its seriousness, repetition and duration. These apply separately to the actions of the perpetrator and the harms experienced by the victim. They may or may not be in alignment or proportionate.

The *seriousness* of the action is aligned with, or proportionate to, the harm to the victim. In particular, this is gendered, in that the same

action tends to generate more severe harms when performed by a man rather than a woman⁸⁹. Lethal violence is more reliably measured than non-lethal violence and physical injury is more reliably measured than non-physical forms of harm. The intention of the perpetrator affects the seriousness of the event, whether premeditated; with an aggravating motivation (for example, a hate crime or gendered motivation); in the heat of the moment, reckless or accidental.

The action may be *repeated*. This challenges the assumption of alignment between one perpetrator, one victim and one event. Repetition is particularly a feature of domestic violence (and therefore of violence perpetrated against women) and forms of threat and coercion that accumulate to constitute violence; it is less common for violence committed by strangers to be repeated and hence is a more important feature of violent crime against women⁹⁰. Repetition means an accumulation of harm in high-frequency victims, who are disproportionately women. Yet, the default assumption in measuring violence is still one victim, one perpetrator, one event. Repeated acts should be counted to ensure that this distinctive gendered feature of some forms of violence is captured rather than disregarded. The repetition of acts that might not individually count as violence, but which in their repetition constitute an ever-increasing threat of harm, means that they should be included in the concept of violence. This is the defining feature of stalking and harassment.

The *duration* of the action may take the form of repeated discrete incidents of violence; the harm may be experienced as a continuous state of fear. Such lack of alignment of the temporality for perpetrator and victim poses challenges for a measurement framework. This is mitigated if the unit of measurement explicitly takes this into account; for example, by not conflating the perpetrator, victim and event into one unit, but rather separately accounting for them (discussed shortly). Issues of repetition and duration are further addressed in the discussion

⁸⁹ Walby, S. and Allen, J. (2004) *Op cit.* Footnote 81.

⁹⁰ Walby, S., Towers, J. and Francis, B. (2014) 'Mainstreaming domestic and gender-based violence in sociology and the criminology of violence', *Sociological Review*, 62: 187–214.

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of domestic violence in the next chapter in relation to the concepts of a 'continuum'⁹¹ and of 'coercive control'⁹². We conclude that the measurement framework needs to include a count of repetitions, notwithstanding the different temporalities of actions and harms.

Variations in the type of violence emerge from these variations in the nature, severity, duration and repetition of the actions of the perpetrator and the harms experienced by the victim. These tend to cluster into forms of violence recognised in law as different crimes; new types may emerge and old types be rejected through public debate. Variation in forms of violence include homicide/femicide, rape, domestic violence and Female Genital Mutilation (FGM), as well as (but not fully developed here) stalking/harassment, war and violence against civilians in conflict zones, including war crimes (such as genocide) and rape as a weapon of war.

Units of measurement

Measurement requires the identification of the relevant unit. These are events, victims and perpetrators. While conventionally there is an assumption of one perpetrator and one victim for each event, in practice these are not so simply aligned, as in the case of domestic violence where there are multiple events from one perpetrator to one victim. It is important to ensure that measurement uses all three units of events, victims and perpetrators.

Measuring the treatment of violence in the work of public services requires both the number of events (how many crimes, or perhaps how many visits to a particular service) in a fixed period of time (such as a year) and the number of victims. Violence can have a complex temporality. The physical act may take place over a short space of time and it may be repeated; but the impact can last a much longer time, including the injury and harm to physical and/or mental health,

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Kelly, L. (1988) *Surviving Sexual Violence*. Cambridge, Polity Press.

⁹²

Schechter, S. (1982) *Women and Male Violence*. New York, Harper Collins; Stark, E. (2009) *Coercive Control: How Men Entrap Women in Personal Life*. Oxford, Oxford University Press.

fear and consequent coercion and control. Most services and most data collection mechanisms use one of these three units. Addressing gender-based violence requires using all three: events, victims and perpetrators. Measuring one is not a substitute for the others; all three are needed because they capture distinctly different aspects of the process of violence.

If there is to be successful mobilisation of all relevant public services, there will need to be greater compatibility in units of measurement. For example, if there are to be routinely available conviction rates (discussed shortly), this requires the same unit of measurement throughout the criminal justice system. There are two approaches to this. One is to assert the dominance of one of the three categories. The other is to collect information in all three of the measurement units. The first would be difficult to achieve in a consensual approach. The second would require cooperation around the shared goal of ending violence. It is interesting to note that, in practice, many agencies often have the information using the other units of measurement in narrative form in 'files', even if they do not abstract this information into their statistical systems. This would mean that the challenge is not the major one of organising new data collection, but rather the more modest one of mining the already collected data for the relevant information to upload into statistical systems. Likewise, surveys should collect information about events, victims and perpetrators and not be restricted to only one or two of these units of measurement.

Counting rules

Ensuring comparability and reliability of data recorded by administrative organisations (such as the police) requires the systematic application of technical 'counting rules' to determine what is counted, what is excluded and how many events (such as crimes) make up an incident.

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Variations in counting practices between countries and agencies have regularly been found to reduce comparability⁹³. Consistency is needed.

There are several issues over which counting rules are needed: the date attributed to the crime; the measurement (or counting) unit; whether an event is classified by its principal offence or all offences are counted; how offences by multiple perpetrators are counted; how offences by the same perpetrator against multiple victims are counted; and how multiple offences against the same victim continuing in time are counted. The UNODC⁹⁴ notes the first five of these six issues but declines to offer a solution, suggesting that 'the harmonisation of counting rules is best treated ... separately from the structure and application of the ICCS'. We offer solutions here, since the issues are too important to defer.

First, the date of the violent crime should be recorded as the date it took place, even if this needs to be estimated. The alternative of using the date when the crime was discovered risks distortion (as occurs, for example, when a serial offender is ultimately apprehended⁹⁵).

Second, the simultaneous use of three measurement units (events, victims and perpetrators) at each data collection point prevents the potential complexities around multiple offenders, multiple crimes or multiple victims from arising. Third, each event should be classified by a principal offence. This requires a hierarchy of offences⁹⁶. Stability

⁹³ UNODC (2015) *Op cit.* Footnote 33; Aebi, M. (2008) 'Measuring the influence of statistical counting rules on cross-national differences in recorded crime', in Aromaa, K. and Heiskanen, M. (eds) *Crime and Criminal Justice Systems in Europe and North America 1995–2004*. Helsinki, HEIUNI: 200–18; van Hoer, H. (2000) 'Crime statistics as constructs: the case of Swedish rape statistics', *European Journal on Criminal Policy and Research*, 8: 77–89.

⁹⁴ UNODC (2015) *Op cit.* 106. Footnote 33.

⁹⁵ Smith, J. (2002) *Death Disguised*. London, The Shipman Inquiry. www.gov.uk/government/uploads/system/uploads/attachment_data/file/273227/5854.pdf [November 2016].

⁹⁶ Mosher, C., Miethe, T. and Philips, D. (2002) *The Miss-Measure of Crime*. Thousand Oaks, Sage.

in this hierarchy is desirable⁹⁷, lest it changes the number of certain types of offence⁹⁸.

Conclusions on the concept of violence

The drawing of the boundary between violence and not-violence in this proposed measurement framework is anchored in international law. Yet, the boundary between violence and not-violence can be hard to determine in practice. Violence involves the actions (and intentions) of the perpetrator and the harms to (and non-consent of) the victim. 'Violence' means events that involve the actual, intended or threatened, direct or indirect physical contact by the perpetrator or bodily harm to the victim. It depends on intentions as well as actions (especially in addressing incomplete actions), on the interpretation of the concept of harm (including non-consent) and on the significance of repetition. Incomplete actions are included within the concept of violence because of the significance of intention; hence, attempts and threatened actions are included. The concept of harm focuses on a reference to the body. Repetition is significant in increasing the threat and actuality of harm. There is a need for consistent technical and counting rules to implement these principles. The usefulness, coherence and consistency of the measurement framework and the use of three units of measurement by all data collectors – events, victims and perpetrators – should all be included.

Conceptualising gender

Gender is not external to violence but can structure the core characteristics of the event that is a kind of social relationship between perpetrator and victim. Gender relations may thus not only structure

⁹⁷ Francis, B., Soothill, K. and Dittrich, R. (2001) 'A new approach for ranking "serious" offences: the use of paired-comparisons methodology', *British Journal of Criminology*, 41: 726–37.

⁹⁸ Newburn, T. (2007) "'Tough on crime": penal policy in England and Wales', *Crime and Justice*, 36: 425–70.

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the wider context and causation of violence, but also saturate or partially constitute its core aspects, including violent crime. Gender saturation may vary, requiring the identification of various relevant dimensions. Addressing the conceptualisation of gender relevant to violence requires first considering the extent and manner in which gender is made visible and second the identification of which dimensions of gender are to be made visible.

Gender visibility

There are three main approaches to gender visibility:

- *invisible*: the category of gender is not used, leading to gender being invisible;
- *focus on women*: to end the violations of women's human rights and gender-based violence against women;
- *gender mainstreaming*: making gender specificities visible by disaggregating by gender and revising categories to allow gender dimensions to be fully included.

Expressions of each approach are embedded in various laws and policy instruments of the UN, Council of Europe, EU and individual states. These may be understood to represent different legal traditions and instruments: universal human rights, violence against women as a violation of women's human rights and gender-based violence as a form of gender discrimination⁹⁹. They may be understood as based in different schools of feminist theory¹⁰⁰. They may also be regarded as steps in a developmental trajectory, moving from the understanding that universalism does not provide gender neutrality, to a focus on women, to refining the multidimensional nature of gender relations.

⁹⁹ Walby, S. and Olive, P. (2013) *The European Added Value of a Directive on Combatting Violence Against Women: Annex 2 Economic Aspects and Legal Perspectives for Action at the European Level*. Brussels, European Parliament European Value Added Unit.

¹⁰⁰ Shepherd, L. (2008) *Gender, Violence, Security*. London, Zed.

Invisible gender

Gender has been invisible in many academic and policy fields as well as international law. Gender may also be segregated into an adjacent field that is marginal to the mainstream. There are several reasons why gender may be made invisible. It may be the consequence of neglect of gender, a considered claim that gender is not relevant, or a claim that the absence of gender is a route to gender neutrality. The neglect of gender is the most common of these practices, with little attempt at justification. This has been shown to be mistaken on many occasions¹⁰¹. In some cases, the exclusion of gender from core concepts is not a matter of neglect but attempts are made to explicitly justify it. In other instances, the absence of gender has been claimed to be a route to gender justice and the meaning of its absence claimed to be gender neutrality, not gender bias.

In some cases, the invisibility of gender is defended as gender neutrality in aid of universalism. Some human rights texts have been interpreted as if this is their implied approach, including the UN *Universal Declaration of Human Rights*¹⁰² and the *European Convention of Human Rights*¹⁰³. Some international (UN) health-based definitions of violence by the WHO, including in its *International Classification of Diseases*¹⁰⁴, make no reference to gender in their core components. There is sometimes a deliberate de-gendering of concepts to develop a gender-neutral approach. An example is the de-gendering of the categories of victims and perpetrators in rape law by the extension of the range of pertinent objects and orifices, meaning rape is no longer an offence that only men can commit against only women (see discussion in Chapter Four).

Criticisms of this approach are that it makes invisible relevant aspects of human rights, justice, crime and violence. Further, the claim

¹⁰¹ Walklate, S. (2001) *Gender, Crime and Criminal Justice*. London, Routledge.

¹⁰² UN (1948) *Op cit*. Footnote 27.

¹⁰³ ECtHR (1953) *Op cit*. Footnote 53.

¹⁰⁴ WHO (2014) *International Classification of Diseases (ICD)*. www.who.int/classifications/icd/en/ [November 2016].

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to universalism is gender-biased rather than gender-neutral, since categories are often implicitly gendered in a way that is biased towards the dominant gender; as such, 'gender neutral' is actually gendered to the advantage of one sex.

A variant of this approach is to make gender visible in the main area while recognising it as relevant for an adjacent area. The International Classification of Crimes for Statistical Purposes (ICCS) produced by the UNODC does not include gender in its four tiers of classification, but it does include it in its secondary, optional tags¹⁰⁵. This marginalises gender to 'context' and excludes it from the core concepts on which the classification is built. Gender becomes something about which information is collected on an optional basis, as a secondary tag, not a primary code in the classification.

There have been many challenges to the invisibility of gender. Early challenges focused on including women¹⁰⁶; later ones sought to include multifaceted dimensions of gender relations¹⁰⁷.

A focus on women

The second approach is to focus on women. Instead of absence, women are made visible. There has been a strong movement to recognise and contest violence against women.

The gender neutrality of the universalism of the UN's *Universal Declaration of Human Rights* was challenged with a demand to explicitly include women's human rights¹⁰⁸. The UN responded by recognising the specificity of women's human rights, which included the right of

¹⁰⁵ UNDOC (2015) *Op cit.* Footnote 33.

¹⁰⁶ Peters, J. and Wolper, A. (1995) *Women's Rights, Human Rights*. New York, Routledge; MacKinnon, C. (2006) *Are Women Human?* Cambridge, MA, Harvard University Press.

¹⁰⁷ Consuelo, 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: 601–18; Dobash, R. and Dobash, R. (2004) 'Women's violence to men in intimate relationships: working on a puzzle', *British Journal of Criminology*, 44: 324–49.

¹⁰⁸ Peters, J. and Wolper, A. (1995) *Op cit.* Footnote 106; MacKinnon, C. (2007) *Op cit.* Footnote 106.

women to be free from gender-based violence. A key moment in this development of the international legal regime was recognition of the demand that women's rights be explicitly and not merely implicitly included as human rights¹⁰⁹. The United Nations 1993 *Declaration on the Elimination of Violence against Women* (DEVAW)¹¹⁰ defines violence against women as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'. Since this Declaration, the focus on women and on violence against women being a violation of women's human rights has rippled through the UN system. It is embedded in the UN Security Council Resolution 1325 on addressing violence against women in conflict zones¹¹¹. It is adopted in the work of the UN Statistics Commission on indicators on violence against women¹¹² and their manual on violence against women statistics¹¹³. A policy focus on 'violence against women' is found in the UNiTE campaign led by the UN Secretary-General¹¹⁴. WHO adopts a focus on women in its specialised surveys on violence against women¹¹⁵.

The focus on women has been in alignment with the development of women's projects to eliminate violence against women, which have helped to construct women as an active political subject in

¹⁰⁹ Kelly, L. (2006) 'Inside outsiders: mainstreaming violence against women into human rights discourse and practice', *International Feminist Journal of Politics*, 7: 471–95.

¹¹⁰ United Nations General Assembly (1993) *Op cit.* Footnote 30.

¹¹¹ UN Security Council (2000) *Resolution on Women, Peace and Security: Security Council Resolution 1325*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement> [November 2016]; Pratt, N. (2011) 'Critically examining UNSCR 1325 on women, peace and security', *International Feminist Journal of Politics*, 13: 489–503.

¹¹² United Nations Statistical Commission (2010) *Op cit.* Footnote 40.

¹¹³ UN Statistics Commission (2014) *Guidelines for Producing Statistics on Violence against Women*. http://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf [November 2016].

¹¹⁴ UN Secretary-General (2016) *UNiTE to End Violence against Women*. <http://endviolence.un.org/> [November 2016].

¹¹⁵ WHO (2005) *Op cit.* Footnote 45.

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democratic arenas¹¹⁶. 'Violence against women' has also been aligned with a preferred unit of measurement – victims – to ensure that public services to assist those who have suffered the violence remain 'victim-centred'.

Several challenges have been made to framing the issue as 'violence against women'. It omits men who might be subject to violence in gender-saturated contexts, such as domestic violence¹¹⁷. The focus on women rather than gender tends to essentialise the categories of women and men¹¹⁸. It creates a specialised field that is isolated from the mainstream, where most resources and capacity are located.

Gender mainstreaming

The third approach is gender mainstreaming. This invokes a concept of gender justice that mobilises the concept of gender discrimination, identifies a multiplicity of places where gender inequality is relevant and practices gender disaggregation of mainstream statistics. This approach is found in international, regional and national legal instruments, policies and statistical practices.

Violence against women is a form of gender discrimination in international law. The concept 'discrimination against women' has meaning within the UN system as a consequence of its definition within Article 1¹¹⁹ of the UN 1979 *Convention on the Elimination of Discrimination against Women* (CEDAW)¹²⁰. CEDAW defines violence

¹¹⁶ Walby, S. (2011) *The Future of Feminism*. Cambridge, Polity Press; Dobash, R. and Dobash, R. (1992) *Op cit.* Footnote 16.

¹¹⁷ Archer, J. (2000) 'Sex differences in aggression between heterosexual partners: a meta-analysis', *Psychological Bulletin*, 126: 651–80.

¹¹⁸ Shepherd, L. (2007) 'Victims, perpetrators and actors revisited: exploring the potential for a feminist reconceptualization of (international) security and (gender) violence', *British Journal of Politics and International Relations*, 9: 239–56.

¹¹⁹ 'For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

¹²⁰ UN (1979) *Op cit.* Footnote 28.

against women as a form of gender discrimination in General Recommendation 19¹²¹:

Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.

Within the EU, a similar approach to gender equality is embedded in its founding Treaty of Rome on equal pay for women and men and in the current Treaty of Lisbon as equal treatment and non-discrimination. The focus is gender equality rather than women's human rights, although these are not incompatible. The competence of the EU-level to act to implement this principle of gender equality through the legal concept of 'equal treatment' has slowly expanded. Consequent on the Treaty of Lisbon in 2006, there has been an expansion of the competence of the EU-level in the area of 'freedom, security and justice', drawing on Article 82 (and sometimes 83) of the Treaty on the Functioning of the European Union as the basis for Directives on trafficking, child sex abuse, domestic protection orders and victim support.

The implication of the gender mainstreaming approach for data collection is to disaggregate mainstream statistics by gender rather than to develop specialised statistics on women only. For example,

¹²¹ UN (1992) *Op cit.* Footnote 29.

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this entails gender disaggregation of statistics on violence collected in general victimisation surveys¹²², rather than specialised surveys concerned only with violence against women.

The approaches of 'focus on women' and 'gender mainstreaming' can sometimes appear as if they were alternatives to each other. However, scrutiny of UN, Council of Europe and EU legal and policy documents finds that they are usually co-present – even in the same sentence. Gender-based violence is both a violation of women's human rights and a form of gender discrimination. In practice, in these international policy documents they are rarely treated as alternatives but rather as mutually reinforcing principles.

This is the approach taken in CEDAW Recommendation 19, which refers to 'the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms'¹²³. Further examples of this hybrid approach include the UN Beijing Platform for Action¹²⁴ and in 2011 the Council of Europe's *Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence*, which requires Parties to cover not only all forms of violence against women but also domestic violence, which extends (on an optional basis, though they are encouraged to do so) to all victims of domestic violence, including men¹²⁵. This issue becomes more complex when the intersection of gender with other inequalities is taken adequately into account, since making gender visible has implications for the visibility of intersecting inequalities¹²⁶.

The inclusion of a gender dimension requires more than the introduction of the category of gender into policy; it requires the revision of mainstream concepts and practices. In a policy context,

¹²² Walby, S., Towers, J. and Francis, B. (2014) *Op cit.* Footnote 90; Walby, S., Towers, J. and Francis, B. (2016) *Op cit.* Footnote 6.

¹²³ UN (1992) *CEDAW*, Recommendation 19, point 4. www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#top [November 2016].

¹²⁴ UN (1995) *Op cit.* Footnote 31.

¹²⁵ Council of Europe (2011) *Op cit.* Footnote 47.

¹²⁶ Crenshaw, K. (1991) 'Mapping the margins: intersectionality, identity politics and violence against women of colour', *Stanford Law Review*, 43: 1241–99; Walby, S., Strid, S. and Armstrong, J. (2012) 'Intersectionality and the quality of the gender equality architecture', *Social Politics*, 19: 446–81.

this means addressing the activities of all policy actors, not only those that are focused on women.

Gender mainstreaming was institutionalised as an approach to gender equality issues, including violence against women, in the UN 1995 Beijing Platform for Action¹²⁷. At paragraph 123 it states: 'In addressing violence against women, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken an analysis may be made of their effects on women and men, respectively.' The European Commission defined gender mainstreaming thus in 1996:

Gender mainstreaming involves not restricting efforts to promote equality to the implementation of specific measures to help women, but mobilising all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage their possible effects on the respective situation of men and women (gender perspective). This means systematically examining measures and policies and taking into account such possible effects when defining and implementing them¹²⁸.

Similarly, the Council of Europe describes gender mainstreaming as: 'The (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies, at all levels'¹²⁹.

¹²⁷ UN (1995) *Op cit.* Footnote 31.

¹²⁸ EC (1996) *Incorporating Equal Opportunities for Women and Men into all Community Policies and Activities*, COM(1996) 67 final. <http://aei.pitt.edu/3991/> [November 2016].

¹²⁹ Council of Europe (1998) *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices*. Strasbourg, Council of Europe.

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The inclusion of the gender equality perspective in the mainstream is a challenge¹³⁰. There is a dilemma as to the extent to which gender issues are better addressed separately and the extent to which they are better addressed within the wider system. The advantage of separate development is that specialist and expert knowledge can be more easily developed, while the disadvantage is that the knowledge developed is regarded as relevant only to that specialism, so it becomes isolated and with few resources. The advantage of being inside the mainstream is the possibility of accessing resources for development, while the risk is that a series of compromises dilutes or removes key elements, so that the gender equality perspective is merely absorbed by the mainstream rather than changing it.

There is no easy or permanent resolution to this tension between mainstream and specialised perspectives. The best approach is to treat this tension as a source of dynamism that is productive to both the agenda of gender equality and the improved performance of the mainstream on its own terms¹³¹. This entails an approach of developing specialist expertise and knowledge *and* simultaneously engaging with reform of mainstream structures of knowledge.

For statistical purposes, the best way forward is to provide data that is gender disaggregated and includes all relevant categories, since this would support the conceptualisation of gender-based violence as both a violation of women's human rights and a form of gender discrimination.

Dimensions of gender

Taking gender seriously means identifying the sex of the victim and perpetrator and identifying further gender saturated dimensions. Identifying the sex of victim and of the perpetrator is important but not sufficient. Gendering statistics means more than adding gender

¹³⁰ Walby, S. (2005) 'Gender mainstreaming: productive tensions in theory and practice', *Social Politics*, 12: 321–43; Daly, M. (2005) 'Gender mainstreaming in theory and practice', *Social Politics*, 12: 433–50.

¹³¹ Walby, S. (2005) *Op cit.* Footnote 130.

as a variable¹³²; more than the gender disaggregation of existing data on victims and perpetrators. It entails the inclusion of information about several gender-saturated dimensions of the violence that is core to the definition of the event. In the context of violence, this especially concerns domestic and sexual relations. It should include the recognition of transgender and pangender. Gender-saturated dimensions include domestic relationships (intimate partnerships or other family members) (as compared to acquaintances and strangers), whether there was a sexual aspect and (potentially) gender motivation. Gender 'saturates' because gender inflects or shapes practice but is not the sole determinant.

Four gender dimensions are required, while a fifth and further dimension may sometimes apply:

1. The sex of the victim.
2. The sex of the perpetrator.
3. The relationship between perpetrator and victim: whether the perpetrator was a domestic relation, either (current or former) intimate partner of the victim or another family member (either blood relative or other household member), an acquaintance or a stranger.
4. Whether there was a sexual aspect to the violence as well as physical.
5. In some events it is possible to discern a gender motivation.

Further types of gender-saturated contexts can also be relevant in some situations.

First, the sex of the victim is essential in order to measure 'violence against women' and to gender disaggregate statistics on violence.

Second, the sex of the perpetrator is important in order to ascertain the extent and nature of gender-based violence.

A third important gender-saturated dimension is the 'domestic'. In the context of violence, this means identifying whether there is a domestic relationship between the perpetrator and victim. A domestic

¹³²

Johnson, H. (2015) *Op cit.* Footnote 23.

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relationship can take one of two main forms: intimate partner and other family members. Forms of differentiation concerning intimates are between current and former intimate partners and between spouses, partners and boyfriends/girlfriends. Forms of differentiation for family members are between blood relatives and other family members.

The UNODC ICCS¹³³ usefully distinguishes between 11 types of perpetrator–victim relationships: current intimate partner/spouse; former intimate partner/spouse; blood relative; other household member; friend; acquaintance; colleague/work relationship; authority/care relationship (doctor, nurse, police and so on); other offender known to victim, offender unknown to victim and relationship not known. These are similar (but not identical) to the disaggregations the UNODC ICCS¹³⁴ lists as additional disaggregations for intentional homicide, which offer a more structured disaggregation: intimate partner or family member (IPFM), other perpetrator known to the victim and perpetrator unknown to the victim. Intimate partners are further disaggregated into: current spouse; current cohabiting partner; current non-cohabiting partner (boyfriend/girlfriend but not married); former spouse, former cohabiting partner and former non-cohabiting partner (boyfriend/girlfriend but not married). Family members are further disaggregated into blood relatives and other household members (living in the same household as the victim) and relative by marriage or adoption. Blood relatives are further disaggregated into parent, child, cohabiting blood relative and non-cohabiting blood relative. Other perpetrators known to the victim are disaggregated by: friend or acquaintance (separately identified); colleague/business or work relationship, authority/care relationship and other perpetrator known to victim. These are useful distinctions. They contain information about not only domestic relations but also positions of authority. However, it is regretful that the UNODC ICCS lists for perpetrator–victim relationships are slightly different for crimes other

¹³³ UNODC (2015) *Op cit*: 100-1. Footnote 33.

¹³⁴ UNODC (2015) *Op cit*: 103. Footnote 33.

than homicide from those for intentional homicide. One or the other should become the preferred list.

A fourth gender-saturated dimension is the sexual aspect. This overlaps with the domestic category of intimate partner but is wider, since it includes non-consensual sex from non-partners. It is relevant to sexual offences (rape and other sexual assaults) in understanding them as gendered – whether they entail heterosexual or lesbian, gay, bisexual, queer, transgender and intersex (LGBTQI) relations. It is relevant to rape–murder and its inclusion within the category of femicide. It is relevant to FGM.

A fifth potential gender-saturated dimension is motivation. This is much more difficult for data collection (and legal adjudication), since it is not usually easily observable. In some instances, this may be useful but not essential extra data for specific local purposes. For example, in the case of a domestic homicide motivated by dowry issues, the additional information about the dowry motivation is useful but not necessary to determine whether or not the death was a domestic homicide. Coercive control is a further example; this is addressed later, since it also pertains to the issue of the boundary between violence and not-violence.

Further gender-saturated dimensions are relevant in some instances. One of these is ‘location’ or ‘setting’. In some services (such as health), information is more often collected on the location of the violence than on the perpetrator–victim relationship; however, ‘location’ may be a proxy that in practice approximates ‘relationship’. For example, there is a likelihood that violence in a ‘domestic location’ is perpetrated by a domestic relation, though this is not always the case. Where information on relationship is not collected, information on location is significant.

Conclusions on the concept of gender

It is important to revise the mainstream measurement frameworks and indicators, not only the specialist ones. The majority of well-resourced data collection occurs during the administration of major public

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services (such as police, courts and health) and in the most repeated population surveys (such as crime and health). It is important to ensure that the new categories essential for the understanding of violence against women and gender-based violence are included in mainstream frameworks, so that gender is not reduced to being merely a variable for existing categories¹³⁵. It is not enough to have disaggregation by gender; it is also important to ensure that gender-saturated concepts are operationalised and included in the official measurement framework.

It is necessary to achieve not only the gender disaggregation of traditional categories but also the inclusion of the categories necessary to understand gender-based violence. This means rejecting the stance of gender neutrality while recognising that this can sometimes be a well-intentioned strategy. The practice of de-gendering a previously gendered approach is not justified. Making something invisible is not a route to understanding or justice that is likely to be successful. It means rejecting collecting data on women only while recognising the merits of affording special attention to women and the importance of building specific sites of expertise. It is necessary to engage with mainstream systems of knowledge and providers of services.

This has implications for the indicators that summarise complex statistical information on violence. It is necessary to change the indicators, introducing new ones as well as disaggregating the traditional ones. This means including the sex of the victim and perpetrator, the relationship between perpetrator and victim, whether violence has a sexual aspect and when it is gender motivated.

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Johnson, H. (2015) *Op cit.* Footnote 23.

