

Concept and Scope of Gender-Based Violence

Gender-based violence (GBV) is a phenomenon deeply rooted in gender inequality as such and continues to be one of the most serious human rights violations. However, this concept has not yet received an official definition in international law.

The concept of GBV at the international level

International acts of the 1960s-1980s aimed at establishing women's equality did not even include the concept of "gender" but solely operated with the term "sex", which denotes a person's belonging to a specific biological category.

The Convention on the Elimination of All Forms of Discrimination Against Women (1979, CEDAW) defined "discrimination against women" as 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.

For the first time, the terms "gender" and "GBV" were used in the Declaration on the Elimination of Violence against Women (1993, DEVAW). Afterward, these terms are used in international documents aimed at eradicating violence against women, particularly in the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011, the Istanbul Convention), ratified by Ukraine on June 20, 2022.

According to the Istanbul Convention, the term "**gender**" refers to the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

The term "GBV" is used in international documents to define the concept of the term "**violence against women**" and has the following **key features**:

- **any act of gender-based violence**
- **includes threats to commit such acts, coercion or arbitrary deprivation of liberty**
- has or may result in **physical, sexual, psychological or economic harm or suffering to women**
- takes place **in both public and private life**.

Terms "GBV" and "violence against women" have been used interchangeably in the international arena, as the vast majority of violence against women has been and continues to be perpetrated predominantly by men and predominantly gender-based.

Since 2014, the UN documents have emphasized the need to distinguish between violence against women and GBV, the survivors of which can also be men and LGBTIQ¹.

In 2015, the **UN Inter-Agency Standing Committee² defined the term "GBV"** as an umbrella term for any harmful perpetrated against a person's will and that is based on

¹ lesbian, gay, bisexual, trans, intersex and queer

² Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action. Reducing risk, promoting resilience and aiding recovery, IASC 2015

socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private. International institutions currently use this definition.

The concept of GBV in Ukrainian legislation

The term "GBV" was present in the Ukrainian regulatory legal base for a relatively short period from 2014 to 2017, but it was not defined. However, political opposition, along with long and intense discussions in the government and expert sector, led to the rejection of its use. Instead, in 2017, the official establishment of the term "violence based on sex" occurred, which is an imitation of the incorrect translation from the English text of DEVAW.

Article 1 of the Law of Ukraine "On ensuring equal rights and opportunities for women and men" (2005, No. 2866-IV): **violence based on sex is acts directed against people because of their sex, customs or traditions widespread in society** (stereotypical ideas about social functions (positions, duties, etc.) of women and men), or acts that **predominately or disproportionately affect persons of a particular sex, that cause physical, sexual, psychological or economic harm or suffering**, including threats of such acts, **in public or private life**.

A survivor of violence based on sex can be both a woman and a man.

While the existing definition of violence based on sex in Ukrainian legislation incorporates some constructs of GBV from several international documents, particularly the Istanbul Convention, it falls short of comprehensively covering the broad concept of GBV.

Ukrainian legislation lacks definitions for the concepts of "gender" and "GBV." Instead, it relies on the term "violence based on sex," which is a narrower concept solely based on biological sex (female and male). This approach overlooks gender, which encompasses socially constructed roles, behaviors, expressions, and identities of individuals across the gender spectrum, including girls, women, boys, and men.

Forms of GBV

- **physical violence** that is not sexual in nature and results in pain, discomfort or injury (e.g., femicide, forced sterilization)
- **sexual violence** – any form of sexual contact without consent (e.g. rape, sexual exploitation, forced prostitution)
- **economic violence** – denial or limitation of resources, opportunities or services, education, medical services or other social services
- **psychological violence** – threats of physical or sexual violence, intimidation, harassment, etc

Technology-facilitated GBV (GBV in the digital space)

Currently, Ukrainian legislation lacks both legal definitions of GBV in the digital space, as well as legal responsibility for such acts and mechanisms for protecting the rights of survivors from them. This includes digital violence, stalking, and revenge porn. Although the Istanbul Convention defines violence against women as all acts of GBV against women, including on the Internet.

At the same time, Ukrainian legislation contains norms under which digital violence can be partially qualified as the following (but not exclusively):

- domestic violence as a criminal offence (Article 126¹ of the Criminal Code of Ukraine)
- threat to kill (Article 129 of the Criminal Code of Ukraine)
- sexual violence (Article 153 of the Criminal Code of Ukraine)
- violation of the equal rights of citizens based on their racial, national, regional affiliation, religious beliefs, disability and other grounds (Article 161 of the Criminal Code of Ukraine)
- violation of privacy of mail, telephone conversations, telegraph or other correspondence conveyed by means of communication or via computer (Article 163 of the Criminal Code of Ukraine)
- violation of personal privacy (Article 182 of the Criminal Code of Ukraine)
- committing domestic violence, violence based on sex as an administrative offence (Article 173² of the Code of Ukraine on Administrative Offences)
- mobbing (Article 173⁵ of the Code of Ukraine on Administrative Offences)