

## Systematic Review Protocol Registration

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### 1. *Review Title*

The gendered dimensions of defences to homicide: a systematic review

### 2. *Anticipated or actual start date*

11 October 2021

### 3. *Anticipated completion date*

1 May 2022

### 4. *Stage of review at time of this submission*

The review has not yet started.

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### 8. *Organisational affiliation of the review*

City, University of London

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### 10. *Funding sources/sponsors*

City, University of London

UK Prevention Research Partnership (PRP) Consortium Award

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**11. Conflicts of interest**

N/A.

**12. Collaborators**

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**13. Review question(s)**

1. Are there aspects of partial or complete defences to homicide that are explicitly or implicitly gendered?
2. Are there differences in men and women's use of these defences, and if so, what are these differences?
3. Are there sex/gender differentiated outcomes to using these defences?
4. Is the presence of a domestic, intimate, or familial relationship associated with sex/gender differences in either the content of or the application of defences to homicide?
5. Are there associations between gender bias in homicide defences and sex/gender differentiated acquittal and/or sentencing outcomes?

**14. Searches**

This review utilizes a five-step search strategy:

1. Electronic database searches: The following databases will be searched: HeinOnline, Westlaw, LexisLibrary, Criminal Justice Abstracts (Full Text), and SOCIndex with Full Text.

2. Screening reference lists:

This will include forward and backwards citation tracking of included studies and reports.

3. Grey literature

The grey literature search strategy will be divided into three parts:

3a) will parallel the electronic database search for literature on the sex/gendered aspects of defences to homicide via search engines such as Google and Google Scholar;

3b) will consult the websites of specialised agencies such as within the UN or EU systems, or known civil society organisations working on the topic, to identify relevant reports or publications;

3c) will search for grey literature on specific homicide defences returned in both the peer reviewed returns and in 3a) and 3b) (i.e. if an article is about Canadian law, a grey literature search will be conducted regarding Canadian law).

#### 4. Hand searching national laws:

Following the collation of relevant homicide defences extracted from literature returns, hand searches to locate the text (statute, judgments, or both) of the named homicide defences will be conducted. This will include resort to domestic criminal codes, government websites, and case law, including via case law aggregators i.e. Westlaw. Searches will be conducted via Google, government websites, law aggregators such as publications of international agencies, regional bodies, and civil society organisations, law databases, specialised libraries, and the reviewers' networks.

#### 5. Consultations with external networks and advisory boards:

The review will be supplemented with guidance from an advisory board, expert recommendations, and consortium members who have expertise in this area.

Search dates: 1990 – 2021 (inclusive)

Re-runs: searches will be re-run to final analyses to ensure any further studies are identified for inclusion.

### ***15. Condition or domain being studied***

Criminal law and criminal justice; partial and complete defences to homicide; gender discrimination; access to justice; gender disaggregated homicide; violence.

Various partial and complete defences to homicide are available globally. If successful, these defences can have the effect of fully absolving the accused of criminal liability (in the case of a complete defence, such as self defence) or reducing a charge and attendant sentencing (i.e. reducing a murder conviction to a lesser conviction, such as manslaughter, via a partial defence.)

Gender discrimination in homicide defences persist, despite reforms (Fitz-Gibbon & Horder, 2015; Fitz-Gibbon & Pickering, 2011). For example, intimate partner homicides (IPH) comprise a sizeable proportion of homicides against women (Stöckl et. al., 2013; UNODC 2018). The gendered and sex differentiated features of such relationships are linked to aspects of homicide ranging from rates of homicide to method of homicide. These sex and gender differentiations are also found in homicide defences. One study reports that the content and application of homicide defences in cases of intimate partner homicides (IPH) is associated with the commission of male homicide of female partners and gender biased criminal sentences for women who kill abusive partners (Howes, 2021). These outcomes could be

driven by gender bias (Cutroni & Anderson, 2020; Penal Reform International and LinkLaters 2016).

This review will provide a multi-country analysis of existing gender bias regarding both the content and application of the law of homicide defences. Ensuring that criminal law and criminal justice are free from bias is a perennial need for liberal democracies. Providing fair and unbiased sentencing in which the severity of the sentence matches the gravity of the crime is also a high priority. Further, establishing appropriate criminal justice responses to homicide and to violence against women and girls are chief policy concerns. The review can form the basis of law reform and criminal justice practice reform suggestions to remove gender bias in homicide defences and to assess why previous attempts to do so have not yet worked to plan.

#### **16. *Participants/populations***

**Inclusion:** persons accused of homicide (any age); victims of homicide (any age); actors within the criminal justice system (any actors, i.e. judges, juries, prosecutors, police, defence counsel).

**Exclusion:** Persons accused of attempted homicide or other incomplete forms of homicide; victims of attempted homicide or other incomplete forms of homicide.

#### **17. *Intervention(s), exposure(s)***

Defences to homicide available via criminal code/statute, judgments/case law, or both.

#### **18. *Comparator(s)/control***

**Sex/gender:** legal exposures and outcomes (such as the availability of, or outcome of, pleading a homicide defence) will be compared based on sex/gender. Sex—female/male—will sometimes be used as a proxy for gender, for example regarding sources that collect data by sex. When sex is used as a stand in for gender this will be explained.

**Criminal justice outcomes:** a comparison between the availability of defences, criminal justice actor responses, acquittal rates, verdicts, and sentences for women who kill versus men who kill will be made. The review will assess whether such outcomes are different based on sex/gender, and whether there is an association between these differences and gendered aspects of homicide defences.

**National and sub-national jurisdictions:** collected homicide defences will be coded for gender bias. Comparisons will be made across jurisdictions to answer review questions 1-5.

#### **19. *Types of study to be included***

**Inclusion:** The study is eligible for inclusion in the review if it presents information on the gendered aspects of the content or application of defences to homicide. Types of studies include peer-reviewed and grey literature; conferences papers; theses. Approaches include doctrinal legal analysis; socio-legal analysis; empirical legal analysis; case studies. Populations include male and/or female persons accused of homicide (the study must focus

on at least one population accused of homicide, and/or male and/or female victims of homicide). No restrictions on study setting.

Exclusion: Returns that do not explicitly refer to and focus upon the content and/or application of a defence to homicide will be excluded. If the text does not name and locate the defence in legislation or judicial decisions it will not be considered. Returns that report information on defences to homicide but do not report information the gendered and/or sex disaggregated dimensions of these defences will be excluded.

## 20. *Context*

The context is criminal justice and any defence to homicide in any location, if the study fits the inclusion criteria.

## 21. *Main outcomes*

The main aim of this review is to provide a systematic study regarding the gendered aspects of homicide defences, including gendered differences in acquittal or sentencing. ‘Exposure’ is to homicide defences and ‘outcomes’ are criminal justice outcomes including guilty or not guilty verdicts and sentences following guilty verdicts. The aim is to inform future interventions to remove gender bias in criminal law and improve criminal justice responses to homicide and related violence.

The review will synthesise and analyse existing sources on sex/gendered aspects and effects of defences to homicide, and synthesise and evaluate the law on homicide defences in jurisdictions addressed in the relevant returns. The review will assess whether there are sex/gender unequal consequences to such defences, including in jurisdictions in which the law may formally be ‘gender neutral’ but in which, in practice, the application of such defences have sex/gender unequal outcomes

Outputs may include a typology of the gendered dimensions of homicide defences; a gender bias scale and rankings of defences on this scale; an overview of both homicide defences and the gendered aspects of these defences in multiple jurisdictions; an assessment of how these defences are used (are they fit for purpose? Do they fulfil legislative intent? How do criminal justice actors understand them?) and for whom they are available; an evaluation of the connection between the gendered aspects of homicide defences (content, application) and gender differences in acquittal and/or sentencing; and suggestions for law reform based on principles such as the reduction of violence, gender equality, fairness, correspondence, and deterrence.

## 22. *Data extraction (selection and coding)*

Databases (e.g. Westlaw) will be searched and returns downloaded into a reference management software (Refworks) for automatic and manual de-duplication. The remaining records will be transferred into a collaborative systematic review software (Rayyan).

The titles and the abstracts will be screened independently by the first reviewer against the inclusion and exclusion criteria listed previously. The second reviewer will check the first either 25 or 20% of abstracts (whichever is lower) with an expectation that reviewers will

agree a minimum of 95%. If discrepancies arise, the reference will be included at this stage until further appraisal can be conducted in the next stage.

Eligible sources will then be obtained for full-text screening by first reviewer separately against the inclusion and exclusion criteria. Sources that have been excluded and the reasons for exclusion will be recorded. The second reviewer will check the first either 250 or 20% of abstracts (whichever is lower) with an expectation that reviewers will agree a minimum of 95%. If discrepancies arise, these will be resolved through discussion, or a third reviewer will moderate.

Structured data will be extracted from all eligible sources using a standardised extraction form. The second reviewer will check the extracted data. If discrepancies arise, these will be resolved through discussion, or a third reviewer. There are three main categories of data to be extracted: i) law(s) providing a defence to homicide; ii) study characteristics (data source, author, year of publication, data type, data points, method of measurement, population or sample size, missing data, reference); and iii) gender dimensions (within the content or application of the law, in how the law is viewed or used by criminal justice actors, in how the law is viewed or used by those accused of homicide, in criminal trial outcomes, other).

### ***23. Risk of bias (quality) assessment***

A formal quality assessment tool for qualitative assessments, such as HTA13 or JBI, will be used for sensitivity analysis but not exclusion. Several tools will be employed and a hybrid tool best suited to the nature of legal analysis will be developed by building on and refining existing tools.

Language bias: due to the databases selected, the search returns are likely to predominantly be published in the English language. Studies published in Spanish will also be eligible for inclusion.

### ***24. Strategy for data synthesis***

The strategy for data synthesis will employ thematic synthesis and develop more than one typology based on analysis of subgroups. Data extracted from returns will be coded (e.g. by type of defence, type of sex/gendered element), grouped descriptively, and then further analysed for themes.

Utilising the health sciences approach to synthesising qualitative literature regarding study participant perspectives and experiences, this review will synthesise both the perspectives of the authors of the literature and the perspectives and experiences the literature reports (i.e., the perspectives of women and men who plead defences to homicide, the perspectives of criminal justice actors such as judges who decide if homicide defences should result in acquittal or reduced sentencing). The perspectives will be coded and evaluated against other returned literature to synthesise the outcomes of the scoping. The reviewers will further analyse these perspectives and experiences.

The analysis will categorise the defences and the sex/gendered aspects of the defences to produce a typology of defences to homicide, a typology of the sex/gendered aspects of defences to homicide, and a typology of the sex/gendered effects of these defences to homicide.

Additional analysis of the links between these defences to homicide, gender inequality, and violence may be conducted if the returns support this. For example, if the literature provides information on how gender bias in homicide defences is associated with inadequate criminal justice responses to gender based violence, analysis of such association, for example the development of a typology of linkages between the two phenomenon presented in the literature, will be conducted.

#### **25. *Analysis of subgroups or subsets***

The literature will be analysed to develop a typology of:

- 1) the differences in the content, use, and criminal justice outcomes of homicide defences based on the sex/gender of the accused, the sex/gender of the victim(s), and/or other gendered aspects of the defences (honour, infidelity, etcetera);
- 2) how different criminal justice sector actors interact with the gendered and/or sex disaggregated aspects of homicide defences, for example how the judiciary responds to homicide defences on the basis of the sex/gender of the accused, the sex/gender of the victim(s), and other gendered aspects of the relationship between the accused and victim(s) and of the homicide defence(s) plead.

#### **26. *Type and method of review***

Type of review: systematic review.

Area of review: crime and justice; violence and abuse.

#### **27. *Language***

English

#### **28. *Country***

England

#### **29. *Dissemination plans***

Peer-reviewed journal articles will be submitted to high-quality journals in the field(s) of law, crime, and criminal justice. Additional summaries and reports (for example, a typology of defences to homicide, a typology of the gendered dimensions of defences to homicide) will be made available to key beneficiaries. This may also take the form of written submissions of evidence to consultations on data collection in this field.

#### **30. *Keywords***

Homicide; murder; manslaughter; killing; defence(s); ‘homicide defence(s)’; gender; ‘homicide reform’; systematic review