# The Communicative Co-Constitution of Gender-Based Violence through Functional Differentiation

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## Abstract

*Until recently, gender-based violence (GBV) has been approached predominantly as a public health concern that has not received much attention in mainstream social science discourses. Most recent publications on GBV research implore the necessity for multidisciplinary collaboration and intervention. In spite of multiple global efforts, the elimination of GBV is not yet visible on the horizon. In this article I draw on Niklas Luhmann's Social Systems Theory (SST) to describe GBV as a hyper-complex phenomenon that is communicatively co-constituted through functional differentiation. I argue that the binary code of each function system creates different symbolic abbreviations of GBV meanings that inadvertently exclude its victims and enable its incidences. The major objective of this article is to portray the complexity of GBV and to highlight the need for multidisciplinary social scientific interventions in an issue that poses a threat to the sustainability of world society*

**Keywords**: Niklas Luhmann, Social Systems Theory; communication, silence, gender-based violence

Global reports on GBV and its various forms, such as domestic violence (DV), intimate partner violence (IPV), and child sexual abuse (CSA),reveal that it remains a stigmatised and hence incommunicable or even taboo topic in both developed and developing countries, across high- and low-conflict zones, and across a large diversity of cultures (Russo &Pirlot, 2006; WHO, 2013; Abrahams, Devries, Watts, Pallitto, Petzold, Shamu & Garcia-Moreno, 2013; Palermo, Bleck& Peterman, 2013; UN Women, 2016; Fulu, 2016).

Existing literature on GBV shows that it has been approached predominantly as a public health concern that has been reported on by organisations such as the World Health Organization (WHO), Centers for Disease Control (CDC), United Nations Population Fund (UNFPA) and United Nations Children's Emergency Fund (UNICEF). In spite of the glaring prevalence of this global pandemic, mainstream social science journals do not seem to have acknowledged GBV as a social scientific problem (Walby, Towers & Francis, 2014). Given the central theme of incommunicability in many of the global reports on GBV, I use Niklas Luhmann's social systems theory (SST) to observe GBV as a communication problem, following Luhmann's (1996b, p.258) claim that "concepts can be willfully introduced as distinguishing indications, as observing devices". I argue that since social systems are created through communication their problems, such as GBV, are also created through communication, or as it happen in this case, through non-communication or incommunicability.

Luhmann (1995) argues that society is co-constituted by primary systems that are differentiated in terms of their particular binary code that steers the communication themes for each system. I argue in this article that each of these function systems' binary code communicatively co-constitutes GBV and excludes people from other function systems in the process.I start the discussion with a brief overview of Luhmann's types of self-referential autopoietic systems and focus on four specific themes in his theorising namely inclusion/exclusion, binary coding, psychic systems and individual persons, and latency. My primary objective in this article is to show how something as immoral as GBV is constituted amorally through processes of selection steered by the binary codes of six particular function systems, namely science, mass media, economy, family, religion and law. I achieve this objective by describing GBV as a hyper-complex societal problem that is communicatively co-constituted through functional differentiation that manifests itself in various forms of exclusion.

### Gender-Based Violence from a SST Perspective

GBV has been recognised as a global problem that is prevalent in all countries in various forms (WHO, 2016). However, as Walby et al. (2014, p.187) argue, "Violent crimes against women are routinely made invisible in the public sphere". It is also almost invisible in the academic sphere. At present, GBV is addressed predominantly in the field of Health Communication, or the more recent field of Domestic and Gendered Violence (Walby et al., 2014). Besides feminist discourse on issues such as sexual harassment and gender inequity in social scientific domains, mainstream social science journals do not address the numerous complex social issues that cause and perpetuate GBV and prohibits its communication. The consequence is that GBV research is not equipped with sufficient conceptual tools to facilitate its deliberation in mainstream social scientific discourses. Luhmann seems to allude to the to-date uncontainable pervasiveness of GBV that threatens world society when he says:

Whereas human beings count as persons in the space of inclusion, in the space of exclusion *they seem to count only as bodies*. The symbiotic mechanisms of the communication media lose their specific attribution. *Physical force, sexuality and the elementary, compulsive satisfaction of needs* are given free rein and direct relevance without being civilized by symbolic recursion" [emphasis added].(Luhmann, 2013a, p.26) In light of this statement, Iuse Luhmann's key argument that society is primarily differentiated in terms of inclusion and exclusion, with specific reference to GBV, not solely as an issue that is symptomatic of suppression, exploitation, or stratification, but rather as a societal problem that is communicatively co-constituted through functional differentiation. For ease of reference, I recap for readers not familiar with Luhmann's theorising that he commences his argument that social systems are autopoietic, as Vanderstraeten (2012) explains very well, by distinguishing different kinds of autopoietic self-referential systems, as portrayed in Figure 1. This is relevant to the discussion because Luhmann excludes human individuals and organisations as units of analysis in his theory of functional differentiation, as I explain in this section. In his first seminal paper published in English, Luhmann states:

To use *ipsissimaverba*: autopoietic systems 'are defined as unities of networks of productions of components that recursively, through their interactions, generate and realize the network that produces them and constitute in the space in which they exist, the boundaries of the network as components that participate in the realization of the network. (Luhmann, 1986, p.174) It is in terms of this definition that Luhmann (1986) draws a distinction between living, psychic and social systems, as illustrated in Figure 1 below. Psychic systems refer to individual minds or consciousnesses that are also operationally closed and thus not transparent. Therefore, they cannot be units of analysis. Social systems include societies that consist of 1) functionally differentiated systems, 2) organisations, and 3) interactions that occur between individuals in the environment of function systems.
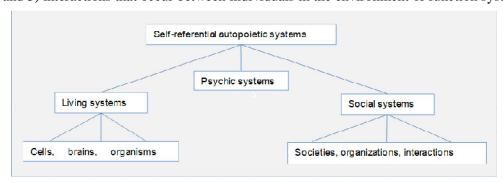


**Figure 1: Types of self-referential autopoietic systems (Luhmann, 1986, p.173)**

The key understanding here is that neither organisations nor individuals are the focus in Luhmann's theorising. Luhmann focuses on function systems and considers organisations and individuals only insofar as they are included (considered significant) or excluded (considered insignificant) in the environment of function systems. I consider it relevant and necessary to elaborate on the theme of inclusion and exclusion below.

### Inclusion and Exclusion

Luhmann replaces the concept of *social integration* with the distinction between inclusion and exclusion and emphasises that he does not deal with interactions between human beings or with organisations as sub-systems within function systems (see Figure 1).

As Braeckman (2006) points out, organisations do make decisions about inclusion and exclusion within function systems and therefore ithas to be explicated that inclusion and exclusion do refer to human beings, as Luhmann (2013a, p.17) states: "Inclusion is to be understood as a form whose inner side (inclusion) is marked as the opportunity for the social consideration of *persons* and whose outer side remains unmarked. There is therefore inclusion only if exclusion is possible" [own emphasis].

Insofar as organisations are *included* in his description of inclusion and exclusion, Luhmann (2013a, p.18) further elaborates that "Inclusion means [rather] that the societal system provides for persons and assigns them to positions in the framework of which they can act in keeping with expectations; ..., where they can feel at home as individuals". Luhmann's argument is that because individuals can participate in any function system and hence can be included in many different systems' *environments*, they are *not part of society*, but are in the environment of society. I will elaborate further on this point when I discuss psychic systems and individual persons below. It follows that in the name of freedom and equality, every function system is *open* to inclusion. However, as Braeckman (2006:79) shows, "By means of its organizations, society eventually undermines the principles of freedom and equality on which it is based". In this regard, Luhmann states:

Function systems presuppose the inclusion of every human being, but, in fact, they exclude persons that do not meet their requirements. Many individuals have to live without certified birth and identity cards, without any school education and without regular work, without access to courts and without the capacity to call the police. One exclusion serves as an excuse for other exclusions. At this level, and only at this level, society is tightly integrated but in a negative way. And modern values such as equality and freedom, serve as cover terms to preserve an illusion of innocence – equality as equal opportunity and freedom as allowing for individual (and not societal) attribution. (Luhmann, 1997, p.4/13) In terms of GBV, for example, this means that in many cases victims are excluded from function systems such as law, education, mass media and so forth, because they do not and cannot meet the requirements of those systems, as I will show in the discussion of each function system. My description of Luhmann's application of binary coding below aims to add further clarity.

### *Binary Coding*

Luhmann (1986) says that function systems are autopoietic in the sense that they create the elements that create the system through communication as a process of selections that are, for each system, steered by its own binary coding and hence its own logic. Luhmann (1989, p.45) explains that "on the level of coding a system is differentiated by means of a binary scheme" while, at the same time, it establishes itself at this level as a closed system. He continues by saying that "a value can only be abandoned for the sake of its counter-value". In other words, and this seems confusing at times, the alternatives of "true" or "false" cannot be replaced by "true" or "illegal", as these codes are "closed contrast sets", according to Luhmann (1989, p.45). In the minds of individuals (psychic systems) and through symbolically generalised media of communication (such as conditioned meanings), language can be used as a medium. However, language is not the only medium. In an economy, for example, the binary code is payment/non-payment, with or without language that accompanies it. Therefore, Luhmann (1989:45) argues that codes are all-encompassing constructions that have a claim to universality and that have no ontological limit. In my opinion, it is a human tendency to include morality in binary coding; in other words, to spontaneously perceive phenomena in terms of binary codes such as 'good or bad'; 'right or wrong'. That is to say, normative expectations seem to be commonly embedded in human perception although the societal realities indicated in GBV statistics, for example, indicate that society at large *does not have* sufficient morality or moral coding to prevent the occurrence of GBV.

It is therefore apparent that normative expectations actually do not feature at the level of function systems where the actions of human individuals become microscopic and hence unobservable. Communication, from this perspective is a process of selections that occurs through symbolically generalised media in terms of each particular function system's binary coding. For example, in science the code of true or false is applied; that is not a moral or immoral code and hence is *amoral*. Therefore, Luhmann argues that the binary codes of function systems are not normative and hence have nothing to do with moral coding. Borch (2011) confirms this point as he explains that function systems are coded at the level of a higher amorality, adding that sociological theories that revolve around moral evaluations of society and its function systems miss this fundamental point. Moral coding can be found in individual consciousness and in the praise or blame assigned to individuals in terms of the roles that they fulfil in social systems, as the section below aims to illuminate.

### Psychic Systems and Individual Persons

Borch (2011) cites Luhmann as saying that society is the name for the totality of communication; only communication can communicate and therefore humans must necessarily be exterior to society. In this regard, Borch (2011, p.46) states: "There is no way that the operationally closed system of communication can integrate operations from the psychic system or from the various parts of the organism". In other words, Luhmann does not argue that humans and thus consciousness do not matter or that humans do not feature in communication, as he explains: In a systems theory formulation, this means that consciousness belongs to the environment of communication as a system. This is not to say that consciousness does not matter or that it can be dropped without any consequence. Systems theory is a theory of observation with the aid of a system/environment distinction, and that implies that it won't be possible to drop the environment without dropping the system as well (Luhmann, 1996b).

This means to say that individuals and individuality are involved in communication not as systems but rather points of identification in the communication. As Schirmer and Michailakis (2015, p.51) explain, human beings have no *conceptual place* in Luhmann's social theory simply because they "cannot be unified in one single system, comprising, among others, a number of chemical molecules, a complex biological organism, a consciousness and social characteristics". Schirmer and Michailakis (2015) further clarify that there are two ways that people appear in the context of Luhmann's SST, namely as psychic systems and in the form of person. The important distinction to make is that psychic systems (consciousness) *think*, they do not communicate, just as social systems cannot think as they are not human. Social systems communicate. Schirmer and Michailakis say that persons refer to "the addresses that specific communication can be attributed to" and they elaborate as follows:..., through the concept "person" Luhmann can do justice to the fact that human beings are anything but irrelevant in his theory, he can do justice to the operative difference between social systems and psychic systems, and he can do justice to the sociological fact that the way people "appear" in social systems is highly variable. In other words, the form of "person" is the device by which social systems include human beings in (and exclude them from) communication processes. (Schirmer & Michailakis, 2015, p.53).

In organisations, for instance, individuals fulfil roles, such a lawyer in a law firm in the function system of law; or a priest in a church in the function system of religion and so forth. Individuals who participate in these function systems would be the laymen, for example, such as a client, or a member of a religious congregation. As such, individuals co-constitute the environment of function systems and therefore they co-constitute the communicative events or interactions where values and morals, for example, do feature. Stichweh (2007) explains that there is no autonomous level of evolution of the psychic system since one psychic system cannot be copied to another psychic system. This is one of the major reasons for Luhmann's exclusion of psychic systems in his theorising. It is therefore apparent that complex processes are continuously and simultaneously at work in the co-constitution of systems and their environments through consciousness in psychic systems and communication in social systems. It follows that whatever a system includes or considers also defines what it excludes or ignores. This ignorance is what Luhmann refers to as latency, which is a key concept in terms of GBV, as indicated in the section that follows.

### Latency

Luhmann (1995, p.335) uses the term 'latency' to describe ignorance in so far as latency equips function systems with what is generally referred to in legal terms as 'plausible deniability'. In this regard, Luhmann states: One must distinguish between physically feasible consciousness and socially feasible communication. Similarly, one must distinguish between *the latency of consciousness* and the *latency of communication*. Consciousness belongs to the (interpenetrating) environment of social systems; the latency of consciousness (unawareness, ignorance) is therefore at first only an environmental precondition for forming social systems. (Luhmann, 1995, p.335)

Luhmann (1995) argues that because psychic systems are not transparent to one another, they cannot be transparent to social systems. Latency of consciousness refers to individuals' ignorance or lack of knowledge, while latency of communication refers to function systems' ignorance of communication themes or issues. He continues to say that specific social regulators prevent or suppress communication (Luhmann, 1995) and argues that for both kinds of latency three levels of situating the problem have to be distinguished, which is key to the understanding of the incommunicability of GBV:

(1) Purely factual latency, in the sense of ignorance or lack of consideration in choosing themes for the communicative process;

(2) Factual latency that rests on the impossibility of knowing or communicating; and

(3) Structurally functional latency, namely latency that functions to protect structures.

The last level of latency is particularly problematic as it suggests that structures (in functional systems) suppress communication (about GBV in this article) because it serves the best interest of that particular function system. In other words, any particular system requires the *scapegoat* that latency provides, as Luhmann explains:

If structures require the protection of latency, this does not mean that consciousness or communication is impossible, only that consciousness or communication could destroy structures or trigger considerable restructuring, and that this prospect preserves latency, and thus blocks consciousness or communication. (Luhmann, 1995, p.336)

The brief descriptions of the function systems that follow aim to show how all three levels of latency can be applicable to each of these systems. Table 1 below provides a synoptic view of different function systems and their functions, efficacies, codes, programs and media that will be applied to describe the communicative co-constitution of GBV. It should be noted that in his table Moeller also included politics, but excluded mass media and family.

**Table 1: Social systems (Adapted from Moeller, 2006, p.29)**

| System | Function | Efficacy | Code | Program | Medium |
|--------|----------|----------|------|---------|--------|
| Science | production of knowledge | supply of knowledge | true/false | theories, methods | truth |
| Mass media | providing society with a universally available memory | sustaining communicative selections | information/non-information | field of selection | public opinion |
| Economy | reduction of shortages | satisfaction of needs | payment/ non-payment | budgets | money |
| Family | the epigenetic constitution of symbolically generalised media of communication | membership of social systems | inclusion/exclusion- | narrowing the selections of meaning | identity |
| Religion | elimination of contingency | spiritual and social service | immanence/ transcendence | holy scriptures, dogmas | faith |
| Law | elimination of the contingency of norm expectations | regulation of conflicts | legal/illegal | laws, constitutions, etc. | jurisdiction |

Each system fulfils one primary function; its efficacy is relevant to the fulfilment of that function in particular and hence the term "functional differentiation". All communication in each system is steered by its particular binary code that dictates its program and its meaning, as the discussions below aim to show.

## The Communicative Co-constitution of GBV in Function Systems

In the sections that follow I show how GBV is communicatively constituted through the binary coding in each function system. I discuss each system in terms of its programs and functions and their codes of efficacy; in other words, the extent to which each function fulfils or does not fulfil its function insofar as GBV is concerned. It is reiterated that structural coupling may occur between function systems but that no system can fulfil the function of another.

## The Communicative Co-constitution of GBV in Science

The primary function of science is to produce knowledge in terms of its binary code true/false. Luhmann (1997, p.1/13) says that "science is not differentiated into regional, ethnic or cultural sciences but into disciplines and research fields". In this regard, GBV has been positioned predominantly within the discipline of Health. The vast majority of scientific publications on GBV can be found in health journals, such as *The Lancet*, the *South African Medical Research Council*, or the *American Journal of Epidemiology*. Until 30years or so ago, it had been approached primarily as a public health concern. More recently, however, scholars such as Walby et al. (2014) show that domestic and gendered violence is an emerging field at the interstices between sociology, gender studies, criminology, social policy and social statistics that investigate and analyse domestic and gendered violence. Therefore, within the function system of science, GBV could be positioned in both the natural and social scientific domains.

Although there are volumes of data on global GBV research these findings are not published in top-tier social science journals. Walby et al. (2014) say this suggests that GBV is not considered important since this research has not yet been cemented into authoritative academic knowledge.

They add that even academic journals in the field of criminology, for example, still "either ignore women or treat gender as a 'control' variable'". I therefore argue that the medium of science, which is 'truth', is misrepresented in science as a function system. While the emerging field of Violence against Women (VAW) has its own journals, conferences, theories, concepts and forms of measurement. Walby et al. (2014) say that this field has developed relatively separately from mainstream disciplines with the consequence that the integration of the scholarship on GBV into other disciplines does not occur. They propose that gendered violence should be streamlined in the scientific fields of sociology and criminology. I am arguing that GBV is, among others, also a communication problem that should be addressed in fields such as communication science, organisational communication and strategic communication, since, a)both victims and perpetrators of GBV can be reached in the workplace, b) GBV has a significant impact on employees, and c) GBV is a theme within global sustainability objectives (UN Global Compact, 2016).

In my view,health and gender sciences may produce sufficient knowledge to describe the criticality of GBV as a global issue, but the lack of supply of this knowledge in mainstream journals *limits* its programs, and thus prohibits the development of theories and methods that could accelerate interventions. The absolute necessity for the efficacy of the science system is reiterated by Jewkes and Abrahams (2002, pp.1240-1241) when they state, in reference to South Africa, as an example: Popular ideas of rape as being a violent attack by a stranger or gang is reflected in only a very small portion of women's experiences of coerced sex. The evidence points to a conclusion that women's right to give or withhold consent to sexual intercourse is one of the most commonly violated human rights in South Africa. It appears from the literature that a representative study dedicated to rape and sexual coercion has never been conducted in a developing country. It becomes clear from this observation that victims of GBV are isolated and hence excluded from science as recipients of information. Instead, they are often trapped in social systems such as families that exclude them from science and scientific communication, as Russo and Pirlot indicate when they state:

Marriage as a social institution has come under particular scrutiny for providing men with an entitlement to batter and rape their wives and providing legitimacy for their actions. ...The invisibility of male violence against women is truly remarkable given its pervasiveness and profound health, social and economic consequences. ...Yet, in many parts of the world, such violence continues to be seen as a private matter and is implicitly - indeed, sometimes explicitly - condoned. (Russo & Pirlot, 2006:181-182) Seedat, Van Niekerk, Jewkes, Suffla and Ratele (2009, p.1016) agree and say that "patriarchal social norms sanction the use of violence by men to discipline and control female partners, and so long as boundaries of severity are not transgressed, violence is viewed as socially acceptable". I reiterate, these findings are published in health journals and I am arguing that unless social sciences participate in GBV discourses, science cannot fulfil its function sufficiently. These observations illuminate the necessity for social scientific participation and intervention. The following section considers how mass media communicatively co-constitutes GBV.

## *The Communicative Co-constitution of GBV in Mass Media*

The function of the mass media, which is to provide society with a universally available memory, embodies several apparent paradoxes, given its binary code information/non-information. In broad terms, Luhmann (2000) distinguishes three streams of programming for the mass media, namely news and reporting, and advertising and entertainment. In terms of the first strand, there has been a significant amount of publicity on GBV, namely the reports on BBC News in 2015 relating to the Oxford and Rotherham scandals in the UK about child sexual abuse that had been silenced, the conviction of paedophiles such as Ralph Harris in the UK, and Bob Hewitt in South Africa, the scandals of child sexual abuse in the Roman Catholic Church, and the posthumous revelations on the sordid sexual acts of Jimmy Saville, for example.

Walby et al. (2014) argue that this violence is presented to the public as 'scandals' that in terms of the mass media's binary code, qualify as information. However, considering Luhmann's (1995) argument that information that is repeated is no longer information, it is therefore possible to conceive that the continuous reporting on sexual violence in the media may de-sensitise audiences.

Another significant dynamic of news and reporting is that non-reporting of GBV is taken to be the norm. In this regard, Walby et al. state: The mainstream neglect is embedded in the construction of public knowledge. Taking England and Wales as an exemplar, the official count of violent crime, police recorded crimes, has no categories in which to capture domestic violence or gender-based violence (with the exception of some sexual offences); thus violent crime against women is routinely made invisible in the public sphere. (Walby et al., 2014, p.188) With regards to advertising as a stream, mass media has always advertised and commodified sex and sexuality and this has been a long-standing debate among feminist scholars in particular. The structural coupling between media organisations (as sub-systems) and the economy as a function system should also not be underestimated, as Luhmann says:

…,it is precisely in the relationship of economy and advertising that we therefore find good arguments for an increasing differentiation of systems with a decrease of structural couplings. The system of the mass media has its own function here as well, and that can be said to be the stabilization of a relationship of redundancy and variety in everyday culture. (Luhmann, 2000, p.49) While radio, television, newspapers, billboards and magazines are primary media for advertising, the Internet has arguably become the strongest medium. In his discussion on entertainment Luhmann (2000, p.51) articulates his emphasis on entertainment as "problems concerning the construction of reality" and "the effect the coding information/non-information has in this case". Although Luhmann continues with another line of argument in this regard, the "construction of reality" as it relates to GBV and its communication requires closer investigation. Besides the advertising of sex and its related products, entertainment in itself creates many perceptions that have an impact on GBV and its communication. Fulu and Miedema (2015, p.1447) state, for example, that: "…globalized cultural discourses influence notions of masculinity and femininity, particularly through the internalization of violence as a conflict-resolving tool". In a similar vein, Lim, Carotte and Hellard report on the impact of pornography on GBV, sexual health and well-being and they state:

…[P]opular pornography website 'pornhub' received 79 billion video views in 2014. Increased access to pornography online has been accompanied by rising concerns that it negatively impacts on health and well-being, particularly with regard to young people. … [These] concerns include that viewing sexually explicit material erodes morals and that specific types of pornography, such as that depicting violence against women, leads to increased violence against women in real life. … Between 37% and 88% of mainstream pornographic scenes include acts of physical aggression (mostly gagging and spanking), most commonly towards female actors with the scene usually suggesting that the recipient was a willing participant. Women are more likely than men to be depicted as submissive during sex and as exploited or manipulated into sexual activity. (Lim, Carotte & Hellard 2015, p.1) It seems that Luhmann took cognisance of the challenges that fiction presented even in its printed form as he stated: "… the modern novel began to give readers the ability to observe what the heroes and heroines of the novel could not themselves observe, above all in a pre-Freudian way, their sexual interests" (Luhmann, 2002, p.113).As Buiten and Naidoo (2013) show, constructions and representations of masculinity in mass media have significant consequences, such as perpetuating fictitious ideals and misrepresentations. In this regard Luhmann (1989, p.4) states: "Ideals have the fatal tendency to transform themselves into illusions". Examples of such illusions are common in the sex trade industry where they manifest in problems such as human trafficking. Again, the coupling between most systems and the economy presents challenges, as I aim to show in the following section.

### *The Communicative Co-constitution of GBVin Economy*

The amorality of functional differentiation is most evident in the economy with its binary code of payment/non-payment, and its ignorance towards the parties or commodities involved in the monetary exchange processes. An example is Davis's informative account of how marriage was socially constituted as an "exchange relationship", in the earlier twentieth century and he states: The basic element in what we actually call prostitution – the employment of sex for non-sexual ends within a competitive-authoritative system – characterizes not simply prostitution itself but all of our institutions in which sex is involved, notably courtship and wedlock. …Since prostitution is a contractual relation in which services are traded (usually in terms of an exchange medium) and sex is placed in an economic context, it is strange that modern writers have made so much of the fact that the "social evil" has economic causes. Prostitution embraces an economic relation, and is naturally connected with the entire system of economic forces.

But to jump from this truism to the conclusion that prostitution can be abolished by eliminating its economic causes is erroneous. Economic causes seldom act alone, and hence their removal is seldom a panacea. (Davis, 1937, pp.746-749). In economic terms, the commodification of sex and even sexual violence is inextricably linked to supply and demand, as Gutiérrez (2014) argues. It is generally known that the power relationship between victims and perpetrators of GBV has economic roots and that its dynamics are not constrained by socio-economic class. Yet, it is indeed the case that there is a higher prevalence of GBV in lower income geographies and yes, there is a higher prevalence of more perverse pathologies, such as child prostitution for example, in less developed or more isolated societies. However, this does not mean that very wealthy people are not among the perpetrators of GBV, as my examples earlier suggest. It seems to be the predominant theme throughout research reports on GBV that its victims are financially constrained to varying degrees proportionate to the levels of poverty and the degrees of exclusion from the primary function systems. It is therefore difficult to understand the heterarchy among function system, since it seems that the economic system, in particular, coupled with other function systems such as the family, religion and politics that facilitates the exclusion of the majority of victims of GBV from other function systems.

For example, the issue of female genital mutilation (FGM) is linked to "marriage ability and financial dependence (UNICEF, 2016). Although power is the medium in politics, economic power seems to extend to 'the power to abuse and exploit", as Karl Marx states: That which is for me through the medium of *money* – that for which I can pay (i.e., which money can buy) – that am *I*, the possessor of the money. The extent of the power of money is the extent of my power. Money's properties are my properties and essential powers – the properties and powers of its possessor. (Marx, as cited in Ritzer, 2000, pg.57)The extent to which the power of money in the economy drives latency in other function systems, particularly in the family, politics, religion and even mass media, requires further exploration and deliberation that cannot be addressed within the limited scope of this article. The discussion on the family as a function system aims to shed more light on this issue.

### *The Communicative Co-constitution of GBVin the Family*

Luhmann (1990b) says that the family is not generalisable as a function system as such, but individual families can be seen as subsystems in society. It seems that most of Luhmann's publications on the family as a function system have not been translated into English. Therefore, for the purposes of this article, some of Luhmann's SST concepts will be used inter-referentially (Davis, 2011) to discuss how GBV is encoded within the family as one of its primary co-constitutive systems, albeit the case that they are very different from the other function systems. Blom and Van Dijk (1999) position the family within the social systems framework more clearly, but I cannot elaborate further at this point.

What is significant is that in the family, everything is communication because of the high frequency of face-to-face interaction and the level of intimacy (Luhmann, 1990b). It was said earlier that the human individual features in Luhmann's SST as either a psychic system or as a person. I argue that the family can be seen as the epigenetic sub-system of society as a whole insofar as symbolically generalised media of communication (conditioned meanings) are continuously created in the family for both persons and psychic systems. Concepts such as 'identity' (family name), image (esteem), positioning (social status) and so forth are defined within the operational closure of a specific family that becomes environments to other systems, such as organisations (schools, business organisations, civil societies)and society at large. In terms of GBV, the operational closure of the family becomes problematic, as the operative logics of family systems prohibit and impair selections of information and utterance regarding its occurrence because of stigma.

Reports on GBV generally indicate that the stigma associated with GBV and both its victims and perpetrators is one of the primary reasons for the silence that perpetuates it. Messner (2016) further argues that the view of "rape as deviant acts committed by a few bad men was radically upended by a 1960s and 1970s feminist paradigm shift that viewed rape not as deviance but as a normal manifestation of patriarchal masculinity". It should be noted that this perception seems to feature in most countries, according to global reports. The family as a sub-system is where moral coding occurs. The moral codes of 'right' vs. 'wrong', or 'good' vs. 'bad' often create a moral conflict between the 'esteem of the family' and the well-being of the individual, with the latter often perceived to be of secondary concern. Further, latency becomes the most self-destructive and self-defeating factor insofar as it constitutes ignorance, incommunicability and silence and in doing so, silence obtains the symbolically generalised abbreviation of 'consensus' – *qui tacetconsentirevidetur*, as Luhmann (1996a, p.344) says when he argues that "producing dissent requires much more effort than to assume agreement".

When Mattheis (2012, p.630) says "Due to the specificity of the system operations, a system cannot communicate with its environment", it is true in more ways for the family in particular. In the case of GBV, in its various forms, the protection of family structures and the ascriptions of esteem and blame perpetuate the invisibility of sex crimes. Reports on child sexual abuse indicate that in most cases the perpetrators are known to the victim, and are often members of the victim's family (Jewkes & Abrahams, 2002; Seedat et al., 2009). Even worse, it has been reported that in some cases, other family members may be aware of the sexual abuse of children (Pretorius, Chauke & Morgan, 2011), but will refrain from disclosing it for reasons among those mentioned earlier. It is therefore argued that the binary code for the family can be inclusion/exclusion, that its program is the channeling of selections in the symbolically generalised media of communication, and that its medium is identity. A far more in-depth analysis of the communicative co-constitution of GBV within the family system is required, which cannot be covered within the scope of this article.

In the section that follows, I aim to show that both family and religion employ secrecy to circumvent exclusion at organizational and face-to-face interaction levels, since the fear of exclusion from the family or the church, for example, seems to supersede the reality that crimes are being perpetrated.

### The Communicative Co-constitution of GBV in Religion

Religion as a function system presents a different set of challenges for GBV and its communication, with specific reference to the expectations it presupposes. In the case of religion, the worshiping of deities assumes the preference of 'good' over 'evil', for example. Luhmann opens his discussion on the system of religion as follows:

As a moral fact, religion is defined in two ways: by a moment of desire (…), which appraises values, and by a moment of sanction that limits what is permitted (….). … While morality is defined by a distinction in which both sides claim one another, religion is characterized by a relationship of exclusion. …Society [thus] distinguishes religion by marking off its domain as sacred against everything that cannot be signified the same way. In terms of a binary coding such as 'sacred and profane' it channels other self-referential meanings that are 'inaccessible' to those excluded from the particular system. (Luhmann, 2013b, p.2)

For example, in spite of the efforts of human rights organisations to terminate the legal legitimacy of child marriage, the religious role players in some streams of Islam, for example, refused to change their practices arguing that it would be in contradiction of their religious principles (Human Rights Watch, 2016).It is also generally understood, as Davis (1937) shows, that historically marriage, as ordained by religious institutions, has been designed to contain sexual exchange relationships with the subsequent connotation of sexual entitlement. In other words, sex has been implicitly or explicitly defined as a 'woman's duty' and a 'husband's right'. Such implicit or explicit generalised abbreviations suggest that religion communicatively co-constitutes GBV by excluding members from all other function systems, including law, education, health, science, mass media and so forth. In other words, in a significant portion of the world, religion prohibits girls and women from receiving secondary and/or tertiary education and predisposes them to GBV in its various forms (Human Rights Watch, 2016). There are, for example, no religious scripts that prescribe female genital mutilation (FGM), although practitioners believe that the practice has religious support. It goes without saying that these practices incur tremendous health, physical and psychological consequences and that these practices constitute GBV. While Luhmann agreed that no universal moral code has evolved, as stated earlier, it still seems inconceivable that any religious group would blatantly enforce child marriage and the perpetration of sexual violence against children. My argument is that religion's binary code 'immanence/transcendence' obscures and even justifies the exclusion of justice for a vast majority of the world's population (Human Rights Watch, 2016).

Other abbreviated generalizations embedded in religion include patriarchy, submissiveness, subordination, obedience and so forth that become associated with the binary code of immanence/transcendence that steers communication themes in religion. These generalisations cannot be addressed in more detail within the scope of this article. What I am alluding to here was illustrated clearly in the much publicised case of the death of Farkhuda, which was probably one of the most brutal cases of GBV spurred by religion, published by BBC News on 11 August 2015. An innocent young woman was brutally killed by a mob of Muslims when she was falsely accused of burning pages of the Koran. The binary opposition of 'corrective justice' as a concept requires in-depth analysis and deliberation as it appears to be a key driver in various forms of GBV. In the following section, I aim to show that law as a function system creates its own normative paradoxes.

### *The Communicative Co-constitution ofGBVin Law*

The law as a function system is probably one of the most complex and almost incomprehensible systems because of its binary code legal/illegal, that should be, as normative human logic dictates, 'justice/injustice'. Luhmann describes the legal system as follows: The legal system receives its autopoiesis through coding the difference between what is legal and what is illegal. No other system operates according to this code. This binary coding of the legal system creates the assurance that if a person is in the right then the force of the law is behind him or her. (Luhmann, 1989, p.64)

However, given the statistic that 35% of women globally experience some form of GBV in their lifetime, and that as much as 90% of incidents of GBV go unreported (UN Women, 2016), the force of the law is clearly disrupted through coupling with other systems. In this regard, Luhmann explains the following:

The [legal] system uses the code of right and wrong to duplicate all meanings – the right event being not wrong, the wrong events being not right. By this very description, whatever happens and whatever can be done becomes contingent. It remains possible to select the right or to select the wrong, but not without committing oneself to negating the opposite value. (Luhmann, 1990a, p.231)

I therefore argue that the use of the code 'right/wrong' within the legal system does not correspond with the moral code 'right/wrong' insofar as it is defined in relation to or in terms of the code legal/illegal that presupposesa legal and not a moral interpretation of 'right' and 'wrong'. Therefore, the concept 'justice' becomes self-referential in its relation to the binary codes in other systems. For example, in terms of the coupling between the economic system and the legal system, justice could be achieved if a perpetrator of rape had to pay the victim a substantial amount of money to compensate them for pain and suffering. In terms of religion, on the other hand, justice could be achieved if a child rapist is expelled from a religious community, or even struck by lightning, for example. However, as Luhmann continues:

[But] these normative meanings work as concurring self-reference only, assuring the reproduction of legal events out of legal events. There is no need and not even the possibility of complete self-determination. The legal system *does not determine the content of legal decisions* – neither logically nor by some kind of crafty procedures of hermeneutic interpretation. It operates as a closed and at the same time as open system, normatively referring to the maintenance of its own self-reproduction and cognitively referring to adaptive requirements with respect to the environment [emphasis added]. (Luhmann, 1990a, p.233)

It therefore has to be reiterated that the binary code legal/illegal is an empty formula that is created through normative closure that requires symmetrical relations between mutually supportive elements and through cognitive openness that requires, on the other hand, asymmetrical relations between the system and its environment (Luhmann, 1990a). These processes become even more complex with reflexive expectations that Luhmann (1990a, p.232) describes as "expectations of expectations". People expect others to expect to be treated equally, for example, but the evidence suggests that this is not the reality for the majority of people. In this regard, Luhmann (1990c, p.178-179) observes: "Modern society in particular is compatible with any degree of inequality of living conditions, as long as this does not interrupt communication". These arguments require further elaboration at another opportunity.

Luhmann (2012, p.98) also argues that the inclusion/exclusion difference results in "wide sections of the population being denied inclusion in the legal system, so that the legal/illegal code of the legal system cannot be enforced or can be enforced only to a very limited extent". Therefore, he claims, "we can accordingly not rely on legal programs (legislation, including constitutional law) to really regulate the attribution of right and wrong". This, again, raises the issue of the legal legitimacy of rape within marriage. It seems that the *onus probandi* rests with the victims of GBV in most cases. In countries where child marriage is legalised through coupling with religious systems child rapists cannot be prosecuted as their acts are not deemed 'illegal'. In this regard, Human Rights Watch in a report on Yemen states:

Many officials in Yemen's parliament agree that a ban on child marriage is fundamental to safeguarding the rights of young girls. However, a small but powerful group of conservative parliamentarians oppose setting a minimum age for marriage, arguing that doing so would lead to the "spreading of immorality", undermine "family values," and would be contrary to Sharia, Islamic law. (Human Rights Watch, 2011, p.3)

While the most extreme cases of GBV in all of its forms are most likely to occur in poverty- and war-stricken countries where nation states enforce different laws, marriage as a legitimised institution still prohibits the enforcement of the law, as Russo and Pirlot (2006, p.181) state: "Marriage as a social institution has come under particular scrutiny for providing men with an entitlement to batter and rape their wives and providing legitimacy for their actions". It should be reiterated that IPV and DV are the most common forms of GBV that transcend socio-economic boundaries. Luhmann articulates this more clearly when he says:

Law is unjust or at least not quite in conformity of ideas of justice. … Moreover, legal norms are never completely enforced. …Lack of justice and lack of compliance and enforcement have to be taken as normal in this world. In both respects, ideal and material, the legal system lacks perfection. … At last though not least we are aware of many ways in which sophisticated legal forms are misused to bring about effects that were not intended by the legislator – one of the most famous examples of a tricky misuse being emancipation. (Luhmann, 1990a, p.235)

The global statistics on GBV make it abundantly clear that emancipation is still to a significant extent an ideology, as Mattheis supports when he states:

In a social system law is characterized by the fact that it makes behavioral expectations mandatory. According to Luhmann, legal rules are counterfactually stabilized expectations which are secured against disappointment. The counterfactual character of the law is crucial for the validity of the law. No matter whether the expectations are fulfilled or not – the validity of a legal rule is no subject of doubt. In this respect, the fulfillment or non-fulfillment of legal rules is irrelevant to their validity. (Mattheis, 2012, p.632)

It also follows from Mattheis' discussion that international laws with a focus on human rights are not necessarily enforced at nation or state level. Essentially, with regards to GBV in particular, the binary code of the legal system, 'legal/illegal' and its antecedent code 'right' and 'wrong' becomes suspended between structural couplings between and among family, religion, science, mass media and the economy, as function systems. In spite of the progress made in global legislation relating to GBV, law as a function system seems to fail in achieving operational closure. The legal magnitudes of the issues that co-constitute GBV require further analysis and deliberation.

## *Conclusion*

I have argued throughout this article that GBV is communicatively co-constituted through functionally differentiated systems that exclude victims and preclude perpetrators of GBV through the binary coding of each function system. I argued that science excludes GBV from mainstream social sciences journals and that this limits theoretical development and programming relating to GBV intervention and prevention. I have also argued that the streams of programming in mass media contradict each other and that through structural coupling with the economy, they promote GBV in many instances. I explicated the amorality of functional differentiation in my description of the economic system and argued that poverty, in many cases, excludes victims of GBV from other function system and their media, such as truth, justice and identity, for example. I argued that the structural couplings between family and religious systems further perpetuated GBV because of the latencies these systems promote, which compels secrecy, non-disclosure, stigma and incommunicability. I further argued that law did not achieve efficacy as it could not secure justice. I have used key concepts in Luhmann's theorising to observe the complexity of GBV and the communication that creates and sustains it in the different function systems. I suggested in the discussion of each function system that there was room for further elaboration that needed to be addressed in following publications and that necessitated scholarly deliberation. My concluding argument is that science should bridge the knowledge gap by including GBV and its communication as a topic in mainstream social science publications since its exclusion can be interpreted as structurally functional latency in science that results in the perpetuation rather than the elimination of a global pandemic that threatens the sustainability of the entire world society.

## References

Abrahams, N., Devries, K., Watts, C., Pallitto, C., Petzold, M., Shamu, S.,& Garcia-Moreno, C. (2014). Worldwide prevalence of non-partner sexual violence: A systematic review. *The Lancet, 383*(9929), 1648–1654.

Blom, T.,& Van Dijk, L. (1999). A theoretical frame of reference for family systems therapy? An introduction to NiklasLuhmann's theory of social systems. *Journal of Family Therapy21*, 195-216.

Borch, C. (2011). *NiklasLuhmann*. London: Routledge.

Braeckman, A. (2006).NiklasLuhmann's systems theoretical redescription of the inclusion/exclusion debate. *Philosophy & Social Criticism32*(1), 65-88.

Buiten, D.,& Naidoo, K. (2013). Constructions and representations of masculinity in South Africa's tabloid press: reflections on discursive tensions in the Sunday Sun. *Communicatio* 39(2), 194-209.

Davis, C. (2011).*A second-order cybernetic explanation for the existence of Network Direct Selling Organisations*. PhD Thesis. University of South Africa, SA.

Davis, K. (1937). The sociology of prostitution. *The American Sociological Review2*(5), 754-755.

Fulu, E.,&Miedema, S. (2015). Violence against women: globalizing the integrated ecological model. *Violence Against Women21* (12), 1431-1455.

Gutiérrez, E.J.D. (2014). Prostitution and gender-based violence. *Procedia – Social and Behavioral Sciences 161*(2014), 96-101.

Human Rights Watch. (2011). "How come you allow little girls to get married?" Child marriage in Yemen. Retrieved fromhttp://www.humanrightswatch

Human Rights Watch. (2016). No way out. Child marriage and human rights abuses in Tanzania.Retrieved from http://www.hrw.org/report/2014/10/29/no-way-out-child-marriage-and-human-rights-abuses-tanzania

Jewkes, R.,& Abrahams, N. (2002). The epidemiology of rape and sexual coercion in South Africa: an overview. *Social Science & Medicine 55*(2002), 1231-1244.

Lim, M.S.C.,Carrotte, E.R.,&Hellard, M.E. (2015). The impact of pornography on gender-based violence, sexual health and well-being – what do we know? *Journal of Epidemiology and Community Health0*(0), 1-3.

Luhmann N. (1986). The autopoiesis of social systems. In F. Geyer & F. Van der Zouwen (Eds.), *Sociocybernetic paradoxes. Observation, control and evolution of self-steering systems*(pp.172-1920). London: Sage.

Luhmann, N. (1989). *Ecological communication*. Chicago: University of Chicago Press.

Luhmann, N. (1990a). Self-reproduction of Law and its limits. In N. Luhmann, *Essays on self-reference*(pp.227-245). Stanford: Stanford University Press.

Luhmann N. (1990b).Sozialsystem Familie. *SoziologischAufklärung* 5. Opladen: WestdeutscheVerlag. Retrieved from https://www.scribd.com/document/95535328/84045765-Luhmann-Soziologische-Aufklarung-5

Luhmann N. (1990c). World society as a social system. In N. Luhmann,*Essays on self-reference* (pp.175-190). Stanford: Stanford University Press.

Luhmann, N. (1995).*Social Systems*. Stanford: Stanford University Press.

Luhmann, N. (1996a). Membership and motives in social systems. *Systems Research 13*(3), 341-348.

Luhmann, N. (1996b). On the scientific context of the concept of communication. *Social Science Information35*(2):257-267.

Luhmann, N. (1997). Globalization or World Society? How to conceive of modern society. *International Review of Sociology7*(1), 67-80. Retrieved fromhttp://www.generation-online.org/p/fpluhmann2.htm

Luhmann, N.(2000).*The reality of the mass media*. Stanford, CA: Stanford University Press.

Luhmann, N. (2012).*Theory of society volume 1*. Stanford, CA: Stanford University Press.

Luhmann, N. (2013a).*Theory of society volume 2*. Stanford, CA: Stanford University Press.

Luhmann, N. (2013b).*A systems theory of religion*. Stanford, CA: Stanford University Press.

Mattheis, C. (2012). The systems theory of Niklas.Luhmann and the constitutionalization of world society. *Goettingen Journal of International Law4*(2012)2, 625-647.

Messner, M.A. (2016). Bad men, good men, bystanders: who is the rapist? *Gender & Society30*(1), 57-66.

Moeller, H. (2006).*Luhmann explained from souls to systems*. Chicago: Open Court.

Palermo, T.,Bleck, J.,& Peterman, A. (2013).Tip of the iceberg: reporting and gender-based violence in developing countries. *American Journal of Epidemiology179*(5), 602-612.

Pretorius, G.,Chauke, A.P.,& Morgan, B. (2011). The lived experiences of mothers whose children were sexually abused by their intimate partners. *Indo-Pacific Journal of Phenomenology11*(1), 1-14.

Russo, N.F.,&Pirlott, A. (2006). Gender-based violence. Concepts, methods and findings. *Annual New York Academy of Science1087*, 187-205.

Schirmer,W.,&Michailakis, D. (2015). The Luhmannian approach to exclusion/inclusion and its relevance to social work. *Journal of Social Work15*(1), 45-64.

Seedat, M., Van Niekerk, A., Suffla, S., & Ratele, K. (2009). Violence and injuries in South Africa: prioritising an agenda for prevention. *Lancet: Health in South Africa 5*, 1011-22.

Stichweh, R. (2007). Evolutionary theory and the theory of world society. *SozialeSysteme13*, Heft 1+2: 528-542.

United Nations Women. (2016). Facts and figures. Retrieved from: www.unwomen.org (accessed 28 May 2016).

Vanderstraeten, R. (2012). Rewriting theory: from autopoiesis to communication. *Systems Research and Behavioral Science 29*, 377-386.

Walby, S., Towers, J.,& Francis, B. (2014). Mainstreaming domestic violence and gender-based violence into sociology and the criminology of violence. *The Sociological Review 62*:S2, 187-214.