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A medico-legal definition of femicide

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ABSTRACT

Femicide refers to the extreme form of violence against someone belonging to the female gender, i.e. the killing of a woman. Research shows that, to date, gender-based violence remains largely a hidden phenomenon with prevalence often being underestimated by official statistics and data missing in numerous countries. It can be argued that the under-reporting may be suggestive of a legislative gap that needs addressing.

This work aims to reach a shared medico-legal definition of femicide stemming from a comprehensive review of the current legislation of countries around the world. In addition, it appraises forensic pathology studies focusing on the murder of women as well as the most relevant documents published by prominent international organizations fighting violence against women. Review of the literature shows a scarcity of national legislations concerning specifically femicide, despite the attention given to this phenomenon by international organizations fighting violence against women.

Additionally, a non-homogeneous framing of the term femicide arises from the forensic pathology literature and national laws. Starting from one of the funding principle of medical ethics – autonomy – authors propose to define femicide as a murder perpetrated because of a failure to recognize the victim's right to self-determination. This definition would give the forensic pathologist a central role in identifying femicide cases among the

murders of women. A shared forensic approach is needed, ideally employing standardized methodology to compare international data and to standardize scientific research in the field.

1. Introduction

The aberrant phenomenon of femicide and gender-based violence is a global problem, which has not been uniformly and sufficiently addressed by countries around the world. Killing of women is a universal emergency and there have been concerns that rates might have increased during the COVID-19 pandemic, although data collected in six Spanish-speaking countries (Argentina, Chile, Paraguay, Panama, Mexico, and Spain) showed that the number of femicides did not increase during recent lockdowns [1].

Although sporadically used in the past, the term "femicide" became known worldwide with the work of the Mexican anthropologist, academic and political scientist Marcela Lagarde [2]. With her work, she was successful in bringing to the attention of the World the heinous crimes perpetrated against the women of Ciudad Juárez in Mexico, rendering the term femicide of common use.

Femicide refers to the extreme form of violence against someone belonging to the female gender, i.e. the killing of a woman. In 1976, Diana Russel, introduced the term to the International Tribunal on Crimes Against Women, defining it as the case of "killings of females by males because they are females" [3]. This underlined the desire to inscribe the lemma 'femicide' in a legal and social representation, the former directly associated to the crime and the latter linked to the phenomenon culturally dictated by the patriarchy.

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Research shows that, to date, gender-based violence remains largely a hidden phenomenon with prevalence often being underestimated by official statistics and data missing in numerous countries [4]. In 2016, the World Health Organization (WHO) stated the need for accurate and reliable statistics on violence against women as being fundamental to studying, researching and monitoring the phemonenon [5]. This aspect was also clearly underlined by the recent Resolution of the European Parliament of 16 September 2021 which, analyzing all forms of genderbased violence, highlighted a lack of aggregate, updated, global and comparable data across the European Union and that these data are fundamental for documenting and countering the phenomenon [6]. It can be argued that the under-reporting may be suggestive of a legislative gap that needs addressing.

The authors argue for a central role of forensic sciences to this aspect of the international debate on femicide. Specifically, there is a need for a shared consensus on a formal definition of femicide that would stem from forensic pathology research and necroscopic evidence. This would help identifying femicide cases among the murders of women utilizing a forensic approach, ideally employing standardized methodology to compare international data and to standardize scientific research in the field.

This work aims to reach a shared medico-legal definition of femicide stemming from a comprehensive review of the current legislation of countries around the World. In addition, it appraises forensic pathology studies focusing on the murder of women as well as the most relevant documents published by prominent international organizations fighting violence against women.

2. Methods

The official websites of the United Nations (lac.unwomen.org), the World Health Organization (who.int/health-topics/women-s-health), and the Council of Europe (coe.it) were searched to obtain documents on femicide legislation. Additional literature review was performed in PubMed, MEDLINE, Embase and Scopus using the following keywords: (femicide) AND (legislation), including works up to March 2022.

To appraise forensic pathology studies on femicide, the following keywords were searched in the abovementioned databases: "killing", "women", "forensic", "pathology" and "autopsy", last searched on 30th March 2022.

All publications were screened by reading titles and abstracts to ensure relevance to the topic of this work, in addition, references of selected articles were searched to identify additional relevant studies.

3. Results

Detailed and complete databases on some geographical areas were found on official websites of United Nations, World Health Organization, the Council of Europe and national governmental websites. The search yielded 15 results on PubMed, 2 results on MEDLINE, 10 results on Embase and 27 results in Scopus. The vast majority of publications did not focus on national laws, rather they discussed other topics related to the killing of women. In the following sections an overview on national legislation, available on official documents and peer-reviewed publications, is provided. This is followed by a section on forensic pathology approaches to femicide and suggested definition.

3.1. The Americas

Femicide was first defined and addressed as juridical problem in Latin America where violence against women is widespread and, although inter-country differences exist, extensive measures have been taken to combat the killing of women. During last two decades of this century, virtually all Latin American countries have legislated on violence against women and numerous refer specifically to femicide [6]. Country-specific conditions appear to shape the legislative framing of femicide and, consequently, of the law. Definitions of femicide vary and range from the mere homicide with the victim being a woman, to murders motivated by hatred or contempt for women. There are some who also include cases of abuse of power, abuse in position of trust and abusive relationships; some legislations also include human trafficking, kidnapping, sexual violence, and gang activity [7,8].

National criminal code provides specific provisions for femicide in Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay. In Chile there is an increase of applicable penalties for this crime [8].

In the United States there are no specific laws on femicide and the term is generally not commonly used. In 1994 the National Organization for Women and feminist organizations achieved the Violence Against Women Act, recently reviewed by Moore and Gover suggesting that, after 25 years, it is necessary to urgently assess the Act's impact [9].

Between November 2020 and March 2021, the United Kingdom's Commonwealth Parliamentary Association undertook the 'Strengthening Democracy, Parliamentary Oversight and Sustainability in the Commonwealth' project. This included a review of 29 countries legislation protecting women from all forms of violence [10]. None of the assessed countries in the Americas (Barbados, Belize, Canada, Saskatchewan, Cayman Islands, Trinidad and Tobago) had a specific legislation on femicide. The project highlighted the persistence of discriminatory laws in most countries of the Commonwealth hampering the legislative protection of women victims of violence and killing.

3.2. Asia

Far East Countries such as Japan and South Korea are examples of states not having specific legislations on femicide, but having passed a number of laws against stalking and marital violence. In Japan, the "Anti-stalking law" (law no. 81) was passed in 2000 following the murder of a woman in 1999 which constituted a legal precedent [11]. This law punished harmful behaviors due to resentment for an unrequited sentiment and applied to both sexes. The anti-stalking law was amended in 2013, 2016 and 2021, to adapt to social developments and the accompanying changes in stalking methods. Specifically, cases that were not envisioned at the time of the initial enactment of the law (such as relentless restrictions on sending emails, restrictions on messages and writing using Social Network Services and the use of Global Positioning System device) were added to the scope of regulation. Penalties were also strengthened [12]. In addition, there is also the "Law on the prevention of marital violence and the protection of victims" (Law no. 31) passed in 2001 which aimed to combat domestic violence. It was also amended in 2004, 2007 and 2013: it incorporated mental violence to the regulation target strengthened by the prohibition of access to children. In South Korea, efforts to prevent violence against women have been promoted since 1994 by establishing individual laws regarding sex violence, domestic violence and sex trafficking. A case of femicide in 2016 led to the "Basic Law on the Prevention of Violence Against Women" (Law No. 16086) in 2019, which empowers national and local governments to protect victims and prevent violence as a new legal system that can comprehensively respond to violence against women [13].

In other Asian countries the laws governing marital violence mainly concern violence against women, but do not refer to femicide [14]: in Malaysia, the "Domestic Violence Law" was established in 1994. In the Philippines, the "2004 Anti-Violence Law Against Women and Their Children" was established in 2004. In Indonesia, the "Law on the Elimination of Violence in Houeshold, 2004" was established in 2004. In Cambodia, the 2005 "Domestic Violence Prevention and Victim Protection Law of 2005" was enacted. In Vietnam, the "Law on the Prevention and Control of Domestic Violence" was established in 2007. In Thailand, the "Domestic-Violence Victim Protection Act" was applied in 2007.

In the Middle East and some South Asian countries, the so-called "honor killing" is tolerated and can, at times, be accepted when conducted, for instance, in the name of "contamination of family honor". This can take place, for example, in the context of refusal to marry or in pre-marital and extra-marital negotiations including rape [15]. In Pakistan, there are laws that criminalize acts committed against women in the name of traditional practices and crimes in the name or pretext of honor: the 2004 law on honor killings, the 2011 law on the prevention of anti-woman practices and the 2016 landmark amendment to the Code of Criminal Procedure, the Evidence Act and the Pakistan Penal Code. These latter were altered to make anti-honour killing and anti-rape laws more robust. Nonetheless, hundreds of women are still victims of honor killings, often in the family, which are frequently not been reported. Often the escape of the male involved in the alleged "honor killing" is facilitated [16].

3.3. Oceania

In the above mentioned Commonwealth report, New Zealand is described as a virtuous country, where provisions for domestic violence allow victims to be separated from abusive partners, settle in new homes, and seek protection for themselves and their children. Nevertheless, other Oceanian countries (Australia, Fiji, Kiribati, Samoa and Toga) do not have specific legislation on femicide [10].

3.4. Africa

In the Commonwealth report, Zambia is taken as an example of very good practice: a wide range of offences against women have penalties that are stronger than the general criminal law. Whereas, Gambia, Ghana, Kenya, Mauritius, Seychelles, Sierra Leone, Tanzania and Saint Helena do not have a legislation on femicide [10].

3.5. Europe

The European Institute for Gender Equality stated that no European Union Member State currently has a legal definition of femicide [17]. Nevertheless, some countries recognize and punish gendered motivations behind killings of women in their laws, for example because of hatred on the grounds of her sex.

Spain was the first European country to address gender based violence with the Organic Law 1/2004 (28th December 2004) titled "Protective Measures against Gender-Based Violence" [18]. It states that "Gender-based violence is not a problem that concerns the private sphere. On the contrary, it represents the most brutal symbol of the existing inequality in our society. It is a violence that is directed against women for the specific fact of being women, considered by their aggressors as individuals lacking the minimum rights of freedom, respect and decision-making capacity (...)", thus perfectly framing the culture that underlies such behavior. In its title IV, the Spanish Law introduces, as an aggravating criminal circumstance, the injury that occurs against whoever is or was the wife of the author, or a woman who is or has been emotionally linked to him, even without cohabitation.

Other countries, such as Italy, Germany and France, have provided laws contrasting violence against women, but without referring specifically to their murder [19–23].

On 16th September 2021, the European Parliament approved the Resolution "*Identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU*" and recognized gender-based violence as a new kind of crime among the offenses referred to in Article 83 (1) TFEU. It introduced femicide among Community crimes, as well as other crimes that must be fought on a common basis such as trafficking in human beings, drugs and arms, cybercrime and terrorism. The extremely articulated Resolution underlines in art. 18 "(...) that there are substantial differences in the legal definition and treatment of gender-based violence in the various Member States". It also highlights that "these differences strongly hinder the legislative actions of the Union aimed at combating gender-based violence" [24].

The Commonwealth countries on the European continent (United Kingdom, Cyprus, Gibraltar and Jersey) resulted not to have a legislation on femicide [10].

3.6. International documents referring to the violence against women

In the United Nations General Assembly Resolution 48 104 of 20 December 1993, the General Assembly recognized that violence against women is a manifestation of the historically unequal power relations between men and women. This has led to domination and discrimination against women by men and prevented the full advancement of women. It is also recognized that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position to men. The expression "violence against women", in art. 1 of the Declaration, refers to "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 the threats of such acts, the coercion or arbitrary deprivation of liberty, whether in public or private life " [25]. As highlighted above, there is no univocal definition of the term, although its peculiar traits are recognized in the World Report on Violence and Health of the World Health Organization (WHO), in 2002. The WHO declared that violence is not simply attributable to family problems, personal choices or facets of life, but must be considered the result of complex causal factors that can cross national borders [26]. One of the main aims of the Report was to raise awareness of the phenomenon of violence on a global scale. Another aim was to argue for the need to develop concrete actions against violence, both at the level of policies and civil society. A third, albeit not less important aim, was to consider public health policies as strategic when addressing causes and consequences.

The UN Commission on Human Rights (Commission on Human Rights Resolution 2003/45: Elimination of Violence against Women, 23 April 2003, E/CN.4/RES/2003/45) defined femicide as any form of violence systematically exercised on women in the name of an ideological superstructure of patriarchal matrix. Hence, aimed at perpetuating their subordination and annihilating their identity through physical or psychological subjection to the point of slavery or even death [27].

In 2011, the Istanbul Convention, expanding on the UN Convention of 1979 on the elimination of all forms of discrimination against women (CEDAW), defined discrimination against women as any distinction, exclusion or limitation based on sex, which has the effect or purpose of compromising or nullifying the recognition, enjoyment or exercise by women. This is regardless of their marital status and under conditions of equality between men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. In art. 3c) the Convention refers the term "gender" to socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men [28].

3.7. Definition of femicide among forensic pathologists

The literature examined show that there is still an inhomogeneous approach to femicide even within the medico-legal community. Specifically, Ghanem Salameh et al. [29] clarified that, in Jordan, there are different forms of femicide: the so-called honor crime (when the woman deviates from the sexual norms imposed by society); the fatal intimate partner violence (indicating the killing of the wife by her husband and related to religious and cultural norms) and a third, less prevalent, category encompassing "other domestic violence" (perpetrated by male members of the family other than the husband). These must be distinguished from the killing of women during robbery or for economic or accidental reasons. In Turkey, Karbeyaz et al. [30], in Taiwan, Fong et al. [31], in Canada the Canadian Femicide Observatory for Justice and Accountability [32], in Egypt Zaghloul et al. [33], in Italy Giorgetti et al. (Bologna) [34], Zara et al. (North West) [35] distinguish, the murders perpetrated by current or former partners, from those committed by others. In Portugal, Pereira et al. [36], in Italy (Milan), Vignali et al. [37], Sorrentino et al. [38], in USA Sabri et al. (Minnesota) [39], Jordan et al. (Kentucky) [40], Gillespie et al. [41], and in Brazil Margarites et al. (Porto Alegre) [42], distinguish intimate partners femicides from the non- intimate partners femicides in case histories. In another case study detailing the murders of women in Udine (Italy), Moreschi et al. [43] recognized the need to distinguish femicide from accidental murders (such as robbery, terrorism, brawl or war), but did not provide a practical method or definition to distinguish between the two. In Brazil, Meneghel et al. [44] frame femicide as a social mechanism that keeps women under control by a public manifestation of male power, highlighting how this phenomenon increases in the presence of social inequality, armed conflicts, migration, gender discrimination and exercise of a hegemonic and aggressive masculinity. In South Africa, where the phenomenon is very prevalent, Meel [45] links the increase in femicides to the patriarchal culture present in rural areas, where women are hierarchically subordinate to men, and Mathews et al. [46] and Abrahams et al. [47] compare intimate femicide-suicides to intimate femicide-non suicide cases.

4. Discussion

Our results denounce the lack of specific legislations on femicide in most countries of the world and, despite the attention given to violence against women, a framing of the term femicide is often not provided. Consequently, this favors both an underestimation of the phenomenon and the view that this crime is not deserving of stricter provisions intended specifically to contrast it. Furthermore, the lack of specific laws distinguishing femicide from other murders, documents that there is still no consensus on the definition of femicide and a question remains as to whether it is synonymous of murder of women or constitutes a crime separate from the mere killing of women. In addition, most laws on femicide define it as a homicide perpetrated by an intimate partner, which may be reductive.

Our search for publications on femicide legislation also illustrates that there is a dearth of published articles on the topic. Authors believe that one of the most important reasons for this lack of legislative and research interest is indeed linked to the inhomogeneous definition of femicide, which hinders trustable statistical data. As denounced by the United Nation Office on Drugs and Crime (UNODC) in 2019 [48].: "Owing to the lack of a standardized definition of 'femicide', data collected by countries under this label are not comparable and cannot be used for global or regional estimates to provide an indication of the scale of this phenomenon. On the contrary, starting from a worldwide accepted definition, the work of officials and prosecutors in investigating these crimes and protecting the victims would be facilitated, and improved recording of gender-based homicides enabled".

Moreover, in 2018, the publication "Femicide across Europe" stated: "consensus on a clear and practical definition [of femicide] is fundamental in order to produce clear data, which is also necessary for the monitoring system to work" [49]. This publication was based on the work by *COST Action IS1206*, supported by European Cooperation in Science and Technology, funded by the European Union's Horizon 2020 Framework Programme. The "Femicide across Europe" also recommended drafts of special legislations based on a clear and comprehensive femicide definition, and concluded that "a working definition of femicide should be the starting point for everything. Once we know how to define the problem, it should lead us and enable us to see a solution, within our context. In order to do so we need to build a system of data collection".

Therefore, a systematic framing of the phenomenon to differentiate between the killing of a woman and femicide is needed. It is precisely in this context that forensic medicine can act as the connection between the intricacies of the official international approach, the need for a rigorous scientific description of the phenomenon and the necessities of judicial authorities. The aim would be to develop a differential diagnosis between woman killing and femicide.

The medico-legal literature documents the heterogeneity of the framing of femicide among the murders of women and the need for more homogeneous research. When referring to femicide, the examined literature suggests that there is a mistake in the discussion which has become dichotomous. In fact, there is a general tendency to consider femicide, either as every homicide in which the victim belongs to the female sex, or as a homicide committed by the husband or a man to whom the victim was emotionally linked. This false dichotomy hinders the possibility of comparable statistics.

Authors believe that future investigations in forensics would need to consider that femicide is based not on the sex of the victim or of the perpetrator, but on the reasons that underpin the "dis-ethics" of abuse, especially the violation of women's right to freedom and right to life. In fact, even if this coercive attitude is often socially stigmatized and condemned, it still finds, even today, an underground legitimization as denounced by UNODC in 2019 [48]. Cultural legacies of subordination and domination allow behaviors that "justify" the perpetration of traditional social roles. Femicide is not a murder linked to the romantic relationship with the aggressor, but rather represents, due to its peculiar characteristics, a murder that is part of the cultural sphere and can be therefore typified. Killing a woman "for the mere fact of being a woman", "for reasons of hatred, contempt, pleasure or sense of possession" is what characterizes this crime, which is the result of a misogynistic and patriarchal culture [50]. There are analogies with cultural homicide, characterized by racial, religious, social, gender or sexual hatred. It could be argued that to define femicide exclusively on the basis of the gender and role (current or ex-partner) of the perpetrator is a reflection of the same patriarchal culture and risks creating a statistical bias when reporting and studying these crimes.

There is an urgent need for a solid framework giving appropriate dignity to the victims of such murders that cannot be considered equivalent to others. Hence, taking into account the first principles of legal medicine, deeply rooted in ethics and legality, authors propose a definition of femicide which comprises the dis-ethical and dis-legal value of the act, and that therefore could be accepted by the medicolegal community.

Starting from one of the funding principle of medical ethics – autonomy - the following definition of femicide is proposed: a *murder perpetrated because of a failure to recognize the victim's right to self-deter-mination.* The victim is killed because she has answered "no" to a request from the murderer or because the desires or beliefs she wants to affirm do not coincide with those of the aggressor.

This approach would still include as femicide those cases in which the murder is perpetrated by an (ex-)partner and motivated by requests of divorce, jealousy or possession; which are all motives not recognizing a woman's right to freedom, to betrayal or to affectively belong to another man. In addition, the proposed definition of femicide would also include cases not concerning partners or ex-partners, such as the killing of a woman that has refused a marriage imposed by the family, or the murder of a woman to prevent her emancipation. On the contrary, cases that would not be considered femicide would be: merciful killing (in which the murder kills his partner because she is severely ill), homicides due to mental disorders or drug addiction of the murder, or to robbery. In the authors' opinion, all these cases are not femicides, but fall within the category of mere homicides, regardless of the sex of the victim.

Based on the proposed definition, casuistries of murders of women could be studied distinguishing femicide from other types of murders. Applying methodologically shared medico-legal protocols to autopsies, objective and verifiable features of femicide could be identified by forensic pathologists. Distinctive patterns would then allow to discriminate whether or not a woman's murder can be classified as femicide. In future manuscripts, it will be important to study the casuistry of murders utilizing the proposed definition of femicide.

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5. Conclusion

This work proposes that femicide should be defined as a murder perpetrated because of a failure to recognize the victim's right to selfdetermination

This follows from the argument that, amongst all murders of women, the crime of femicide deserves to be defined as an autonomous type, with its own characteristics stigmatizing its peculiarity: a victim of femicide is killed because she is not recognized in her own right to selfdetermination.

Lastly, authors believe that a forensic medicine approach is necessary to examine in detail the cases of femicide and, through further cooperation with police forces, to identify those elements that can guide the investigations of the Public Prosecutor and, ultimately, to give governments, related institutions and legislators elements helpful to decide if an *ad hoc* legislation would be advisable for these cases.

Ethics statements

This work does not involve human subjects, or animal experiments. No data were collected from social media platforms. The research has not been influenced by a secondary interest, such as financial gain. Therefore no conflicts of interest has to be declared.

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