



## **GENDER-BASED VIOLENCE IN WESTERN EUROPE. OBSTACLES TO ITS MEASUREMENT AND CURRENT JUDICIAL SYSTEM PERSPECTIVES<sup>1</sup>**

### **LA VIOLENCIA DE GÉNERO EN EUROPA OCCIDENTAL. OBSTÁCULOS EN SU MEDICIÓN Y PERSPECTIVAS DEL SISTEMA JUDICIAL ACTUAL**

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#### **Resumen**

La violencia de género se caracteriza principalmente por la común y repetitiva ocurrencia del ejercicio de actos de agresión de la parte de los hombres contra las mujeres y de mujeres contra hombres, respecto al elemento de poder que se construye en quien la ejerce. Estos actos ocurren en variados y diferentes contextos desde el hogar en el caso de la violencia doméstica, el trabajo, donde el acoso es predominantemente direccionado a la mujer, y en una esfera más pública de crimen organizado como es el caso del feminicidio e incluso el tráfico de seres humanos. En un primer momento es importante distinguir de forma muy clara los diferentes conceptos recurrentes de la violencia de género y presentar los entendimientos de los mismos en el marco de relevantes acuerdos internacionales. Con este artículo, además de la discusión de la problemática adjunta del fenómeno de la violencia de género, se procura subrayar las dificultades de medición científica y objetiva del mismo con obstáculos y consecuencias que provienen también del sistema judicial en Europa Occidental de manera específica para la perspectiva de la violencia ejercida de hombres hacia las mujeres.

#### **Palabras clave**

Violencia, género, sistema judicial, marco de interacción de la violencia de género.

#### **Abstract**

The main feature of gender-based violence is the common occurrence of repetitive incidence of violent acts of men against women. These events occur in many different contexts: at home, in the case of domestic violence, at work, where harassment is predominantly addressed towards women and within a more public sphere of organized crime such as trafficking in human beings.

In a first moment, it is important to clearly establish the difference of several terms surrounding gender-based violence. Secondly, it is relevant to present the different understandings of the concept approached under relevant international agreements.

In addition to the discussion of the issues accompanying the phenomenon of gender-based violence, this article seeks to highlight the difficulties of its scientific and objective measurement. Obstacles to a reliable assessment are very often rooted in the judicial system with consequently biased decisions.

For the purpose of this article violence against women is used with the same meaning as gender-based violence.

#### **Key words**

Violence, gender, judicial system, women, framework of interaction of gender violence

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**SUMARIO.** I. Conceptual understandings of gender-based violence; II. Gender-based violence and violence against women - the magnitude of the phenomenon; III. Gender-based violence and violence against women - Obstacles to its visibility; IV. Conclusion; V. Bibliography.

## **I. Conceptual understandings of gender-based violence**

Since the 1990s that gender-based violence has clearly entered into the international agenda as a consequence of the sustained efforts of women's movements and active international organizations on feminist issues. Since then, the number of surveys and studies on this particular form of violence increased steadily, especially in the last decade of the 20th century. Therefore, a significant amount of information has been accumulated in prevalence of gender-based violence, its causes and consequences (Jansen, 2012). The multiple increase of quantitative and qualitative studies, underline the obstacles to the feasibility and validity of its measurement, which we discuss later in this article.

Either at the national and international level there is a willingness to address this phenomenon in its multidimensional nature and complexity. It is, therefore, important to distinguish the conceptual approaches to gender-based violence. Namely, other connected and related concepts used in order to express the meaning and analysis of the phenomenon within different contexts and frameworks.

While mentioning the general term, gender-based violence refers to any harmful act that is perpetrated against a person's will. This harmful act has a negative impact on the person's wellbeing, on his/her physical and psychological health or in the development and identity of the person. It differs from other types of violence to the extent that, in this case, the gender of the victim is the main reason for the perpetration of violence. Consequently, its main feature is that it occurs as a result of unequal gender-power relations and takes advantage of the historical and cultural differences between men and women.

It does not affect exclusively women and girls, although, the magnitude of the phenomenon affects them primarily across all cultures. The main types of gender-based violence can be classified as physical, sexual, psychological, economic or cultural.

Categories of perpetrators of gender-based violence, may include family members, community members, and those acting on behalf of state institutions, state cultural or religious institutions (Buldioski *et al.*, 2007).

In the Council of Europe Convention on preventing and combating violence against women and domestic violence<sup>2</sup> the concept of "violence against women" is understood as equivalent to "gender-based violence". This use comes along with the fact that women and girls are disproportionately affected by the magnitude of the phenomenon compared to men.

Within this framework the concept of gender-based violence refers to any harm perpetrated against women and that is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men. They are based on the perceived differences between women and men, leading women to a subordinated status, both in private and public spheres. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society. It is often perpetuated by a culture of denial and silence.

This understanding is also rooted in the previous world wide of the United Nations Convention on the Elimination of All Forms of Discrimination against Women,<sup>3</sup> specifically, where the need to protect women from violence as a result of gender stereotypes is affirmed. In its General Recommendation 19, the Convention states that "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". Article 2 (f) of the Convention explicitly requires Member States to take action on the changing of cultural norms based on gender roles by taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women".

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<sup>2</sup> Council of Europe Convention which was opened for signature in May 2011 in Istanbul, Turkey, the agreement aims to prevent violence, protect victims and "to end the impunity of perpetrators", <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>

<sup>3</sup> Signed by all Member States in the Committee on the Elimination of Discrimination against Women, 1992 <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>



Three years later, in 1995, the concept is again discussed in the forum of the United Nations within the framework which establishes indicators to measure the progress of the Status of Women, the Beijing Platform for Action<sup>4</sup>. In this forum the dominant term/concept used for gender-based violence is that of violence against women and concretely identifies the following different forms:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non- spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

On the other hand, the European Union in its guidelines refers to gender-based violence as a form of violence against women and girls and mentions the need to eradicate all forms of discrimination against them.<sup>5</sup>

In the last two decades, still in the context of the European Union institutions, violence against women has been understood as a violation of fundamental rights, at the same level as: the right to life, security, dignity, physical and moral integrity. It has also been considered as a form of discrimination based on sex. In this sense "violence deprives women of their ability to enjoy fundamental freedoms and represents a serious obstacle to equality between women and men" (WAVE, 2008).

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<sup>4</sup> Beijing Declaration and Platform for Action, 1995, <http://www.un.org/womenwatch/daw/beijing/platform/>

<sup>5</sup> General Affairs Council of 8 December 2008 (Not published in the Official Journal).

## **II. Gender-based violence and violence against women - the magnitude of the phenomenon**

Several surveys and data collection efforts have shown that gender-based violence is predominantly perpetrated by men. Although, women can also commit acts of violence and men and boys can be victims of violence by both sexes. The fact that men are the main perpetrators of the crime of gender-based violence proves to be evident by the recent survey implemented by the European Agency for Fundamental Rights in the 28 countries of the European Union.<sup>6</sup>

The extent of this is even greater when it comes to sexual violence and sexual harassment. This fact strengthens the previous argument that the majority of gender-based violence can and should be understood as violence against women.

In all societies is possible to observe violence against women. As already mentioned, it covers various forms of physical, sexual and psychological abuse. In Western Europe, similarly to other socio-cultural contexts, violence against women takes a number of forms that should be specified. These include rape, sexual assault and beating. Physical violence includes beating, pushing, bruises, kicking and even murder. It is often repeatedly perpetrated over a period of time, resulting in serious bodily injury and poor physical and mental health. Mental abuse includes verbal, emotional outbursts, threats of violence, imprisonment, denial of money and interrogation (Moane, 2010).

Experts and human rights activists argue that physical and sexual violence and psychological abuse, to which women are subjected to, can be compared with torture, both in nature and severity. Very often, it has a fatal ending, being the case of femicide<sup>7</sup> (European Parliament, 2010).

The persistent historical and cultural inequality in gender power relations, is both the cause and consequence of the different forms of gender-based violence.

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<sup>6</sup> European Agency of Fundamental Rights. Violence against women: an EU-wide survey-Main results, 2014.

<sup>7</sup> The term femicide is used in the context of murders of women in the public and private spheres, as a result of a violent crime by gender. As described in the UN forum "Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo".



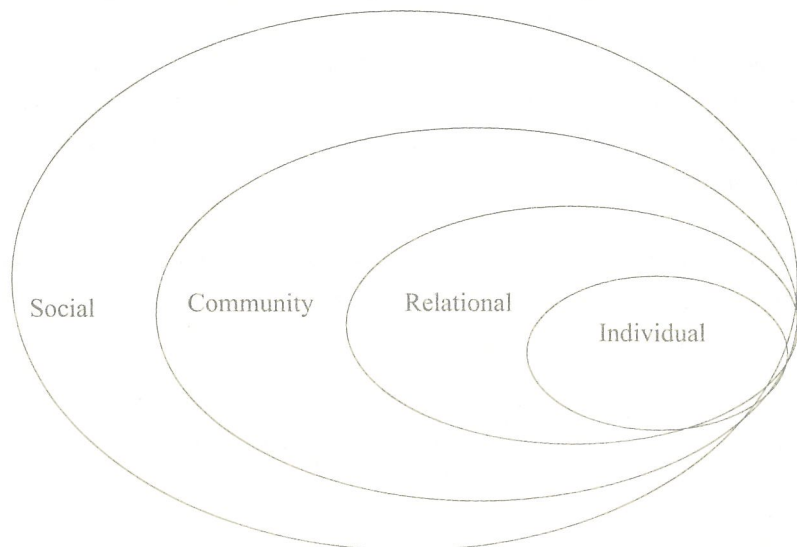
The imbalance occurs at individual, relational level, membership in the community, as well as in the wider sphere of society.

The most visible impact of its serious consequences is on the health level of survivors, their wellbeing and that of their families. Conducted studies in the field of the costs of violence, show that it also produces more or less observable concrete impact in the community as well as in the wider sphere of society (Walby, 2004).

Violence against women is often linked to a network of attitudinal, structural and systemic inequalities that are "gender-based" because they are associated with the subordinate position of women in relation to men's position in society.

There is an overall consensus in research that there is no single cause that adequately explains gender-based violence. In order to understand how those factors are combined, it is often used an ecological framework specifically developed to represent violence of relationships between couples. In this ecological framework the risk factors at the individual, relational, community and society level are represented as nested circles as presented in the figure below (Heise, 1999). It provides a framework for the understanding of causes and solutions of violence taking place across all levels of society.

Figure 1. Ecological framework of interaction of gender violence. By the author.



These circles represent the structural, institutional, interpersonal and individual factors, which reflect the origin, cause and impact of gender-based violence. Each circle produces an intersection with the other.

Structural factors include social, economic and political systems at the macro level. The fact that a political and social system promotes men dominance in the public sphere in general, has a negative impact on women's empowerment. It hinders their access to power positions and public participation at the same level as men.

This is the case of access to work, money and power where the imbalance in their distribution between the sexes is still quite evident in all European Union societies.

The results of the gender equality index, an instrument of social analysis developed in 2013 by the European Institute for Gender Equality, show that: despite 50 years of implementation of equality policies in the EU 27 Member States considered in the study, they are still halfway to achieve gender equality.

According to the analysis provided by this composite indicator, in the areas of participation in the public sphere, gender inequality favours more predominantly men. This is the case in access to power-decision making, distribution of time-use and access to money. The results also confirm that men have easier possibilities to join the labour market.

A political system which allows the perpetuation of male dominance in the power structures of society contributes to the reproduction of inequalities and perpetuates the vulnerability of women and girls.

In this way, the ecological model reflects the institutional factors that frame the social networks and the level of development and accessibility of formal and informal institutions in the community. Access and proximity to services and the dynamic sharing of networks around the individual are important agents of oppression or liberation. A predominant role is also played by the sufficient availability and quality of services to women victims of violence such as: shelters, emergency services, helplines and/or legal advice.



Interpersonal factors including personal relationships between partners, between family members and the community, are also represented in this model. This relates to the unbalanced distribution of the uses of time in the private and public spheres. The fact that women are expected to take more responsibility over caring and household activities, generates a direct impact on women's capacity and participation in the public domain. It increases the risk of isolation, low empowerment and vulnerability (Moser, 2001).

The efforts put in order to prevent gender-based violence are known as primary prevention strategies. Following the analysis provided by the ecological model, primary prevention strategies focus on changing the individual behaviour. This includes promoting awareness raising of alternatives to violence. Some primary prevention initiatives also concentrate on building healthy relationships and power structures management in communities by prioritising certain groups of people over others. Other interventions transcend levels of social ecology and try to influence changes in different spheres. In general, the consensus is that in order to obtain a positive change from a specific intervention at one level or to act on several levels, it is essential that these are connected through the different circles of the ecological model. Within this perspective, gender-based violence prevention will have a greater impact and contribution for transforming society. The integration of this perspective supports the development of strong coordination of mechanisms working in the prevention of gender-based violence in order to ensure that these links are strengthened and systematically improved.

A comprehensive approach towards the circumstances, risk factors and protection mechanisms are fundamental elements for preventing intimate partner violence and other forms of gender-based violence.

Risk factors increase the probability that someone is a victim and / or perpetrator of gender-based violence. Therefore, the reduction of risk factors should be a focus on prevention efforts.

On the other hand, protection mechanisms reduce the risk of becoming a victim and / or a perpetrator of gender-based violence. Therefore, protection mechanisms should be



encouraged, namely, through structural interventions. The main goal should be to obtain more gender equality through the empowerment of women. This can be achieved through the enhancement of women's access to the public sphere. Their participation in power structures, equal pay and paid work which, consequently, should be reached through a more equitable distribution of the use of time in the private sphere.

### **III. Gender-based violence and violence against women - Obstacles to its visibility**

Gender-based violence experienced in the private sphere by women and girls, is often brought home by the partner or a family member. This makes it difficult to report and document and even harder to prevent. In the public sphere, this type of violence occurs within a context of abuse of a power position which is the case of sexual harassment at the work place. Social systems and institutions usually have a gender-biased perception of the type of violence perpetrated on women. Very often, the judicial systems do not recognize the victim and has a tendency to justify the act of the perpetrator.

More than half of this type of violence, including rape takes place in the context of an intimate relationship, its occurrence crosses the social class, urban-rural and other social contexts (Dobash and Dobash, 1992; O'Connor, 2008).

The visibility and knowledge about the real dimension of this kind of violence is extremely difficult to reach due to private and confidentiality issues, cultural attitudes, norms and stereotypes. This is translated into the lack of sufficient research and comparable data across countries. On one hand, it is a sensitive matter to investigate because it affects directly the emotional forum of the victim and the balance they manage to reach in order to be able to cope with the situation. On the other hand, there is a strong pressure on women victims of gender-based violence contributing to their isolation which increases the probability of silencing these crimes.

What refers to rape, the international research estimates that only about 10-15 percent of incidents are reported to police, which positions rape as the less declared crime. Conviction rates for rape are also the lowest compared to other crimes. Comparative studies show that only 10.6 percent of reported rape leads to conviction (Kelly y Regan,



2003) making it completely inadequate to assess the extent of this type of sexual violence against women.

Research based on surveys of crime victims in the U.S.A. provides evidence that the prevalence of rape in adult women is between 14 percent and 25 percent (Moane, 2010).

In comparison, the results of the recent survey implemented by the European Agency for Fundamental Rights show that every 10 women has experienced some form of sexual violence since the age of 15 years old, and one in 20 has been raped. Just over one in five women has experienced physical and / or sexual abuse, whether from their current or former partner, and just over one in 10 women reported having experienced some form of sexual violence by an adult before the age of 15.

The same report states that administrative records, when available for analysis of criminal justice data, demonstrate that traditionally in the case of rape there are high rates of withdrawal of complaint. Meaning that the conviction of rapists is low compared with the rates of reporting for the same crime.

The results of the survey also reveal that women who experienced intimate partner violence, only 14% of them reported the most serious incident to the police. What refers to those who experienced violence from a non-intimate partner violence, only 13% reported their most serious incident to the police.

When requested, women have written a lot about the difficulties encountered in reporting crime and subject to humiliating legal proceedings (O'Connor, 2008).

Violence against women becomes institutionalised once the social institutions in charge of preventing this type of violence do not act accordingly and instead create obstacles for women who look for their support.

It occurs within a cultural context where the dominant ideology in society supports the natural victimisation of women. It is illustrative the case of rape which very often the

legal system itself and other services tend to support the idea that women deserve to be raped, that women make false claims and that men are not responsible.

Fear, threat of further violence, shame and stigma frequently associated with economic dependence, are some of the factors that prevent women from disclosing experiences of gender-based violence.

Many women say that social workers do not believe their stories and subjected them to humiliating interrogations. Concerning police reports and summary convictions of the judicial system, they repeatedly reflect considerable ambivalence about the responsibility of the perpetrator and the victim.

Together with the growth of the sex industry, violence against women has been strongly institutionalized. It has become a very profitable international industry taking many different forms such as prostitution, pornography and sexual exploitation.

The recent data collection implemented within the European Union shows that the victims of human trafficking are mostly women, in 68% of the cases and girls representing 12% of cases. For the same crime, 17% of the victims are men and 3% boys.

For the reference years - 2008, 2009 and 2010 - the majority of the identified victims are subject to sexual exploitation (62%) (Eurostat, 2013).

#### **IV. Conclusion**

The discussion of the concept of gender-based violence has been introduced in the international agenda through a perspective of human rights and non-discrimination of women.

Since then that the demand for the adoption of measures at the international level for eradication of violence against women has increased. This takes into consideration that the number of women and girls affected by the different types of violence is



disproportionate in relation to the men. Although the many difficulties in measuring the true extent of the phenomenon.

The collection and availability of more reliable information is a necessary way to overcome this difficulty.

Gender-based violence assessment and magnitude are problematic, either from the quantitative and qualitative research point of view. Surveys are often implemented in order to measure its prevalence, although, this may also raise ethical and objective concerns. Partly, because the subject is a very sensitive issue which relates to the privacy of individuals and the safety of survivors. Results of the studies might be affected by the level of awareness and prevention measures implemented in the group / community under observation.

There is, therefore, a considerable lack of knowledge concerning the real impact of this type of crime at the individual and social level.

Efforts to overcome and eradicate this phenomenon are often hampered by lack of reliable evidence regarding its magnitude, causes, consequences and features. These elements might be different or similar across countries and / or cultures making it more difficult to tackle.

Stereotypes, norms and prevailing gender biased attitudes in society, either at the community and the individual level, contribute to the perpetuation and acceptance of the crime of gender-based violence. All these factors are determinant in the judicial systems, making it difficult to recognise the victim and acknowledge the severity of the crime.

Researchers like Walby (1990: 143) state that "Male violence against women is sufficiently common and systematic, with prevailing consequences for women and, consequently, with systematic victimisation by the judicial systems making this phenomenon a social structure".

The way forward is a better understanding of its dimension in order to develop more assertive measures to tackle it across all levels of the social structure and foster its prevention.

In order to better succeed the prevention and eradication of violence against women, it is fundamental to promote more equality between women and men, more safety, physical and psychological integrity of women and girls.

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