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Words Kill

The Failure of the Mexican State to Counter Gender-Based Violence Through Online Hate Speech Targeting Women and Girls

Author: Monika Frankenberger

Supervisor: Prof. Dr. Koen Lemmens

Abstract

Around 10 women are killed in Mexico, every day. Violence against women and girls in the country prevalence in all its manifestations. This thesis has approached one specific and invisible type of violence suffered by Mexican females: Online gender-based hate speech. The research aims at investigating how and to what extent the Mexican state is countering gender-based violence through online hate speech targeting women and girls. To clarify the importance of addressing online gender-based hate speech, the paper introduces the Mexican context of violence against women and girls. Following by the definition of cyber-hate against women and girls, with its particularities.

After providing an overview on the relevant legal framework, including soft law, the research concludes, that is not just the normative framework, where Mexican authorities are failing to secure women and girls on the cyber-world, it is the entire system. It then presents the principal obstacles the Mexican state faces to guarantee and protect women and girls' human rights on the internet. Through the analysis of certain obstacles, it becomes clear, that the possible solution to gender-based online hate speech, does not involve just one actor or a single measure. Eventually the research argues the importance of a joint response with multiple stakeholders, such as states, non-governmental organizations, internet intermediaries, civil society, among others.

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Introduction

In 2019, the United Nations Secretary-General António Guterres warned about the misuse of new technologies to spread hate, he stated: "Social media and other forms of communication are being exploited as platforms for bigotry... Hate is moving into the mainstream – in liberal democracies and authoritarian systems alike. And with each broken norm, the pillars of our common humanity are weakened. Hate speech is a menace to democratic values, social stability and peace".[1] The proliferation of online hate speech poses a new set of challenges for the states. While the phenomenon is practically new and lack global overview, organizations and social media intermediaries have recognized that online hate has increased; representing a threat to every country, due to the increasing number of social media users. Although controversial, online hate speech must be recognized as a real-life problem, which is jeopardizing fundamental human rights and freedoms.

The internet and social media gave the world the opportunity to create, communicate and speak without limits. People, including women have benefited from the new technologies, which gave them voices, knowledge, power and visibility. On the other hand, gender-based hate speech is an issue, that numerous women and girls face every day. The internet has created new forms of communication; therefore, it has provided new tools to disseminate hate, threat and harm women. To counter online hate speech against women and girls remains complicated. Gender-based cyber-hate is another manifestation of violence against women and girls, which requires both, legal remedies and non-legal measures. Under international law, states have the positive obligation to guarantee the enjoyment of fundamental rights to its citizens.

The aim of this research is to assess to what extent the Mexican government is protecting online women and girls' rights. However, it is not focused in all forms of online abuses, this thesis will observe legal and non-legal mechanisms to combat online gender-based hate speech in Mexico. Even though the thesis is directed to the Information and Communication Technologies (ICT), it mainly centers its attention to social media hate speech issues. In addition, throughout this work, it was identified, that despite the extensive Mexican legislation, to date there is no legal provision

[1] United Nations, 'United Nations Strategy and Plan of Action on Hate Speech'.

against gendered online hate speech. Nevertheless, in Mexico the main problem is not the law-making process or jurisdiction, it is the impunity and the inefficiency in its legal framework. Additionally, the lack of gender perspective in the Mexican institutions and in general, in the system. This thesis analyses the Mexican legal framework and its policies, by providing an extensive overview of the issue in the country. Our hypothesis is directed to the failure of the Mexican state to combat gender-based violence through online hate speech targeting women and girls.

Structure

This thesis will be divided in four sections. The first chapter will start contextualizing the Mexican scenario, where online gender-based hate speech is taking place. It offers a definition of "gender-based violence" and delimitates the issue of violence against women and girls in the country. This chapter provides an overview of cyber-violence against women and girls and approaches its main consequences. The second chapter will deal especially with hate speech. It identifies particularities of hatful expression disseminated and shared on the internet. The chapter discusses online hate speech with gender perspective. It is argued that not all online harmful expression targeting women are hate speech, there is a difference between sexist speech and misogyny speech. Moreover, it recognizes that women's experiences of cyber-hate and cyber-harass need special attention because three factors: frequency, severity and context. These two chapters together constitute an indispensable tool to understands the social problem addressed in this thesis.

The third chapter will be focused on the international, regional and national legal framework. It firstly, confronts freedom of expression and hate speech. The chapter is guided by the online/offline principle, which recognizes the equivalence between online and offline laws. Its intention is to identify the legal background of the research topic. Furthermore, it aims to identify if the Mexican jurisdiction and policies are assuring the online protection of women and girls. The last chapter will provide a critical analysis of those laws. It highlights the main concerns where the Mexican state is facing obstacles to correctly address gendered cyber-hate. This chapter suggests some possible solutions to online gender-based hate speech, which could be implemented in the Mexican context.

Methodology

This thesis is based on desk research, it adopts a multidisciplinary approach in order to discuss two main issues, the nature of online gendered hate speech and the legal framework and policies that address it. Literature about hate speech has been reviewed to develop a personal critical opinion about the limitations of the right to freedom of speech and expression. Additionally, the work of different feminist's authors has been included during the entire research, they helped as inspiration to write this thesis. Moreover, the legal analysis has been completed through the study of legal documents and academic papers. It was consulted the Mexican state official websites and other institutions, such as the United Nations and the judgement of the Mexican civil society. Besides, social media intermediaries' terms of services and policies were contemplated and analyzed as priority stakeholders on this issue.

Regarding online hate speech targeting women and girls in Mexico, the research faced some limitations. First, in the extant literature there is a failure of comparative analysis of online and offline relations. Second, Mexico lacks statistics, assessment and information regarding online hate speech. Besides, there are no evaluations of public policies already implemented. The information available is limited. Civil society is the sector which has been addressing gendered online issues in the country. This gives us an idea of how the Mexican state is countering this issue. However, other types of sources were taken into consideration, in order to create an objective research. Academic research and journalist's opinion were considered to formulate our critical analysis. In addition, this thesis took a solution-oriented attitude. Several recommendations from nongovernmental organizations (NGOs) and international organizations were revised to develop a solution to gendered online hate speech in Mexico; without compromising other rights, such as freedom of expression.

Personally, when I started to write this thesis, I was very engaged towards online hate speech against women and girls in Mexico. However, through the research process, my vision about hate speech in general has changed. Now, I accept and recognize that not all offences or hostile messages could fall into the scope of hate speech, because freedom of expression must be highly protected. However, online hatred messages targeting women and girls have negative consequences for women and girls' human rights. Furthermore, online hate could reflect offline

gender-based patterns, and nourish violence in the country. Online hate speech targeting women and girls have real consequences and should be addressed, without compromising the right to freedom of expression.

Chapter 1. Violence Against Women and Girls in Mexico

The aim of this chapter is to establish the acknowledgement of the existence violence against women in Mexico. Hence, to contextualized why the combat of gender-based violence through online hate speech targeting women and girls is an urgent issue. In Mexico the macho culture predominates; this ideology has constructed the Mexican national identity. Culturally, the expression of Mexican masculinity moved from the revolutionary soldier to the images of the drug lord, both extremely violent towards women, both served to reinforce violence and the domination of women.[2] Today, "structural violence" against women in Mexico is a serious problem. The United Nations Entity for Gender Equality and the Empowerment of Women, also known as UN Women, has recognized that violence against women and girls in the country is one of the most "serious, widespread and tolerated violations of human rights".[3] According to Banding X. Lee, "structural violence" refers to:

> *"A form of violence wherein social structures or social institutions harm people by preventing them from meeting their basic needs. Although less visible, it is by far the most lethal form of violence, through causing excess deaths—deaths that would not occur in more equal societies. Not only is it the deadliest violence, greater in scope and in implication than any other type of violence, it grows exponentially as unequal power differentials are used to create more unequal structures. Yet, because these limitations are embedded within social structures, people tend to overlook them as nothing more than the ordinary difficulties of life".*[4]

In Mexico, violence and discrimination in all their forms – emotional, economic, physical and sexual – have affected around 30.7 million women. It is estimated that 66% of Mexican women over the age 15 have experienced at least one type of gender violence during their lives.[5]

[2] Alejandro Anaya-Munoz and Barbara Frey, *Mexico's Human Rights Crisis* (University of Pennsylvania Press 2018).
[3] UN Human Rights Council, 'Compilation on Mexico - Report of the Office of the United Nations High Commissioner for Human Rights' (2018) A/HRC/WG.6/31/MEX/2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/266/90/PDF/G1826690.pdf?OpenElement> accessed 23 April 2020.
[4] ibid. P110.
[5] Instituto Nacional de Estadística y Geografía, 'Encuesta Nacional Sobre La Dinámica de Las Relaciones En Los Hogares (ENDIREH) 2016' (2017) <https://www.inegi.org.mx/programas/endireh/2016/> accessed 6 February 2020.

Furthermore, in 2019, 10 women were killed per day in Mexico![6] At the same time, the Mexican patriarchal social orders, relations and roles have made misogyny a common social practice, that is now institutionalized within the judicial system.[7] Impunity for the perpetrators of violence against women and girls remains in the norm. As a result, 88.4% of women who have experienced violence in their lives decide not to report it before authorities;[8] only 7% of the crimes suffered by this sector of the society are investigated.[9] This is a generalized problem in the country. In 2019 statistics revealed that 93.2% of crimes were not investigated.[10] The main reasons why Mexicans abstained from denunciation were "they considered it is a waste of time" (33.1%) or "they do not trust authorities" (16.5.%).[11]

In the country's roots remains the patriarchal society established by the colonial empire, with stronghold *machismo* in new generations.[12] Society creates gender stereotypes that have several implications, many times resulting in treating someone differently or discriminating against them because of their gender.[13] Mexican drug war has exacerbated the situation and has fueled violence against women. Unequal power relations between men and women have been further aggravated by a hyper-masculine attitude.[14] Today, Mexico faces a profound security crisis, severely affecting the human rights of its people. The scope of this thesis cannot address the Mexican security crisis. However, violence against women online and offline in Mexico, is tightly related to organize crime and the power vacuum left by this war, the breakdown in the rule of law and governance. In this and the power vacuum left by this war, the breakdown in the rule of law and governance. In this

[6] Gobierno de México, 'Secretariado Ejecutivo Del Sistema Nacional de Seguridad Pública' (31 August 2019) <https://www.gob.mx/sesnsp> accessed 2 June 2020.
[7] Anaya-Munoz and Frey (n 1).
[8] Instituto Nacional de Estadística y Geografía, 'Encuesta Nacional Sobre La Dinámica de Las Relaciones En Los Hogares (ENDIREH) 2016' (n 5).
[9] Instituto Nacional de Estadística y Geografía, 'Encuesta Nacional de Victimización y Percepción Sobre Seguridad Pública (ENVIPE) 2017' (2019) <https://www.inegi.org.mx/programas/envipe/2017/> accessed 3 June 2020.
[10] ibid.
[11] ibid.
[12] Association for Progressive Communications, 'End Violence: Women's Rights and Safety Online. Analysis of Incidents of Technology-Related Violence against Women Reported on the "Take Back the Tech!" Ushahidi Platform' (2015) <https://www.genderit.org/resources/analysis-incidents-reported-%E2%80%9Ctake-back-tech%E2%80%9D-ushahidi-platform> accessed 7 June 2020.
[13] Laura Bates, *Everyday Sexism* (Simon and Schuster 2014).
[14] Angelika Albaladejo, 'How Mexico's Drug War Fuels Violence Against Women' (*Security Assistance Monitor*, 23 April 2015) <https://securityassistance.org/blog/how-mexicos-drug-war-fuels-violence-against-women> accessed 7 June 2020.

context, online hate speech that targets women and girls does not go unnoticed, it could have a serious impact in women lives.

1.1 Gender-Based Violence

Online hate speech against women and girls is a form of "Gender-Based Violence", such term has different connotations; for this reason, the research will delimit how it will be understood by means of this work. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) refers to 'gender' as identities, attributes and roles of women and men that are socially constructed, resulting in hierarchical relationships, as well as in an unequal distribution of power and rights, that favours men and disadvantages women.[15] Recently, feminists in a more flexible manner have started to apply the concept of 'gender' as a way to refer to the social organisation of relations between the sexes. The concept of 'gender' started to be used instead of 'women' to include sexual diversity in it and what roles and attitudes, are assigned to people based on their sex.[16]

With this in mind, this thesis will understand gender-based violence as the Declaration on the Elimination of Violence against Women defines it: as 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 threats of such acts.[17] Although, geneder-based violence is described to be the violence practiced against women, it is in fact the result of a structural discrimination and a patriarchal dominance that also includes the forms of violence, based on the predominance of heterosexuality and gender stereotypes.[18] However, for the purposes of this document, we focus on gender-based violence as the Convention defines it, its current impact in women and girls for the sole fact that they are

[15] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women 1979 [A/RES/34/180].
[16] Estefanía Vela Barba, 'El feminismo, la violencia en contra de las mujeres y los hombres' *El Universal* (27 November 2015) <https://www.eluniversal.com.mx/blogs/estefania-vela-barba/2015/11/27/el-feminismo-la-violencia-en-contra-de-las-mujeres-y-los> accessed 3 June 2020.
[17] UN General Assembly, Declaration on the Elimination of Violence against Women 1993 [A/RES/48/104].
[18] Birgit Wolf, ''Shaping the Visual' of Gender-Based Violence', <https://www.tdx.cat/bitstream/handle/10803/129680/bw1de1.pdf?sequence=3&isAllowed=y> accessed 1 June 2020

females by birth; keeping in mind that this concept is evolving to include other forms of violence that are gender motivated.

Violence against women can be manifested in different forms, both physical and non-physical; it is a phenomenon that almost always tend to escalate and at the far end of the spectrum is femicide: the murder of a woman;[19] which has been defined by the Inter-American Court of Human Rights as a gross violation of human rights.[20] Violence against women comprises a wide range of acts, from verbal harassment to other forms of emotional abuse, to daily physical or sexual abuse. In general, it consists of domestic violence, physical violence, sexual violence, psychological violence, threats of violence or harm, emotional violence, isolation, and economic violence.[21] Article 2 of the CEDAW details that in all its forms, violence against women could be perpetuated by family members, the community, and most important for international human rights law, by the state.[22] States would be committing violence against women when:

> "Poorly drafted or unenforceable laws for violence against women, law enforcement agents who violate women, the lack of facilities and education for prevention and treatment of women exposed to violence, the sanctioning and reinforcement of unequal gender relations. The state's indifference and neglect in creating opportunities for women in regard to employment, education, participation and access to social services".[23]

On this behalf, it could be mentioned that Mexico has one of the most advanced policy frameworks in the region regarding gender-based violence, with specific federal and state level laws, including the classification of femicide as an autonomous crime.[24] Mexico is one of the states that, at the

[19] Claudia Garcia-Moreno, Wendy Knerr and Alessandra Guedes, 'Understanding and Addressing Violence Against Women'<https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf;jsessionid=E4598F7B7678E282AC1F1F81A13B56C0?sequence=1> accessed 6 April 2020.

[20] ELLA, 'Building Legal Frameworks to Address Femicide in Latin America' <http://www.fundar.org.mx/mexico/pdf/Brief-BuildingLegalFrameworkstoAddressFemicide.pdf> accessed 6 July 2020.

[21] ibid.

[22] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women 1979 [A/RES/34/180].

[23] UNFPA, 'Combating Gender-Based Violence: A Key to Achieving the MDGS' <https://www.unfpa.org/sites/default/files/pub-pdf/combating_gbv_en.pdf> accessed 6 April 2020. P6.

[24] UN Human Rights Council, 'Compilation on Mexico - Report of the Office of the United Nations High Commissioner for Human Rights' (n 3).

international and regional ambit, has signed, ratified, adopted, and so bounded to respect and guarantee the rights proscribed in the international instruments. Mexico has acquired an international responsibility as a state by signing and ratifying such documents. However, when it comes to cyberspace, at the federal level Mexican authorities have been slow and insufficient to introduce new reforms to face cybercrimes. Chapter 3 will present a broader view about the Mexican regulatory system regarding issues on the internet and hate speech. In Mexico it's common to say "Mexico is the laws' country" sarcastically referring to the fact that Mexican legal framework is perfectly written, however citizens hardly respects the law, nor complies with it. Human Rights Watch has recognized that the criminal justice system in Mexico routinely fails to provide justice to victims of violent crimes and human rights violations.[25] According to the Global Impunity Index, in 2017 Mexico was the country with the highest impunity index in the continent.[26] This has jeopardized the combat to gender-based violence in the country; moreover, gendered online hate speech. Deeper analysis of the failure of the Mexican authorities and criminal justice system is presented in Chapter 4.

1.2 Online Violence Targeting Women and Girls

Online violence against women and girls have many forms, some of them could involve online hate speech; cyber-violence; and cyber-harassment. They constitute new forms of aggressions that in many documents are contextualized together. This section will overlook this new phenomenon, which different institutions, academics and civil society have tried to understand and define. However, there is not a common agreement to conceptualize this issue. Cyber-crime studies have categorized cyber-crime into 1) traditional criminal activities that are expanded or enhanced by the Internet; 2) traditional criminal activities that are generalized and 'radicalized' by the Internet and; 3) criminal activities that are created by the Internet.[27]

[25] Human Rights Watch, 'World Report 2020: Rights Trends in Mexico' (2019) <https://www.hrw.org/world-report/2020/country-chapters/mexico> accessed 4 June 2020.
[26] Juan Antonio Le Clercq Ortega and Gerardo Rodríguez Sánchez Lara, 'Global Impunity Index 2017' (Universidad de las Américas Puebla 2017) <https://www.udlap.mx/cesij/files/IGI-2017_eng.pdf> accessed 4 June 2020.
[27] Alisdair Gillespie, 'Sexual Explotation', *Sexual exploitation* (3rd edn, Routledge 2015) <http://www.research.lancs.ac.uk/portal/en/publications/sexual-exploitation(89aa16d4-4bae-4f7e-b337-570215a65c3a)/export.html> accessed 6 June 2020.

In this direction, an effort has been made to identify and classify the common types of cyber-violence suffered by women and girls; this segment-will generally explore them; further, special emphasis on online gender-based hate speech will be made. CEDAW General Recommendation 35 has underlined that, "Gender-Based Violence against women (...) manifests in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology- mediated settings".[28] In addition to this, "Gender-Based Violence against women occurs in all spaces and spheres of human interaction, whether public or private (...) and their redefinition through technology-mediated environments, such as contemporary forms of violence occurring in the Internet and digital spaces".[29] What could be highlighted is, that online violence should not be seen as a problem unrelated or separated from the "real world" gender-based violence. Several academics have recognized gendered violence on the internet as an extension of offline behaviors. Williams has written that the internet reproduces social and cultural patterns, where "real world" issues are reflected,[30] such as violence against women and girls. Citron and Norton have argued that gendered online abuse compromises women's "digital citizenship" and could significantly affect other human rights violations.[31] In addition to this, Laurie has observed that, although the technology is new, gendered violence reproduced on the internet is very old.[32]

On the other hand, other academics have noted a lack of contextualization towards online abuses targeting females as an extension of the "real world" patterns. For example, Megarry argued, that if online gendered violence is to be seen as an extension of offline misogynic behaviors, then it might be understood that who is not misogynic offline is unlikely to commit online abuses.[33] However, the internet nature, where people have the possibility to commit anonymous acts and

[28] UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 2017 [CEDAW/C/GC/35].
[29] ibid.
[30] Matthew Leighton Williams, *Virtually Criminal: Crime, Deviance and Regulation Online* (Routledge 2006) <http://orca.cf.ac.uk/3120/> accessed 6 June 2020.
[31] Danielle Citron and Helen Norton, 'Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age' [2011] Faculty Scholarship <https://digitalcommons.law.umaryland.edu/fac_pubs/1056> accessed 6 June 2020
[32] Laurie Penny, *Cybersexism. Sex, Gender and Power on the Internet* (Kindle, Bloomsbury).
[33] Jessica Megarry, 'Online Incivility or Sexual Harassment? Conceptualising Women's Experiences in the Digital Age' (2014) 47 Women's Studies International Forum 46 <http://www.sciencedirect.com/science/article/pii/S0277539514001332> accessed 7 June 2020.

not be punished for them, could result in online offensive behaviors.[34] Contrary to the offline world attitudes. Indeed, the real and the virtual experiences are not separate. The forms of cyber-violence can be experienced and felt in reality, the consequences of these affect women and girls in their real and daily lives.

Having said this, the feminist Mexican civil organization *Luchadoras* has created a conceptual framework that allows us to visualize the scope of cyber-violence targeting females. Not meaning that cyber-violence is exclusively an issue suffered by women and girls. *Luchadoras* identifies 13 different forms of online abuses that Mexican women and girls mainly experienced:[35]

1) Unauthorized access and controlling access: unauthorized attacks to gain access to a person's accounts or devices. These can imply unauthorized information gathering and/or blocking access to a person's account.
2) Control and manipulation of information: information gathering or theft that can imply a loss of control over such information, and any unauthorized attempt at modifying it.
3) Impersonation and identity theft: the use of forgery of someone's identity without their consent.
4) Surveillance and stalking: the constant monitoring of a person's activities, everyday life, or information.
5) Discriminatory speech: speech reflecting cultural models that assign women gender a secondary, sexualized or strictly reproductive role. Such speech may or may not incite violence.
6) Harassment: repeated and unsolicited acts against a person that are perceived as intrusive, disturbing or threatening. These acts may or may not be sexualized.
7) Threats: speech and content (verbal, written or in images) with violent, sexually aggressive or threatening tone that express an intention to harm a person, their family or friends, or their belongings.

[34] Adrienne Shaw, 'The Internet Is Full of Jerks, Because the World Is Full of Jerks: What Feminist Theory Teaches Us About the Internet' (2014) 11 Communication and Critical/Cultural Studies 273 <https://doi.org/10.1080/14791420.2014.926245> accessed 7 June 2020.

[35] Luchadoras, 'Informe: La Violencia En Línea Contra Las Mujeres En México' (2017) <https://internetesnuestra.mx/post/167782105468/informe-la-violencia-en-l%C3%ADnea-contra-las-mujeres> accessed 7 June 2020.

8) Non-consensual sharing of private information: the unauthorized sharing or publication of any kind of information, data or private details regarding a person.
9) Extortion: forcing a person to act according to another person's will, through threats and intimidation regarding something of value (personal information, intimate images or videos, among others).
10) Disparagement: defamation, smearing and/or undermining of the credibility, professional career, work or public image of a person, group or initiative, through the spreading of false, manipulated or off-topic information.
11) Technology-related sexual abuse and exploitation: the act of exercising power over someone based on the sexual exploitation of their pictures and/or body against their will, where technology is a fundamental means.
12) Attacks on communication channels: deliberate tactics and actions aimed at putting a person's or group's communication or information channels out of circulation.
13) Omission by regulatory actors: contempt or lack of interest, acknowledgement or action by actors, such as authorities, internet intermediaries, institutions and communities, who have the possibility of regulating, resolving and/or penalizing technology-related assaults.

At the international level, based on the study "Take Back the Tech!", which has collected data of seven countries: Bosnia and Herzegovina, Colombia, the Democratic Republic of Congo, Kenya, Mexico, Pakistan and the Philippines; they observed the following tendencies:[36]

1) The women age groups 18-30 and younger are the most vulnerable age groups online.
2) The majority of the cases reported are perpetrated by someone known to the person experiencing the violation (over 40%), followed by someone unknown (30%) and then by a group of people (14%).
3) The majority ways of harm reported, involve "emotional harm" (33%), followed by "harm to reputation" (19%) and "invasion of privacy" (13%).

Mexico lacks statistics about cyber-violence, this is one of the main challenges to offer available data in order to know and act against online abuses. At the national level there is just one record

[36] Association for Progressive Communications (n 13).

about this phenomenon: "The Cyber-bullying Module (MOCIBA)", which defines online harassment as "an intentional act, performed by one or more people, aiming to harm or disturb someone through the use of the Information and Communication Technologies (ICT), specifically the internet".[37] The MOCIBA showed that in 2019, around 9.4 million of Mexican women aged 12 and older have been victims of cyber-harassment. With the forms of online harassment that most affected women were sexual proposals (40.3%); contact through false identities (35.3%); offensive messages (33.9%); and sexual content reception (32.8%).[38] This report reveals that, in general, men are the perpetrators of cyber-harassment; since 52.8% of women were harassed by men; at the same time, 61.8% of men were harassed by other men. On the other hand, 20.1% of women harassed other women and 19.9% of women harassed men. Harassment perpetuated by both sexes against women 25.1% and against men 20.3%.[39] Unfortunately, just 8.6% of female victims reported cyber-harassment before the authorities, the majority opted to block the perpetrator (69.2%).[40] This could represent negative implications to the state to deal with online issues.

1.2.1 Human Rights Impact and Violations

The impacts of online gender violence are commonly undermined. Little research has been done regarding the psychological implications of experiencing online abuse. There is a misconception, that because abuse occurs on the online sphere, it can be ignored or easily forgotten;[41] or because it happened inside the virtual world, it is not real.[42] The study "Take Back the Tech!", previously mentioned, has identified different types of harms caused by such abuses. Amongst others, there were emotional harm (33%); reputation damage (20%); physical harm (13%); invasion to privacy (13%); and in some cases there was sexual harm (9%).[43] Women and girls who have suffered online violence, experience its consequences in real life: anxiety, fear, depression, stress...[44] Dr.

[37] Instituto Nacional de Estadística y Geografía, 'Módulo Sobre Ciberacoso (MOCIBA) 2019' (2020) <https://www.inegi.org.mx/programas/mociba/2019/> accessed 7 June 2020.
[38] ibid.
[39] ibid.
[40] ibid.
[41] Azmina Dhrodia, 'Unsocial Media: The Real Toll of Online Abuse against Women' (*Amnesty Global Insights*, 20 November 2020) <https://medium.com/amnesty-insights/unsocial-media-the-real-toll-of-online-abuse-against-women-37134ddab3f4> accessed 8 June 2020.
[42] Luchadoras (n 33).
[43] Association for Progressive Communications (n 13).
[44] Luchadoras (n 33).

Emma Short, a psychologist and reader in Cyber Psychology at the University of Bedfordshire, has explained more about the impact of online abuse on the social media platform, Twitter:

> "*I think the impact of online abuse is greater because your victimization is broadcasted for everyone to see. It's often joined by a third party, so the crowd or pack is going after you. So, very quickly, it feels as though the whole world is after you. There might be positive tweets, you might have lots of friends on the outside, but if the crowd has turned against you and is after you, it feels like the world wishes you harm"*.[45]

The UN Human Rights Council has stated that the same rights people have offline must also be protected online.[46] Online violence against women could have several implications to women's rights. It could result in silencing women's voices. Abuses can be used to publicly exert power over women, hence preventing them from their right to freedom of expression.[47] Online abuse could result in self-censorship due to fear.[48] Other human rights that could be directly violated are: the right to privacy, the right to sexual intimacy and the right to access to justice and judicial protection.[49] This chapter has approached gender-based violence in its broad spectrum. It can be concluded that women and girl's participation on the internet, as in the offline world, could result in violence and sexual assaults.

[45] Azmina Dhrodia (n 36).
[46] UN Human Rights Council, 38/... The promotion, protection and enjoyment of human rights on the Internet 2018 [A/HRC/38/L.10/Rev.1].
[47] Azmina Dhrodia (n 36).
[48] Luchadoras (n 33).
[49] ibid.

Chapter 2. Hate Speech Overview

In order to address online gender-based hate speech; first, this research faces the challenging task of delimiting "hate speech" in its broader concept. "Hate speech" understandings vary. Today, there is no universally accepted definition of it. As a result, it turns difficult to identify whether expressions are what we consider "hate speech" or not; even if someone claims that a certain discourse *is* "hate speech". Because of this complexity, some international documents and national legal framework, especially in the most progressive democracies, have tried to either define it or to regulate expressions, that could cause harm or discriminate vulnerable groups, namely "hate speech". This is the case of Canada which prohibits "hatred against any identifiable group where such incitement is likely to lead to a breach of the peace"; or Denmark forbidding statements "by which groups of people are threatened, derided or degraded because of their race, color of skin, national or ethnic background". To this regard, Germany limits speech inciting attacks on "the human dignity of others by insulting, maliciously maligning or defaming segments of the population"; New Zealand limits "threatening, abusive, or insulting... words likely to excite hostility against or bring into contempt any groups of persons... on national or ethnic origins of that group of persons"; and in United Kingdom the law regulates the use of "threatening, abusive or insulting words or behavior," when there are intended "to stir up racial hatred," or when "having regard to all the circumstances racial hatred is likely to be stirred up thereby".[50]

On the other hand, international and regional institutions have approached "hate speech", albeit without homogeneity. The United Nations understands "hate speech" as "any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are…"[51] The UN International Committee on the Elimination of Racial Discrimination considers it as "a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society."[52] The Council of Europe's Committee of Ministers has defined "hate speech" as "all forms of expression

[50] Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press 2012).
[51] United Nations (n 1).
[52] UN Committee on the Elimination of Racial Discrimination, General recommendation No. 35: Combating racist hate speech 2013 [CERD/C/GC/35].

which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin".[53]

Even though, definitions and interpretations of "hate speech" vary, all of them have common elements that could be underlined to understand what hate speech is. First, hate speech has a specific target, namely – vulnerable, identifiable, minority – groups or individuals; second, hate speech is rooted in discriminatory, rejection or hostile attitudes; and third, hate speech has a particular motive: to incite violence or hostility against a group or individual. The Camden Principles on Freedom of Expression and Equality, a set of standards formulated by the NGO Article 19, in collaboration with UN officers and human rights experts, define specific criteria to avoid abuses of freedom of expression and to identify unlawful speech, [54] offering a broad scope of the ICCPR Article 20 (2) "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".[55] "Principle 12: incitement to hatred" provides an extensive interpretation of Article 20 (2) and what constitutes hate speech. It understands "hatred" and "hostility" as an intense and irrational emotion; "advocacy" is the intention to promote hatred; and finally, the term "incitement" refers to statements that create an imminent risk of discrimination, hostility or violence against persons or groups.[56]

Aside from what documents could state about harmful expressions, hate speech, as Waldron argues, sends messages, those messages become part of the "permanent visible society".[57] Not only that, hate speech always has a purpose, as we mentioned before; it aims to bring about

[53] Council of Europe Committee of Ministers, Recommendation No. R (97) 20. Of the Committee of Ministers to Member States on 'hate speech' 1997 [Rec (97)20].
[54] Article 19, 'The Camden Principles of Freedom of Expression and Equality' <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf> accessed 14 June 2020.
[55] UN General Assembly, International Covenant on Civil and Political Rights 1966 [A/RES/2200A(XXI)].
[56] Article 19, 'The Camden Principles of Freedom of Expression and Equality' (n 49).
[57] Waldron (n 45).

something or incite.[58] It is violently oppressive.[59] To identify certain expressions as "hate speech" could have a positive impact to values of dignity and equality, nourish by human rights law.[60]

2.1 Defining Gender-Based Hate Speech

Considerable attention has been delivered to national, racial or religious hatred. In general, the regulations previously mentioned limit their notion to certain groups. Although, their interpretation can be broader. Unfortunately, there is little analysis about gendered hate speech, as it is rare to find a clear definition of it. The Council of Europe is one of the few institutions that has defined "sexist hate speech", as "any supposition, belief, assertion, gesture or act that is aimed at expression contempt towards a person based on her o his sex or gender, or to consider that person as inferior or essentially reduced to her dimension".[61] However, This definition could be considered too vague, as well as lacking of instruments to fall into the scope of "hate speech" according to the Article 20 (2) and the Camden Principles.

To identify hate speech against women and girls could turn complicated, because there is a blurry line between sexism and misogyny, both adjectives used to describe patriarchal oppressive forces.[62] Nevertheless, as the feminist philosophy, Kate Manne analyses in her book "Down girl", sexism and misogyny are not synonyms and aim to describe different attitudes jeopardizing equality and dignity.[63] Often, discussions and conversations use words that have become customary to the topic of gender-based violence, without thinking about their actual meaning. Definitions matter to correctly respond to online gender-based hate speech, without interfering with the right of freedom of expression. This is why, this thesis approaches the difference between sexism and misogyny.

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[58] ibid.
[59] Louise Richardson-Self, 'Woman-Hating: On Misogyny, Sexism, and Hate Speech' (2018) 33 Hypatia <https://onlinelibrary.wiley.com/doi/abs/10.1111/hypa.12398> accessed 6 November 2020.
[60] Article 19, '"Hate Speech" Explained A Toolkit' <https://www.article19.org/data/files/medialibrary/38231/'Hate-Speech'-Explained---A-Toolkit-%282015-Edition%29.pdf> accessed 14 May 2019.
[61] Council of Europe Gender Equality Strategy, 'Combating Sexist Hate Speech' <https://rm.coe.int/1680651592> accessed 11 June 2020.
[62] Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford University Press 2018).
[63] ibid.

Manne has theorized "sexism" as the way patriarchal social relations are rationalized and justified.[64] In other words, sexism reinforces sex stereotypes, making patriarchal orders look as something natural and inevitable; as if women were forced to play a certain role in society.[65] Both concepts, misogyny and sexism, are interrelated; sexism "may be used in service of misogynist ends in practice".[66] So, sexist ideology consists in "assumptions, beliefs, theories, stereotypes, and broader cultural narratives that represents men and women..."[67] In this context, sexist speech could not be always called hate speech.[68] Sexist speech can oppress without being violent or incite to violence, this does not mean that it should be tolerated. In the well-kwon "Misogyny speech" made by Julia Gillard (2012) the prime minister of Australia, she accused the opposition leader, Tony Abbott's behavior as sexist when, – among other declarations – he remarked, "what the women of Australia need to understand, as they do the ironing..." while explaining the economics of carbon pricing.[69] This statement represents women in a feminine-coded form of labor and reinforces traditional gendered labor division. However, the speech does not incite violence or promote hate against women.

In the same speech, Julia Gillard accused Tony Abbott for misogynist, when he "stood next to a sign that described me as a 'man's bitch".[70] Misogyny, on the other hand, is perceived by Manne, as the enforcement of women stereotypes in a coercive way; misogyny does not distinct between women and men, rather it divides "good women" and "bad ones".[71] This means that women who do not fall into the feminine-coded domain are "bad" and must be "punished".[72] If misogyny is understood by Manne's perception, it goes further than "the hatred of women"; it encompasses the "entrenched prejudice against women".[73] It is both, hostile and coercive. Misogynists do not hate all women (few men might really do it), instead they hate women who are not what they expect in

[64] ibid.
[65] Louise Richardson-Self (n 54).
[66] Manne (n 57).
[67] ibid. P79.
[68] Louise Richardson-Self (n 54).
[69] SMH, 'Transcript of Julia Gillard's Speech' *The Sydney Morning Herald* (9 October 2012) <https://www.smh.com.au/politics/federal/transcript-of-julia-gillards-speech-20121010-27c36.html> accessed 17 June 2020.
[70] ibid.
[71] Manne (n 57).
[72] ibid.
[73] 'Macquarie Dictionary' <https://www.macquariedictionary.com.au/features/word/search/?search_word_type=Dictionary&word=misogyny> accessed 15 June 2020.

a patriarchal social order.[74] In this regard, if misogyny speech only targets some women, would it be considered "hate speech"? Hate speech as previously argued, aims to undermine a person or "group". It is unusual to read (in the case of online hate speech), "all women must die" or "all women are *sluts*", rather than this, hate expressions are mainly directed to feminists or journalists; or women who are successful in a "men's world". However, misogynistic expressions aim to keep the entire group down,[75] by violent and hostile forms. In this sense, misogyny speech could constitute hate speech. Terminology is important in order to create a better understanding of any phenomenon, in this case, hate speech targeting women. This research considers that it could be helpful, if there were more studies about the difference between sexist and misogyny speech; to avoid the proliferation of definitions, that could result in confusion and misrepresentation of information.

Numerous feminists have recognized the distinction between sexism and misogyny, among others, Rhiannon Lucy Cosslett stated: "While sexism demonstrates a disregard and disrespect for women, I always have associated misogyny with something darker, angrier, and more cynical".[76] Naomi Wolf argued:

> "[S]exism is not in fact misogyny; someone can like women quite a lot in person but be very happy to support systematic discrimination against them (sexism) or to use gender stereotypes against them (sexism). So, I am sorry to see the dictionary conflating the terms. Sexism is to misogyny what anti-Semitism is to Jew-hating. Neither is ever acceptable, but we need precise language to understand and fight injustice effectively".[77]

And Julie Bindel stated that:

> "When a man claims that women are naturally maternal, or are by default, bad drivers, he is a sexist. If he was to add that women are only good for a fuck and should be confined to servicing men and their children, it is misogyny. Misogynists are always sexist, but sexist

[74] Manne (n 57).
[75] Louise Richardson-Self (n 54).
[76] The Panel, 'Sexism and Misogyny: What's the Difference?' *The Guardian* (17 October 2012) <http://www.theguardian.com/commentisfree/2012/oct/17/difference-between-sexism-and-misogyny> accessed 17 June 2020.
[77] ibid.

are not always misogynists. For example, if a man says of a woman: 'look at the state of that fat, ugly cow, I would not touch her with yours,' then he is a misogynist. It would follow that he does not respect women as equals and is therefore also a sexist".[78]

2.2 Online Hate Speech Particularities

Online hate speech brought back deeply rooted tensions in a new form. Hate messages that incite to violence, discrimination and hostility have found on the internet and social media an easy way to its proliferation.[79] Though there is no clear evidence about the extent of hate speech on the internet, numerous journalists, NGO's, researchers, and internet users in general, have complained about the increasing amount of hatred discourses on the web.[80] What constitutes online hate speech does not drastically vary from offline hate speech. However, because of the internet's nature, online hatred discourses have some particularities. Europe's Additional Protocol to the Convention on Cybercrime, the only legally binding instrument in the field of cyber-crime defines online hate speech as "all the forms of expression, which share, encourage, promote or justify race hatred, xenophobia, anti-Semitism or every other form of hatred based on intolerance including aggressive nationalism, ethnocentrism, discrimination and hostility of minorities, emigrants or persons of foreign origin".[81] The Anti-Defamation League (ADL), does not address "online hate speech", instead the ADL refers to "cyber-hate" as "any use of electronic communications technology to spread anti-Semitic, racist, bigoted, extremist or terrorist messages or information".[82]

Basically, the difference between online and offline hate speech definition are the means by it is issued, therefore similar hatred expressions are found offline and online. Nevertheless, online hate speech possesses particular challenges. Some of the most complex challenges to address are: 1) the permanence: it can stay for a long time and in more than one platform; 2) the itinerancy: if the message is removed, it is easy to post another similar, perhaps with another user account or in

[78] ibid.
[79] Iginio Gagliardone and others, *Countering Online Hate Speech* (UNESCO 2015) <https://unesdoc.unesco.org/ark:/48223/pf0000233231> accessed 24 April 2020.
[80] Alex Cabo Isasi and Ana García Juanatey, 'Contrólate En Las Redes! El Discurso de Odio En Las Redes Sociales: Un Estado' <ajuntament.barcelona.cat/bcnvsodi> accessed 16 June 2020.
[81] Council of Europe, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems 2003 [European Treaty Series-No. 189].
[82] Anti-Defamation League, 'Responding to Cyberhate. Toolkit for Action' <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/ADL-Responding-to-Cyberhate-Toolkit.pdf> accessed 16 June 2020.

another platform; 3) the anonymity: users can say horrible things, without including their real name. Offline people do not have this opportunity; 4) and finally, the cross-jurisdictional character: online hate speech can involve more than just one actor: the perpetrator, the platform, the state and the victim, which lead to a problematic issue to figure out who would take responsibility.[83]

2.2.1 Online Hate Speech Targeting Women and Girls in Mexico

The first chapter of this research presented general information about online gender-based violence and it identified different forms of abuses suffered by women and girls in Mexico through the internet. Amongst the online abuses identified by the Mexican organization *Luchadoras,* it is possible to recognized exclusively abuses that are or could relate to hate speech: 1) Discriminatory speech; 2) Harassment; and 3) Threats. Moreover, the study commissioned by the European Parliament's Policy for Citizens' Rights and Constitutional Affairs about cyber violence and online hate speech against women and girls has contextualized hate speech as: "expressions which spread, incite, promote or justify hatred based on sex".[84] Those expressions could include: "posting and sharing violent content portraying women as sexual objects or targets of violence; the use of sexist and insulting comments, abusing women for expressing their own views and for turning away sexual advances; and pushing women to commit suicide".[85] In addition, the study considered that online sexual harassment could be performed through gender-based hate speech or rape threats.

Nowadays, the internet can be seen as a public space, a real space even if the interaction is not physical. It is a place where people socially interact; many use it as a tool for work, others to read and share ideas, some people make friends or engage with politics... online hate speech is real. According to Laurie Penny, the hatred of women in online public spaces is reaching "epidemic levels".[86] Some private spaces now play a public role, this is the case of many social networking platforms, where the expression of ideas may immediately amount to spreading them.[87] Laura Bates has identified three factors that make men and women's experiences of sexism different:

[83] Iginio Gagliardone and others (n 74).
[84] Adriane Van Der Wilk, 'Cyber Violence and Hate Speech Online Against Women' <http://www.europarl.europa.eu/supporting-analyses> accessed 6 June 2020.
[85] ibid. P.29
[86] Laurie Penny, *Cybersexism. Sex, Gender and Power on the Internet* (Kindle, Bloomsbury).
[87] Iginio Gagliardone and others (n 74).

frequency, severity and context.[88] She alluded at street harassment, stressing the fact that both, women and men have had unfortunate harassment incidents. However, the attention is in women's experiences, because of those three facts: frequency, severity and context. The same could apply for online hate speech targeting women and girls in Mexico.

On online gender-based hate speech in Mexico, it can be seen that both, men and women have been victims of discriminatory and offensive messages. However, women experience them more often than men, as the MOCIBA[89] indicated. The percentage of women receiving hostile messages "many times" were 13.4%, in contrast with men that received them with the same frequency 9.5%. "Sometimes", 23.4% of women were victims of offensive messages, contrary to men 21.4%. Same messages were received "few times" by 32.9% of women and 35.1% of men. Finally, discriminatory messages targeted "one time" 30.2% of women and 34% of men.[90] Although, this information is limited and vague, it does reveal that Mexican women tend to be victims of discriminatory and violent messages with more frequency than men.

This section has previously defined misogyny as a form of punishment for women who break gender stereotypes. Online hate speech victims have complained via Twitter, Facebook and other social media platforms of receiving misogynistic messages alluding to killing them, raping them or with explicit sexual content. Other types of sexist messages found on the web are those who remained women where their "place" is, such as: "go back to the kitchen", "you should be sweeping".

Furthermore, there are other documented cases. In 2017, the organization Article 19 registered a case about aggressions against the journalist Frida Guerrera, who uses social media platforms as a space to publish her work about femicide in Mexico. On one occasion, she was harassed with violent messages during a Facebook Live broadcast about women murders, through messages like (quoted the literally translation from Spanish to English): "*Take out your tits"; "Fuck yeah! Kill them all*"; *"Men just beat disobedient women"; "They are killed because they do not know how to cook"; "More feminicides for a better world"* and so on. Article 19 have ascribed those attacks to

[88] Laura Bates, *Everyday Sexism* (Simon and Schuster 2014).
[89] 'Módulo Sobre Ciberacoso (MOCIBA) 2019'
[90] Instituto Nacional de Estadística y Geografía, 'Módulo Sobre Ciberacoso (MOCIBA) 2019' (2020) <https://www.inegi.org.mx/programas/mociba/2019/> accessed 7 June 2020.

an online group called "Legion Holk".[91] The biggest problem is that some groups members operate under anonymity and when one account is removed another one comes out. In another incident, Frida Guerrera identified and reported before the authorities one of her harassers, Sayd García, who threatened her and harassed her online with extremely violent messages, such as death treats. Concerning the case, the accused defense has offered her around $140US dollars of compensation, but she rejected them because "her dignity and security do not have a price". Since 2017, she has been fighting to make justice against him without success.[92] Today, she is still target of sexual threats and dead threats from more than one individual, because of her activism.

Earlier this year, there was a case about a Mexican "rapper" named Johnny Escutia or the *"King de la Furi*a" whose songs detailed how to kill and rape a woman, and incited to do it, for example (quoted the literally translation from Spanish to English): *"I kidnaped her, raped her and took her life... we have fun, without fear of the law, this is Mexico", "you threatened me and look how you ended up, I have your skin",* this last fragment advocated to a femicide committed against Ingrid Escamilla who was skinned alive, before been brutally murdered. Moreover, one of his song directly threats the Mexican blogger "Yuya". His songs were on the web in more than just one platform: Amazon Music, Spotify and YouTube, in the last one he had almost 10,000 subscribers on his channel. In addition, he owned personal social media profiles where some pictures were as disturbing as his songs. After his song lyrics went viral, thousands of social media users complained about the misogynistic content, and demanded platforms to remove his songs and videos. Spotify recognized the lyrics as hate speech and deleted them. YouTube took down the content and Amazon Music, a few days later, did the same. Several NGOs have pronounced themselves against this type of misogyny on social media and the National Commission to Prevent and Eradicate Violence Against Women (CONAVIM) filed a complaint against Johnny Escutia to the Attorney General's Office.[93]

[91] Luchadoras (n 33).
[92] Humberto Ríos Navarrete, 'Ofrecen 3 Mil Pesos de Reparación a Frida Guerrera; Exige Disculpas' *Milenio* (15 October 2019) <https://www.milenio.com/policia/ofrecen-3-mil-pesos-reparacion-frida-guerrera-exige-disculpas-publicas> accessed 5 July 2020.
[93] Alexis Ortiz, 'Mexican blogger Yuya is threatened by "rapper" whose songs detail how to murder a woman' *El Universal* (24 May 2020) <https://www.eluniversal.com.mx/english/mexican-blogger-yuya-threatened-rapper-whose-songs-detail-how-murder-woman> accessed 19 June 2020.

To date nothing has been done, his songs are still circulating on the web in other platforms and YouTube channels. He has a new YouTube channel with around 1,000 subscribers. Besides, he has evoked his right to freedom of expression, arguing that he has a dark humor and all his songs' lyrics were inspired in real cases, but he does not expect people to be inspired to commit crimes just for hearing a song.[94]

The severity of incidents, as presented, is likely to be higher when the victim is female, women regularly report angry threats of violence, while men's online offensive messages are more relate to their physical appearance.[95] Finally, context is important here too. The Camden Principles make reference to the context as well. In order to analyze cases of hate speech, it is essential to take into account context and patters of vulnerability.[96] In a country like Mexico that is facing a serious wave of gender-based violence, as seen in the first chapter, women's experience with online hate speech is shaded by a background where, in general their appraisal of their own safety is greater, and the phycological impact could be higher.[97] Online misogyny speech is part of a continued violence against women and girls. Nowadays, the internet should been seen as a real place, and harassment, intimidation and silencing others online are more than "just words".[98]

Misogynistic online speech is an extension of a structural situation of violence, discrimination and exclusion, whose control requires transformation in different levels of the society and institutions.[99] Online hate speech is often treated as a harmless and nonserious issue, besides, there is a tendency to not report it. However, as other types of cyber-violence, it undermines freedom of speech for women and girls and harms their dignity. Its consequences could affect psychologically, emotionally and physically women and girls' lives.[100]

In another sense, there is a political theory that claims ideas of liberty and self-awareness of the internet, which highlights the idea of technology without control.[101] The sound principle about

[94] Fabian Pasos, *Le pido disculpas por todo a Yuya!* <https://www.youtube.com/watch?v=gnQAykz6wSQ> accessed 19 June 2020.
[95] Instituto Nacional de Estadística y Geografía (n 35).
[96] Article 19, 'The Camden Principles of Freedom of Expression and Equality' (n 49).
[97] Bates (n 83).
[98] Laurie Penny (n 81).
[99] Vladimir Garay, 'Latin America in a Glimpse' <https://www.derechosdigitales.org/wp-content/uploads/glimpse-2019.pdf> accessed 31 May 2020.
[100] Council of Europe Gender Equality Strategy (n 56).
[101] Heather A. Horst and Daniel Miller, *Digital Anthropology* (Bloomsbury Publishing 2013).

freedom of the internet does not acknowledge that in order to fully address freedom of expression in the web, there should be limits to online hate speech.[102] The next chapter will address in depth the confrontation between freedom of expression and hate speech. As it will review what has been said within the human rights legal and non-legally binding framework about the limitations of the online sphere. This research follows the line that allowing "minor" transgressions could be a step forward to serious crimes.[103] Nevertheless, all restrictions to freedom of expression should be carefully decided. The following chapters will revise the Mexican regulatory environment towards new technologies, hate speech against women and girls and freedom of expression, with a human rights perspective.

[102] Laurie Penny (n 81).
[103] Bates (n 83).

Chapter 3. Taking Action Against Online Gender-Based Hate Speech

When it comes to law-making on the ground of the internet, there is a widely accepted principle about the equivalence between online and offline laws. However, because of the nature of the internet and new technologies, it is complicated to successfully apply offline laws in the online sphere.[104] This document will not approach this complex issue, but in order to have a better understanding of the internet hate speech regulations, it is worth mentioning the online/offline principle. To deal with cyberspace, the principle proclaims that there should be equal legal treatment between online and offline activities.[105] It was in 1997, during the Bonn Ministerial Conference Declaration, when this principle was declared: "General legal frameworks should be applied online as they are offline. In view of the speed at which new technologies are developing, they will strive to frame regulations which are technology-neutral, whilst bearing in mind the need to avoid unnecessary regulation".[106] The aim of this chapter is to analyze some of the most relevant aspects of gender-based hate speech in cyberspace within the international, regional and Mexican national jurisprudence. It takes into consideration that in order to address any kind of hate speech, it is fundamental to consider the protection of freedom of expression.

3.1 Freedom of Expression vs. Hate Speech

Addressing hate speech does not mean limiting or prohibiting freedom of speech. The international and regional instruments on freedom of expression offer a framework for states to address hate speech. It should be noticed that, on the internet, the issue of prohibiting hateful content becomes even more complex. States have not yet agreed on how the internet should be best regulated and therefore, whether hate speech should be a matter addressed by the state or not. Indeed, states have the duty to protect and promote rights, to take positive action to find a balance between freedom of expression and rights to equality, safety and dignity.[107] However, censorship of the internet is

[104] Chris Reed, 'Online and Offline Equivalence: Aspiration and Achievement' (2010) 18 International Journal of Law and Information Technology 248 <https://academic.oup.com/ijlit/article/18/3/248/836362> accessed 1 June 2020.
[105] ibid.
[106] Publications Office of the European Union, 'European Ministerial Conference: Global Information Networks: Realizing the Potential, Bonn, 6 to 8 July 1997: Declarations.' (9 July 1998) <http://op.europa.eu/en/publication-detail/-/publication/0d76a85c-e66a-41af-91c2-28cd29a85094> accessed 1 June 2020. P. 10
[107] Iginio Gagliardone and others (n 74).

surely not the answer. A deep analysis of this topic is clearly beyond the scope of this work, but in order to have a better understanding about freedom of expression and online hate speech targeting women and girls, it is worth mentioning the major problems this topic conveys.

Countries' norms vary regarding the protection of free speech. For example, the United States' First Amendment to the Constitution strongly protects freedom of expression, no matter how offensive it could be.[108] Here, it is important to mention that the majority of the social media platforms are developed in Silicon Valley, which operates under United States rules and norms, namely under the protection of the First Amendment. Though, the US Supreme Court has stated that private companies in general are not bound by the First Amendment.[109] On the other hand, the European Convention of Human Rights tends to support other values, such as human dignity. However, when it comes to free speech, it accepts that information or ideas could offend, shock or disturb without interference.[110] States have adopted different levels of restrictions, each depending on its historical or socio-political context.

Messages determined as offensive, violent, discriminatory, misogynist, among others, usually fall into the hate speech category. The content of such expressions emanates from an historical rejection of a certain group or individual, therefore it should not be allowed. In opposition, such messages could be protected by freedom of expression. As mentioned before, there is no concept or consensual treatment of what hate speech is and what it is not.[111] Professor K. Lemmens has identified five types of hate speech: 1) political hate speech; 2) racist hate speech; 3) religious hate speech; 4) sexual orientation hate speech; and 5) incitement to violence.[112] At the same time, Wojciech Sadurski has recognized that hate speech has usually been outlawed for three main reasons: 1) the reaction of the victims of hate speech can be violent, constituting a problem for the

[108] American Library Association, 'Hate Speech and Hate Crime' (*Advocacy, Legislation & Issues*, 12 December 2017) <http://www.ala.org/advocacy/intfreedom/hate> accessed 28 May 2020.
[109] Johhn Samples, 'Why the Government Should Not Regulate Content Moderation of Social Media' (*Cato Institute,* 9 April 2019) <https://www.cato.org/publications/policy-analysis/why-government-should-not-regulate-content-moderation-social-media> accessed 19 June 2020.
[110] Arjen van Rijin, 'Freedom of Expression', *Theory and practice of the European Convention on Human Rights* (5th edn, Intersentia 2028).
[111] Paula Gutiérrez, 'El discurso de odio y la libertad de expresión' (*Animal Político*, 12 August 2017) <https://www.animalpolitico.com/altoparlante/discurso-odio-libertad-expresion/> accessed 29 May 2020.
[112] Koen Lemmens, 'Hate Speech in the Case Law of the European Court of Human Rights - Good Intentions Make Bad Law', *Freedom of Speech under Attack* (2015).

public order; 2) the reaction of third persons, who can commit crimes; and, finally 3) the psychic harm that the speech can cause to a group of people, preventing them from participating in the society on the same level as all the rest of the people.[113]

However, it remains problematic to distinguish the fine line between hatred and dislike. Democratic societies depend, in part, on the access individuals have to diverse sources of news, opinions, ideas and debates.[114] Therefore, a broad interpretation of "hate speech" could be dangerous for free debates, especially political.[115] Conclusively, Prof. K. Lemmens has recalled that "at a certain point, protecting the sensibilities of a growing number of groups in society can boil down to creating new taboos, whereas the very idea of freedom of speech is to have as few taboos as possible".[116] Moreover, democratic regimes are at risk of becoming less democratic by the misuse of new technologies, where certain speeches on the web have been censured by governments with the justification of them being "hate speech".[117]

Within the growing number of groups considered as hate speech victims are women and girls. Misogyny speech, as any other type of hate speech, could keep women away, nullifying their presence in public discussions; – if we take into consideration the online world as the new public sphere – there are expressions easier to identify on the web that carry the intention to damage women's dignity. Some "humor" revolves around exclusion.[118] Online misogyny, many times punishes women for exercising their right to self-expression. The truth is, that "freedom of speech does not include the freedom to abuse and silence others with impunity".[119] Institutions should be very careful not to interfere with the enjoyment of freedom of speech, however, when it comes to hate speech no action can represent a restriction to another person's freedom of expression.[120]

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[113] ibid.
[114] Sonia Livingstone and Peter Lunt, 'The Mass Media, Democracy and the Public Sphere', *Talk on television audience participation and public debate*. (Routledge 2013).
[115] Lemmens (n 8).
[116] ibid. p.161
[117] Janna Anderson and Lee Rainie, 'Conerns about Democracy in the Digital Age' (*Pew Research Center: Internet, Science & Tech*, 21 February 2020) <https://www.pewresearch.org/internet/2020/02/21/concerns-about-democracy-in-the-digital-age/> accessed 29 May 2020.
[118] Laurie Penny, *Cybersexism. Sex, Gender and Power on the Internet* (Kindle, Bloomsbury).
[119] ibid. p. 407.
[120] UN Human Rights Council, 'Promotion, Protection and Enjoyment of Human Rights on the Internet- Ways to Bridge the Gender Digital Divide from Human Rights Perspective' (2017) Annual report A/HRC/35/9 <https://undocs.org/A/HRC/35/9> accessed 21 April 2020.

3.2 Women and Girls Online Human Rights Protection

Acts of violence against women and girls are a human rights violation. Since the World Conference on Human Rights held in Vienna in 1993 and the Fourth World Conference on Women in Beijing in 1995, violence against women has progressively come to integrate the international human rights agenda.[121] In contrast, regarding online hate speech targeting women and girls very few instruments have been published. Despite that, the United Nations recognized that confronting hate speech in general is necessary to achieve progress on the UN agenda; to prevent armed conflict, atrocity crimes and terrorism, emphasizing the need to end violence against women and other human rights' violations; moreover, to "promote peaceful, inclusive and just societies".[122] Though, hate speech is not explicitly mentioned in many international human rights' documents and treaties, it is indirectly called upon by some of the principles related to human dignity, equality and freedom of expression.[123] Some of the following documents mentioned, do not directly express gender-based hate speech, but they are worth to mention because of its relevance to hate speech in general.

3.2.1 International Human Rights Framework

After the atrocities and hate crimes committed during the Second World War, the UN's General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) in 1948, which condemns discrimination under Article 7: "All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".[124] The UDHR reaffirms the right to freedom of expression in Article 19, which includes the "freedom to hold opinions without interference and to seek, receive and impart

[121] Gender Equality Observatory of Latin America and the Caribbean, 'Annual Report 2013-2014: Confronting Violence against Women in Latin America and the Caribbean' (CEPAL 2014) Annual report <https://www.cepal.org/mujer/noticias/paginas/9/53409/Annual_Report_2013_2014._C1420458_Web.pdf> accessed 30 April 2020.
[122] United Nations (n 1).
[123] UNESCO, *World Trends in Freedom of Expression and Media Development: Special Digital Focus 2015* (UNESCO Publishing 2015).
[124] UN General Assembly, Universal Declaration of Human Rights 1948 [A/RES/217(III)].

information and ideas through any media and regardless of frontiers".[125] Hence, every person is entitled to the right of freedom of expression and the right to be protected against any form of discrimination, including hate speech;[126] since such speech reflects discriminatory aims.

The Declaration establishes the fundamental human rights and sets out the government's obligation to protect and fulfil them, but it is a non-binding instrument. Subsequently, some binding documents were published in order to reinforce freedom of expression and offer more protection against discrimination, such as hate speech. The International Covenant on Civil and Political Rights (ICCPR) is one of the most important international documents, which addresses both freedom of expression in Article 19 and indirectly, hate speech in Article 20. Unlike the UDHR, Article 19 of the ICCPR entitles duties and responsibilities to the right to freedom of expression. It restricts freedom of expression when this right threatens: a) "the rights or reputations of others"[127] and b) "for the protection of national security or of public order (ordre public), or of public health or morals".[128] Together with Article 20 (2): "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."[129] This document already poses the states obligation under international law, to implement appropriate measures against hate speech.

The first international document directly addressing hate speech was The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which came into force in 1965; Article 4 stresses that States Parties "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts...".[130] The Committee on the Elimination of Racial Discrimination in its General Recommendation 29 dealt with hate speech and went further including "the internet" on its recommendations to states parties: (s) "Take strict measures against

[125] ibid.
[126] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (PENN, University of Pennsylvania Press 1999).
[127] UN General Assembly International Covenant on Civil and Political Rights (n 50).
[128] ibid.
[129] ibid.
[130] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination 1965 [A/RES/2106(XX)].

any incitement to discrimination or violence against the communities, including through the Internet".[131] Similar to the ICERD, the Genocide Convention adopted in 1948 establishes the States Parties' obligation to take measures to prevent and punish the crime of genocide against groups defined by race, nationality, ethnicity or religion.[132] Unfortunately, because of the period in time when the documents were drafted, none of them mention the new technologies as a way to impart the right to freedom of expression and to incite or disseminate hate against vulnerable groups. Even though, the right to freedom of expression proclaimed in the ICCPR shall include "...freedom to seek, receive and impart information and ideas of all kinds, regardless frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice",[133] this statement allows social media and other online sources to be included under the umbrella of this right.

International law does not cover in depth gender-based hate speech;[134] most international instruments focus their attention on discrimination based on race, nationality, ethnicity or religion. It was not until 1981 when The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) entered into force, that discrimination against women "in all its forms" was condemned under international law.[135] The Convention encourages in Article 2, state parties to implement a "policy of eliminating discrimination against women".[136] This includes (b) "To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women";[137] along with legal protection of women's rights. Article 5 of the Convention proclaims, that states parties shall take all appropriate measures "to modify the social and cultural patterns of conduct of men and women" toward the elimination of "the idea of the inferiority or the superiority of either the sexes" or of gender stereotypes.[138] CEDAW urges states to prevent, investigate, prosecute and punish acts of gender-based

[131] UN Human Rights Treaty Bodies, 'Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' <https://undocs.org/HRI/GEN/1/Rev.6> accessed 27 April 2020.
[132] UN General Assembly, The Convention on the Prevention and Punishment of the Crime of Genocide 1948 [A/RES/260(III)].
[133] UN General Assembly International Covenant on Civil and Political Rights (n 50).
[134] Iginio Gagliardone and others (n 74).
[135] UN General Assembly Convention on the Elimination of All Forms of Discrimination Against Women (n 16).
[136] ibid.
[137] ibid.
[138] ibid.

violence.[139] Additionally, the Committee on the Elimination of Discrimination Against Women adopted in 2017 the new General Recommendation 35, which recognizes contemporary forms of gender-based violence occurring on the internet and encourages states to prevent them.[140]

International law does not prohibit hate speech, instead it prohibits the incitement to discrimination, hostility and violence.[141] Prescribed by law, the number of documents which condemn any type of discrimination on the internet, new technologies and social media is limited. A narrow emphasis has been placed on online gender-based violence. Despite this, several UN General Assembly resolutions have tried to approach online hate speech and gendered violence in any form, including through new technologies. In 2013 the UN General Assembly resolution on protecting women's human rights defenders recognized that gender-based violence could be exercised offline and online, recalling that "information – technology – related violations, abuses, discrimination and violence against women [...] are a growing concern and can be a manifestation of systemic gender-based discrimination, requiring effective responses compliant with human rights...".[142] The resolution calls upon states to prevent these abuses and investigate them.[143]

The UN Human Rights Council (UNHRC) resolution on the promotion, protection and enjoyment of human rights on the internet (2018) affirms that the same rights that people have offline must also be protected online.[144] This resolution has represented important steps regarding human rights issues on the internet. It condemns online attacks against women, sexual and gender-based violence, "which can exacerbate the gender digital divide and widen gender inequalities in society".[145] Moreover, it shows normative progress by recognizing that businesses, like social

[139] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women 2010 [CEDAW/C/GC/28].
[140] UN Committee on the Elimination of Discrimination Against Women General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (n 26).
[141] UN General Assembly Declaration on the Elimination of Violence against Women (n 18).
[142] UN General Assembly, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders 2013 [A/RES/68/181].
[143] ibid.
[144] UN Human Rights Council 38/... The promotion, protection and enjoyment of human rights on the Internet (n 41).
[145] ibid.

media companies play an important role in protecting human rights in the digital world.[146] Other resolutions have addressed online gendered violence, such as the UN General Assembly's resolution on the right to privacy in the digital age (2016), which recalls that violations and abuses of the right to privacy in the digital age may have particular negative effects on women.[147] As well as, the UN Human Rights Council resolution on the role of freedom of opinion and expression in women's empowerment (2013), which requests states parties to promote, respect and ensure women's right to freedom of expression both, online and offline.[148]

The UN resolutions have advanced to face the new challenges that the digital era has brought. Along with other measures, such as reports, plans and strategies, the United Nations has tried to minimize the negative impact of new technologies on women's human rights. In addition, the UN Agenda 2030 for Sustainable Development sets universal objectives to promote prosperity in the world. The Agenda's Goal 5 is directed to "achieve gender equality and empower all women and girls"; accompanied with 5.1 "End all forms of discrimination against all women and girls everywhere"; and 5.2 "Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation".[149]

In 2018, online violence against women was directly addressed in a report carried out by the Special Rapporteur on Violence Against Women. The aim of the report was to:

> "Start the process of understanding how to effectively apply a human rights-based approach to prevent and combat online and Information and Communication Technologies (ICT) facilitated violence against women as human rights violations, which shares its root causes

[146] Article 19, 'UN HRC Maintains Consensus on Internet Resolution' (*ARTICLE 19*, 10 June 2018) <https://www.article19.org/resources/un-hrc-maintains-consensus-on-internet-resolution/> accessed 28 April 2020.
[147] UN General Assembly, The right to privacy in the digital age 2016 [A/C.3/71/L.39/Rev.1].
[148] UN Human Rights Council, The role of freedom of opinion and expression in women's empowerment 2013 [A/HRC/RES/23/2].
[149] William Rosa (ed), 'Transforming Our World: The 2030 Agenda for Sustainable Development', *A New Era in Global Health* (Springer Publishing Company 2017) <http://connect.springerpub.com/lookup/doi/10.1891/9780826190123.ap02> accessed 28 April 2020.

with other forms of violence against women and should be dealt with in the broader context of the elimination of all forms of discrimination against women".[150]

Previously, in 2017 the United Nations High Commissioner for Human Rights submitted another report concerning human rights on the internet and the gender digital divide.[151] This document emphasizes, that some of the obstacles to bridge the internet user gender gap are "privacy, security, trust and safety risks: for example, online harassment and violence against women".[152] It stresses the importance of combating online violence against women and remarks, not just the states obligation to combat online gendered violence while safeguarding freedom of opinion and expression, but also business enterprises responsibility.[153] These represents the international recognition of online abuses targeting women and girls, and recalls states to approach the problem, because it is representing new vulnerabilities on human rights and principles.

Concerned about the dramatic growth on xenophobic movements, racism and intolerance, violent misogyny, anti-Semitism and anti-Muslim hatred around the world, in 2018 the United Nations Secretary General Antonio Guterres presented the United Nations Strategy and Plan of Action on Hate Speech.[154] It provides a strategic guidance for the UN system to face hate speech at the national and global level, through joint efforts with governments, civil society, the private sector and other key partners.[155] Furthermore, the Strategy and Plan of Action on Hate Speech recognizes the misuse of the internet and social media for spreading hate speech.[156] At the international level some efforts have been done to combat online issues, such as cyber-hate. There is a generalized concern about new forms of violence, brought by new technologies, which have targeted women and girls, violating and limiting their fundamental human rights. This means that states have the

[150] UN Human Rights Council, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on Online Violence against Women and Girls from a Human Rights Perspective*' (2020) A/HRC/38/47 <https://undocs.org/en/A/HRC/38/47> accessed 28 April 2020.
[151] UN Human Rights Council, 'Promotion, Protection and Enjoyment of Human Rights on the Internet- Ways to Bridge the Gender Digital Divide from Human Rights Perspective' (n 115).
[152] ibid.
[153] ibid.
[154] United Nations (n 1).
[155] ibid.
[156] ibid.

responsibility to implement measures addressing online gendered hate speech. Otherwise, they will be infringing their international obligation to protect, respect and fulfill human rights.

3.2.2 Regional Human Rights Framework

Human rights regional systems ought to promote and protect human rights in the region through instruments and mechanisms, that together with international human rights norms and standards, seek to address particular issues within each region.[157] Mexico is a member of the Organization of American States (OAS), which has two organs to directly supervise the aspect of human rights: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights. Both are responsible to oversee the compliance of the American Convention on Human Rights.[158]

Similar to the ICCPR, the American Convention on Human Rights proclaims under Article 13 the right to freedom of expression. However, this right is not absolute; hate speech is not protected under Article 13, any incitement to lawless violence would be punishable by law.[159] The Inter-American Court has appealed by an Advisory Opinion that "abuse of freedom of information thus cannot be controlled by preventive measures but only through the subsequent imposition of sanctions on those who are guilty of the abuses".[160] The Special Rapporteur for Freedom of Expression of the Inter-American Commission recognized that harmful speech and crimes against humanity are often accompanied or preceded by hatred expressions.[161] However, any restriction against freedom of expression, should be "provided by law, serve a legitimate aim as set out

[157] Universal Rights Group, 'A Rough Guide to the Regional Human Rights Systems' (*Universal Rights Group*) <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/> accessed 30 April 2020.
[158] Organization of American States, American Convention on Human Rights 'Pact of San Jose, Costa Rica' 1978 [B32].
[159] ibid.
[160] Thomas Buergenthal and others, 'Requested by the Government of Costa Rica' [1985] Inter-American Court of Human Rights 41.
[161] Organization of American States, '8. Chapter VII Hate Speech and the American Convention on Human Rights' (*OAS*, 1 August 2009) <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=443&lID=1> accessed 30 April 2020.

international law and be necessary to achieve that aim."[162] The Inter-American system covers only hate speech that actually leads to violence, and solely such speech can be restricted.[163]

Regarding to women's rights and violence against women and girls, in June 1994, the OAS General Assembly approved the adoption of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, better known as the "Convention of Belém do Pará".[164] The Convention condemns all forms violence against women and girls, including those actions that could cause psychological harm, either in the public or the private sphere.[165] In the past, Mexico has already been penalized for its failure to address violence against women, besides for its negligence to protect freedom of expression. Although, at the regional level online issues prevalence invisible, which could derivate in new challenges to the states in the long term.

There are other regional instruments addressing violence against women and/or cybercrime. Mexico has ratified the Istanbul Convention, even though it is a Council of Europe's instrument. The Istanbul Convention (2017) alludes to the protection and prosecution of violence against women and domestic violence. It addresses contemporary forms of violence against women, such as stalking (Article 34). Other articles, that could be related with online gendered hate speech are Article 33 on psychological violence and Article 40 on sexual harassment.[166] Moreover, the country actively participates as an observer to the Budapest Convention on Cybercrime (2001). The Budapest Convention is the only binding international instrument addressing directly online crimes, and it offers a guideline for states to develop a comprehensive national legislation against them.[167] It provides a mechanism to deal with computer data, which would include online gendered hate speech, through Article 4: "Data interference in a critical system (which) may cause death or

[162] ibid.
[163] Thomas Buergenthal and others, 'Requested by the Government of Costa Rica' [1985] Inter-American Court of Human Rights 41.
[164] Organization of American States, 'About the Belém Do Pará Convention' (*OAS*, 1 August 2009) <https://www.oas.org/en/mesecvi/convention.asp> accessed 30 April 2020.
[165] Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belém Do Pará' 1994.
[166] Anne Bonnewit, 'The Issue of Violence Against Women in the European Union' [2016] European Parliament 60 <https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556931/IPOL_STU(2016)556931_EN.pdf> accessed 1 May 2020.
[167] Council of Europe, Convention on Cybercrime 2001 [ETS No.185].

physical or psychological injury".[168] It is interesting to mention the Additional Protocol to the Convention on Cybercrime, which criminalize acts of racist and xenophobic nature perpetuated through computer systems.[169] This could open the path to prosecute online offences committed with the intent to incite hatred, discrimination or violence.

3.2.3 Social Media Intermediaries Responses

Apart from the states, other stakeholders have moral and social responsibility to promote equality, non-discrimination and human rights. This is the case of the internet intermediaries, which have been subjected to a great pressure for civil society and individuals to identify and respond to "hate speech" on their platforms. We will revise two particular social platforms, Facebook and Twitter, because of their large number of users in Mexico. Social networking platforms, such as Facebook and Twitter have developed private norms or terms of service to intervene or restrict the creation and access to some content that could be harmful. On this regard, social media platforms belong to business enterprises and are entitled to the states parties' obligation to protect persons' rights within their jurisdiction by third parties. In harmony with the Guiding Principles on Business and Human Rights, companies should not violate human rights and rather identify, prevent, mitigate and account for any negative impact on human rights that they cause, contribute to or are directly linked to.[170] The particularity about social media is that harmful content is generated by individual users themselves, not by the platform.

Hate speech has become a big problem on social media. In response, some platforms have created their own hate speech definition and measures to react to it. For instance, Facebook defines hate speech as "a direct attack on people based on what we call protected characteristics – race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity and serious disease or disability".[171] Twitter does not directly use the term "hate speech",

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[168] ibid.
[169] Council of Europe Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (n 76).
[170] UN High Commissioner, 'Guiding Principles on Business and Human Rights' <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed 5 February 2020.
[171] Facebook, 'Community Standards' <https://www.facebook.com/communitystandards/hate_speech> accessed 2 May 2020.

rather it condemns "hateful conduct". Twitter's rules and policies state: "You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease."[172] These platforms recognize harm speech on the basis of sex/gender and have mechanism to penalize it. Both have designed a system where users can report harmful content and subsequently, they may remove it. However, the social media industry faces limitations in providing an effective response for users that have suffered gendered hate speech.

Hate speech restrictions on Facebook and Twitter go beyond the ICCPR limitations for speech, that constitutes intentional advocacy of hatred that incites discrimination, hostility or violence. Besides, they include gender and sex as protected people categories, unlike many other international instruments. This reflects that sometimes, private companies can be more restrictive than international, regional or national law regarding hate speech.[173] However, they protect freedom of expression; censure takes into account the context of the offence, the expression's impact and intention. Both, Facebook and Twitter allow humor and social commentary that could cause harm. The question here, is how trained are the responsible to remove content regarding hate speech and freedom of expression, and if they recognized hatred messages, which must be addressed with gender perspective.

Internet companies might follow the national policies of the country where they are providing their services under the territoriality principle.[174] Nevertheless, the issue for Facebook and Twitter with global reach is more complex, since they tend to operate according to their own global terms of service. These social networking platforms handle an enormous amount of data, that makes it impossible for them to remove all the inappropriate content.[175] The platforms mostly rely on users reports, subsequently they decide whether or not the content should be removed or if the account where the content was posted should be suspended.[176] However, little is known about how these social media platforms decide about keeping or removing the content.

[172] Twitter, 'Hateful Conduct Policy' (*Twitter*) <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> accessed 2 May 2020.
[173] Iginio Gagliardone and others (n 74).
[174] Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, Oxford University Press 2015).
[175] Iginio Gagliardone and others (n 74).
[176] Twitter (n 167).

3.3 Mexican Strategies to Prevent and Address Gender-Based Online Hate Speech

The principal function of the state is to guarantee and safeguard their citizens' rights and liberties, to promote peaceful and secure public spaces.[177] The same state's responsibilities should be translated in the digital world, to guarantee the safe online public sphere. The state should adopt all the possible measures to guarantee that no one could break the law on the internet. In addition, it is the Mexican state's responsibility to propel the substantive equality for women and social integration for all. For its part, the National Commission on Human Rights (CNDH) has recognized that hate speech on social media is increasing, thus representing a threat to human rights. The CNDH considers that the phenomenon in social media, which consists in attacks against the moral of other people, should not be normalized.[178] This section presents the Mexican legal framework regarding online gendered hate speech; or by its purpose, laws that could approach the issue, since the state has not provided a broad legislation about the cyberspace. Besides, some instruments of public policies will be introduced. As well as, the most recent governmental online campaigns aiming to counter online gendered hate speech. However, a deep analysis of them, whether are functioning or not, will be discussed in chapter 4.

3.3.1 National Legal Framework

To date, Mexico does not count with legal mechanisms, nor has it developed a legal framework to correctly address new technology issues, specifically online gender-based online hate speech. Nevertheless, traditional laws could be adopted to confront the problem, following the online/offline principle. The Mexican Constitution establishes that government authorities have the obligation to promote, respect, protect and guarantee human rights. It expressly prohibits discrimination, including on the grounds of gender (Article 1).[179] Article 4 affirms equality between women and men.[180] The Constitution guarantees free speech, as long as that speech does

[177] Secretaría General, Constitución Política de los Estados Unidos Mexicanos 2020 412.
[178] Pedro Villa y Caña Susana Zavala, 'Discurso de odio en redes sociales violenta derechos humanos: CNDH' *El Universal* (24 September 2019) <https://www.eluniversal.com.mx/nacion/politica/discurso-de-odio-en-redes-sociales-violenta-derechos-humanos-cndh> accessed 1 June 2020.
[179] Article 1, Secretaría General, Constitución Política de los Estados Unidos Mexicanos 2020 412.
[180] Article 4, ibid.

not injure someone else, provoke a crime or incite public disturbances.[181] It provides the comprehensive protection and limitations of the right to freedom of expression in Articles 6 and 7:

> *Article 6: "Expression of ideas shall not be subject to judicial or administrative inquiry, except for those cases when such expression of ideas goes against the moral, privacy or the rights of third parties, causes perpetration of a felony, or disturbs the public order. The right of reply shall be exercised according to law. The State shall guarantee the right to information.*
>
> *Every person shall be entitled to free access to plural and timely information, as well as to search for, receive and distribute information and ideas of any kind, through any means of expression".*[182]
>
> *Article 7: "Freedom of speech, opinion, ideas and information through any means shall not be abridged. Said right shall neither be abridged through any indirect means, such as abuse of official or private control over paper, radio electric frequencies or any other materials or devices used to deliver information, or through any other means or information and communication technologies aimed at impeding transmission or circulation of ideas and opinions.*
>
> *No statute or authority shall establish prior restraints, nor shall it abridge freedom of speech, which shall be subject to no other limitation than those foreseen in the first paragraph of Article 6 of this Constitution. Under no circumstances shall the assets used for the transmission of information, opinions and ideas be subject to seizure on the grounds of being an instrumentality of a felony".*[183]

[181] Secretaría General Constitución Política de los Estados Unidos Mexicanos (n 172).
[182] ibid. Article 6.
[183] ibid. Article 7.

Mexico is a Federal Republic composed of 32 federal entities. The Constitution establishes three levels of government: the Federal Union, the state governments and the municipal governments.[184] This means that there is a Federal Criminal Code for the offences committed against the federal order and additionally, each state has their own and individual Criminal Code, which constitutes the federal entity. This analysis is focusing on the federal level and the country's federal legal framework which jurisdiction extends throughout Mexico.

The Federal Criminal Code sets the punishable criminal behavior and its penal sanctions. Up to this day, there are no laws established on the Code related with online gendered hate speech. When it comes to cybercrime, it condemns "phishing".[185] However, it does not include anything related to violence perpetuated through the internet and online sources. Various reform proposals have been suggested to include crimes such as cyber-harassment on the document. Unfortunately, they have been declined, with the argument that some existent articles already could be applied to punishing this kind of behavior. For example, Article 149 Ter states that whoever injures upon human dignity, human rights or liberties of any other person for reasons of, among others, gender or sex, would be sentenced to one to three years in prison.[186] Nevertheless, the Article mentions in which activities the offence would apply: public services, employment and education, which means an enormous limitation for hate speech and discrimination regulations on the internet and other social spheres. Positively, Article 259 Bis condemns sexual harassment when it involves a situation of subordination.[187] In this direction, it would be welcomed if the Code added greater value to new technologies and other means, where harassment could take place. In addition, Article 208 punishes the public provocation to commit a crime or its avocation.[188] Article 282 sentences criminal threats; threats of causing physical harm or damaging someone's property, honor or rights.[189]

[184] Secretaría de Relaciones Exteriores, 'Mexican Political System' (*SRE*) <https://globalmx.sre.gob.mx/index.php/en/democracy-and-rule-of-law/mexican-political-system> accessed 7 May 2020.
[185] Phishing is the fraudulent attempt to obtain sensitive information such as usernames, passwords and credit card details by disguising oneself as a trustworthy entity in an electronic communication.
[186] Secretaría General, Código Penal Federal 1931 [DOF 24-01-2020].
[187] ibid.
[188] ibid.
[189] ibid.

Discrimination has received considerable attention due to the population's diversity and the Mexican migration phenomenon. The Federal Law to Prevent and Eliminate Discrimination provides a broad definition of discrimination, recognizing intersectionality[190] of discrimination. It rejects, among others, distinction or exclusion for reasons of gender and sex. Interestingly, in the definition of discrimination, the Law recognizes misogyny as a form of discrimination. This law considers discrimination the promotion of hate and violence, through messages and images on the media and the incitement of hate, violence, rejection, teasing, persecution or exclusion (Article 9).[191]

Regarding gender-based violence, the General Law on Women's Access to a Life Free of Violence came into force on 2007 with the main objectives of preventing, prosecuting and eradicating violence against women (Article 1). Together with the principles of equality, respect of human dignity, no discrimination and women's freedom (Article 4).[192] Along with this law, the General Equality Between Women and Men Act seeks to eliminate gender stereotypes that promote discrimination for reasons of sex and violence against women. About online sexist speech, this document demands the elimination of sexist stereotypes and discrimination in mass media and electronic media. The most recent law regarding the media was approved in 2014. NGOs and feminist academics helped to draft The Law of Telecommunications and Broadcasting, with the adoption of gender principles in different areas. The Law includes articles that promote gender equality in areas like public service, radio and television frequencies. Within the audience's rights established on the document, it can be found the right to receive content that promotes social plurality, without discrimination, including gender discrimination.[193] Unfortunately, this Law is notably limited to radio and television content, little is said about new technologies, social media and content on the internet. International standards also recognize that regulatory approaches in the telecommunications and broadcasting sectors cannot simply be transferred to the Internet.[194]

[190] The interconnected nature of social categorizations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.
[191] Secretaría General, Ley Federal para Prevenir y Eliminar la Discriminación 2003 [DOF 21-06-2018] 38.
[192] Secretaría General, Ley General de Acceso de las Mujeres a una Vida Libre de Violencia 2007 [DOF 13-04-2018].
[193] Secretaría General, Ley Federal de Telecomunicaciones y Radiodifusión 2014 [DOF 24-01-2020] 152.
[194] OSCE, 'Joint Declaration on Freedom of Expression and the Internet' <https://www.osce.org/fom/78309> accessed 29 June 2020.

Mexico's Supreme Court of Justice defined hate speech in the case law ADR2806/2012 as discourses that:

> *"Incite violence – physical, verbal, phycological, among others - against the citizens in general, or against particular groups characterized by being historically, sociologically, ethnically or religiously oppressed. Hate speech aims to underestimate and discriminate any person for its condition or circumstances, ethnic or social. The social problem with hatred discourses is that through denigration and insults, they create hostility against a person or group... Hate speech creates an atmosphere of hostility which, in turn, could evolve into violence in all its manifestations. As a result, hate speech is beyond any given expression of an idea or personal opinion and could result in discrimination and violence against a victim, therefore allowing violent behavior to go unpunished".*[195]

In Mexico there are two different institutions at the federal level, that could address issues related with online hate speech against women and girls. The National Council to Prevent Discrimination (CONAPRED) is the governmental agency responsible for ensuring non-discrimination, trough policies and measures aimed at progressing in social inclusion.[196] The Council can receive complaints and claims for alleged discriminatory acts committed by individuals or government employees and it can impose administrative and reparation measures. On the other hand, there is the Mexican Office of the Special Prosecutor for Attention for Crimes Against Freedom of Expression (FEADLE), the authority in charge of conducting criminal investigations and prosecutions against illicit acts that violate freedom of expression; and it provides attention to victims. However, this institution limits its power to journalists and human rights defenders.[197] Besides, the FEADLE is characterized by its inefficiency, since its creation it has only obtained four convictions of 803 previous investigations.[198]

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[195] *Amparo 2806/2012* (Suprema Corte de Justicia de la Nación).

[196] 'CONAPRED - Consejo Nacional Para Prevenir La Discriminación' (*gob.mx*) <https://www.conapred.org.mx/index.php?contenido=pagina&id=38&id_opcion=15&op=15> accessed 13 May 2020.

[197] Fiscalía General de la República, 'Conoce a la Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión' (*gob.mx*) <http://www.gob.mx/fgr/documentos/conoce-a-la-fiscalia-especial-para-la-atencion-de-delitos-cometidos-contra-la-libertad-de-expresion> accessed 13 May 2020.

[198] Eduardo Ortega, 'Fiscalía especial para periodistas, sin resolver 99.6% de los casos' *El Financiero* (3 January 2020) <https://elfinanciero.com.mx/nacional/fiscalia-especial-para-periodistas-sin-resolver-99-6-de-los-casos> accessed 4 July 2020.

There are two types of cyber police in the country. First, at the Federal level, the Cybernetic Investigations and Technological Operations Unit, whose support investigations related to electronic and technological means. Among its principal functions are to investigate cases of gender-based cyber-violence and cyber-harassment.[199] Second, together with the National Security Council, each state has a Preventive Cyber-Police, in charge of investigating crimes committed using new technologies, including social media. Every state has their own regulations and mechanisms to operate the cyber police, they depend on the state's Criminal Code. It could address online discrimination and hate speech, according to the state's regulations. Each state has their own complaints mechanism; mainly, the victim could receive support via email, Facebook, Twitter or a phone call.[200][201] However, if the victim wishes to proceed with a criminal complaint, she or he should file it personally before the authorities.

To finalize with the Mexican legal framework, it will be presented the Olimpia Act. In terms of cyber-violence against women, the Olimpia Act has been the most important progress in the country. Nevertheless, it is not a "law"; the Olimpia "law" is a set of legislative reforms to recognize cyber-violence and to punish crimes that violate the sexual intimacy of a person, through the digital media. This initiative emerged after a sexual video of a woman (Olimpia Coral Melo) was shared on WhatsApp and disseminated on social media in the state of Puebla; resulting in the reform of Puebla's Penal Code and the criminalization of the violation to sexual privacy. To date 17 states have adopted the reforms proposed in the Olimpia Act.[202] The reforms include different types of cyber-violence that could address online hate speech, such as cyber-harassment and the online dissemination of sexual content without consent.[203] Significantly, the Olimpia law

[199] Fiscalía General de la República de la Ciudad de México, 'Comunicado FGR 101/19. FGR realiza acciones para combatir ciberviolencia contra la mujer' (*gob.mx,* 12 March 2019) <http://www.gob.mx/fgr/prensa/comunicado-fgr-101-19-fgr-realiza-acciones-para-combatir-ciberviolencia-contra-la-mujer> accessed 4 July 2020.

[200] Secretaría de Seguridad Pública, 'Policía de Ciberdelincuencia Preventiva' <http://data.ssp.cdmx.gob.mx/ciberdelincuencia.html> accessed 15 May 2020.

[201] In general, this information was taken from different local police websites and phone calls to the numbers given, aiming to collect information about how they operate.

[202] Orden Jurídico (ed), 'Ley Olimpia' <http://ordenjuridico.gob.mx/violenciagenero/LEY%20OLIMPIA.pdf> accessed 16 May 2020.

[203] Brenda Yañez and Melissa Galván, 'El ABC de la "Ley Olimpia", una realidad en 16 estados' (*ADNPolítico,* 23 December 2019) <https://politica.expansion.mx/cdmx/2019/12/23/el-abc-de-la-ley-olimpia-una-realidad-en-16-estados> accessed 16 May 2020.

recognizes cyber-violence as a new type of violence against women. Even if it is not implemented at the federal level, an important step has been taken, which is the recognition of violence in the digital world. Unfortunately, it has had negative effects; for example, in order to proceed with a correct investigation, the content on the platforms should not be removed immediately, which could be a disadvantage for the victim. Furthermore, the Olimpia Act does not address cyber-hate.

3.3.2 Public Policies and Campaigns

In Mexico, each Executive Branch's administration develops The Mexican National Development Plan at the beginning of their six-year period. Under Enrique Peña Nieto's administration, the Plan (2013 -2018) was drafted with gender perspective and followed a line within National Security, which considered expanding security to new information and communication technologies.[204] In addition, it contemplated the implementation of national awareness campaigns approaching different forms of violence and discrimination against women (Strategy III, Gender perspective).[205] On the other hand, the new president Andres Manuel Lopez Obrador, Mexican National Development Plan (2019 – 2024)[206] does not consider new technologies at all, just for scientific purposes; it left behind violence and discrimination against women and gender perspective is not reflected on the document. Not having these topics contemplated at the national agenda might have negative consequences and could demonstrate that online gender-based hate speech is far from being addressed.

In addition, every administration has a National Programme for Equality and Non-Discrimination against Women (PROIGUALDAD), which is the most important federal instrument addressing gender concerns, it identifies the gender equality policies as a core for the current government. The last Programme (2013 – 2019) considered, that media content had to be respectful to vulnerable groups, as well as the different areas in which women were victims of violence. However, little is recorded on policies and mechanisms aiming to eliminate violence against women in media and

[204] Gobierno de la República, 'Plan Nacional de Desarrollo 2013 - 2018' <https://www.snieg.mx/contenidos/espanol/normatividad/MarcoJuridico/PND_2013-2018.pdf> accessed 5 December 2020.
[205] ibid.
[206] Gobierno de la República, 'Plan Nacional de Desarrollo 2019 - 2024' <https://lopezobrador.org.mx/wp-content/uploads/2019/05/PLAN-NACIONAL-DE-DESARROLLO-2019-2024.pdf> accessed 5 December 2020.

ICT.[207] Unfortunately, after almost two years of the new administration's mandate, the PROIGUALDAD has not yet been published.

The Law on Women's Access to a Life Free of Violence establishes the System and the Comprehensive Programme to Prevent, Address, Punish and Eradicate Violence against Women (PIPASEVM). This Programme determines the operational rules of the System. It provides multiple courses of action regarding gender perspective, one of them is to "ensure that media does not promote violence against women and that it encourages the eradication of all types of violence, to strengthen respect for human rights and the dignity of women."[208] In addition, the PIPASEVM (2014 – 2018), although limited, had a line of action to promote policies to eliminate the advocacy of violence against women on the media (Strategy 1.2).[209] To date, the Lopez Obrador administration has not presented its Programme.

These Programmes are the federal government's action plan for each mandate, which derive into public policies or strategies to combat different problems. At the local level, the governments have the responsibility to create their own Programmes inspired by them. For this reason, they are extremely relevant. The Programmes detail how the government will confront and address issues of public concern and create a line of action. The administration of Andres Manuel Lopez Obrador has not drafted its plans, which could mean that violence against women is not a priority on his agenda. Besides, new technologies are not contemplated either, it might be a signal that for this government online issues are not urgent, which in the long-term could have negative impacts, if we consider the amount of internet users in the country.

Nevertheless, hate speech on social media increased concern among the Mexican government due to the hate crimes committed against Mexicans in Texas last August 2019. The authorities believed

[207] Global Alliance on Media and Gender, 'Shadow Report on "Violence against Women and Gender Inequality in and through the Media and ICT in Mexico"' (2018) Shadow Report <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31410_E.pdf> accessed 26 May 2020.
[208] Secretaría General Ley General de Acceso de las Mujeres a una Vida Libre de Violencia (n 186).
[209] Gobierno de la República, 'Programa Integral Para Prevenir, Atender, Sancionar y Erradicar La Violencia Contra Las Mujeres 2014 - 2018' <https://www.gob.mx/cms/uploads/attachment/file/311569/PROGRAMA_Erradicar_Violencia_contra_las_Mujeres.pdf> accessed 16 May 2020.

that the shooting was motivated by a racial hate speech "anti-migration manifesto", previously posted and disseminated on social media.[210] After these events, the Mexican government launched an international initiative in the United Nations Educational, Scientific and Cultural Organization (UNESCO) called "Elimination of racial discrimination, racial supremacism and racial hate crimes in the world". Mexico's proposal invites the international community to reject and combat by all legal means acts of racial discrimination, racial supremacism and racial hate crimes. The initiative devoted considerable attention to the importance of detecting hate speech online networks and the effective dismantling of them.[211] The Mexican statement against hate speech on the web reflects states' awareness of the issue. However, as many other actions, these only focus on hate speech on the basis of race and national origin discrimination.

On the other hand, in 2014, the movement *#SinTags* (without labels) was promoted by CONAPRED. Today, the campaign continues with the name *#MovSinOdio,* inspired by the Council of Europe Youth Department's camping "No hate speech movement". The objective is to combat hate speech and promote online human rights with the participation of young people.[212] Work has been done to develop an advertisement strategy, working together with advertising agencies, academics, NGOs and the government to address discriminatory components. The activities are conducted both, online and offline, they seek to promote equality and no discrimination, through different means such as information campaigns at the universities, action days addressing specific discriminatory issues, online campaigns and participation in exhibitions, for example The Guadalajara International Book Fair.[213]

Between 2013 and 2018, the government launched the online campaign *#NavegaSegura* (browse safely), with the aims of raising awareness about the perils of the internet. The campaign was

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[210] Lois Beckett and Sam Levin, 'El Paso Shooting: 21-Year-Old Suspect "Posted Anti-Immigrant Manifesto"' *The Guardian* (4 August 2019) <https://www.theguardian.com/us-news/2019/aug/03/el-paso-shooting-21-year-old-suspect-in-custody-as-officials-investigate-possible-hate> accessed 17 May 2020.

[211] Secretaría de Relaciones Exteriores, 'A Mexican Initiative Against Hate Crimes and Racial Discrimination Advances in UNESCO' (*gob.mx*) <http://www.gob.mx/sre/prensa/a-mexican-initiative-against-hate-crimes-and-racial-discrimination-advances-in-unesco?idiom=en> accessed 17 May 2020.

[212] CoE, 'No Hate Speech Youth Campaign' (*Council of Europe*) <https://www.coe.int/en/web/no-hate-campaign/home> accessed 17 May 2020.

[213] CONAPRED, 'Sin Odio – Movimiento Frente al Discurso de Odio' (*CONAPRED*) <http://dilosinodio.conapred.org.mx/> accessed 17 May 2020.

implemented along with other measures to confront violence against women in all its expressions. They set up the 01800*Háblalo* (1800speakup), a hotline to deal with cases of violence against women, providing psychological and legal assistance. Together with offline campaigns, such as "Prevention of Violence against Women" and "Not all Men are the Same".[214] Through Twitter, different organizations and the government posted advices on preventing with the hashtag *#NavegaSegura*. The main focus was to forestall human trafficking and hacking. Moreover, some posts aimed to encourage people to report online abusive content, which many times can be seen as hate speech.

Public policies and governmental campaigns to counter online gender-based hate speech are limited. Few efforts have been made to address this issue towards non-legal measures. These campaigns have been highly criticized, because they are just directed to women. In addition, there are not massive campaigns and their impacts have not been evaluated. Next chapter offers deep analysis of the failure of those campaigns.

[214] UN Human Rights Council, 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21*' (Human Rights Council 2018) National Report A/HRC/WG.6/31/MEX/1 <https://undocs.org/A/HRC/WG.6/31/MEX/1> accessed 23 April 2020.

Chapter 4. Towards a Comprehensive Approach to Counter Online Gender-Based Hate Speech

Chapter 3 has addressed the Mexican legal framework towards online gendered based hate speech; it could be concluded that, until now, there are no clear legal provisions aimed at regulating the online world, nor is there a clear delimitation of what would constitute "hate speech" in Mexico. Nonetheless, some of the existing laws could apply to combat online hate speech targeting women and girls under the offline/online principle. This does not mean, that the system could work only with those norms to combat online abuses, there is still a need for: first, a coherent and explicit regulation addressing "hate speech", in accordance with the international human rights legal framework; and second, measures to address digital issues, such as online hate speech. However, given the impunity and the inefficiency of the Mexican judicial system, it might be difficult for women and girls to find a satisfactory response from the authorities, even with a harmonized legislation. In this context, the question we aim to answer is where the system is failing to ensure an online environment free from hate against women and girls. This research has identified certain issues obstructing the authorities and the judicial system from responding correctly to new technology issues, in particular online gendered hate speech. Furthermore, the research has recognized some proposals and recommendations, that could work in the country to address online hate speech targeting women and girls in the best possible manner.

4.1 Confronting the Reality

In recent years, the Mexican government has proposed legal initiatives to promote equality and sanction discrimination for reasons of gender or sex. It has established new laws, specifically to eradicate violence against women and girls. However, Mexican legal formalism is characterized by norm production, an example of this is the adherence to most human rights treaties. On the other hand, it is also characterized by its lack of enforcement; for example, in 2019 a study has revealed, that 32% of the Mexicans are willing to break the law if "necessary".[215] This scenario

[215] Parametría, '¿Qué Tanto Obedecemos La Ley?' (*parametria*) <https://www.parametria.com.mx/carta_parametrica.php?cp=5110> accessed 23 June 2020.

raises the question, where is the system failing to address online hate speech targeting women and girls? This research has identified some key concerns towards this issue.

4.1.1 Flawed legislation

The Mexican Constitution, as seen in the previous chapter, outlaws expression of ideas that harm the moral, privacy or the rights of others and foresees judicial or administrative sanctions to whomever infringes this statute.[216] However, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has stressed that in Mexico, as in the rest of Latin America, the term "hate speech" lacks a clear definition, the legislations tends to be too vague and overbroad towards its concept.[217] Even though, the ICCPR Article 19 proclaims that restrictions to the right to freedom of expression must be provided by law,[218] the Mexican Constitution, given its vague description, could lead to subjective interpretations and unlawful censorships to freedom of speech.[219] This has resulted in several cases of restrictions to the right to freedom of expression and opinion. Regarding this situation in Mexico, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has pointed out: "Continuing existence and the use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices".[220] For this reason, regulations against "hate speech" both, offline and online should be written in a more comprehensive and expressive form, to avoid a worst freedom of expression crisis in the country.

Regarding the Federal Criminal Code, there has been some unsuccessful efforts to add "hate speech" as a criminal offence. Other propose to modify Article 149 Ter towards a more explicit definition of "hate speech". The proposal seeks to sentence with "one to three years, or community work whoever promotes, advocates or incites to hate, violence and discrimination"; arguing that

[216] Secretaría General, Constitución Política de los Estados Unidos Mexicanos 2020 412.
[217] The Office of the Special Rapporteur for Freedom of Expression, 'Annual Report of the Inter-American Commission on Human Rights 2015' (2015) Annual report 48/15 <https://www.oas.org/en/iachr/expression/docs/reports/annual/AnnualReport2015RELE.pdf> accessed 05 May 2020
[218] UN General Assembly International Covenant on Civil and Political Rights (n 50).
[219] Rubén Blanca Díaz, ''La libertad de expresión en México: análisis convencional de sus limitaciones' (2018) 3 Alethéia Revista IEU Universidad 14 <https://revista-aletheia.ieu.edu.mx/documentos/revistaVol_3/revistaVol3_Art3.pdf> accessed 22 June 2020.
[220] UN Human Rights Council, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2012) A/67/357 <https://ap.ohchr.org/documents/dpage_e.aspx?si=A/67/357> accessed 5 June 2020.

hate discourses could derivate in worst crimes, such as femicides.[221] To date, the Article 149 Ter prevails limited to some activities, where someone could injure upon human dignity, human rights or liberties of any other person for reasons of race, sex, gender, among others. The definition is too vague and nonspecific about what could constitute "injure". The National Supreme Court (SCJN) has also pronounced its concern about the legislative omission of discriminatory and hate discourses. At the same time, the SCJN recognizes that there is a difference between discrimination or incitement to hate speech and the denial of a service or provision or restriction to the right to work and education for discriminatory reasons,[222] as the Article 149 Ter proscribes.

Mexico is failing with its international compromise acquired when the state signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination, because it does not explicitly penalized ideas or expressions that incite to hate, violence or discriminations as the Convention's Article 4 a),b) requires.[223] Moreover, the Supreme Court has also criticized the Federal Law to Prevent and Eliminate Discrimination, because Article 9 establishes as discrimination the promotion of hate and violence, through messages and images on the media, but does not consider it a punishable act, since those activities do not presuppose a criminal proceeding established by law.[224] The same happens with the General Law on Women's Access to a Life Free of Violence and the General Law on Equality Between Women and Men, both condemn violence and discrimination against women and girls on social media, however they are too broad towards misogyny discourses and attitudes, and do not determine them as criminal acts in any of their articles. The Supreme Court has pressured the Congress to carry out a reform on hate discourses to make the law more comprehensive regarding this subject.[225]

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[221] '3932 - Discursos de Odio Incitan a Violencia y Comisión de Delitos Graves Como Feminicidios; Piden Castigarlos Con Cárcel' (*Cámara de Diputados H. Congreso de Unión*, 14 August 2017) <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2017/Agosto/14/3932-Discursos-de-odio-incitan-a-violencia-y-comision-de-delitos-graves-como-feminicidios-piden-castigarlos-con-carcel> accessed 24 June 2020.

[222] Alejandro Castañón Ramírez, 'Amparo en revisión 805/2018 recurrentes: presidente de la República y otras' <https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2019-01/AR-805-2018-190124.pdf> accessed 24 June 2020.

[223] ibid.

[224] ibid.

[225] Senado de la República, 'Propone El PAN Tipificar Como Delitos Los Discursos de Odio y Cualquier Tipo de Discriminación' (*Senado de la República*, 7 August 2019) <http://comunicacion.senado.gob.mx/index.php/informacion/comision-permanente/boletines-permanente/45661-

Furthermore, countries must include in their legal framework clear criteria in order to determine what could be restricted or not on the web.[226] On this regard, in 2016 the Chamber of Deputies approved a draft reforming the Federal Code's Article 259 to penalize the cyber-harassment:

> "The crime of sexual cyber-harassment is committed when someone, with lascivious intentions and using coercion, intimidation, induction, seduction or deception establishes communication through any communication technology means, with a person under 18 years of age or a person who is not capable of understanding the circumstances, even with their consent".[227]

This initiative was turned to the Senators Chamber to its discussion and ratification, at the moment of this research, it has not yet been implemented. However, it might be understood that sexual cyber-harassment victims are not just girls under 18 years old; in fact, the MOCIBA has identified that the main victims of cyber-harassment are women between 20 and 29 years old.[228] Moreover, another reform initiative to the Federal Criminal Code was proposed towards the dissemination of sexual images or videos through digital means, which has not been accepted either. Although, both indicatives open the path to criminalize online violence against women and girls at the federal level, nothing has been proposed against cyber-hate or online gendered hate speech.

4.1.2 Impunity and Justice Enforcement

Having an extensive legislation does not necessarily lead to enforcement, and in Mexico, impunity has been pervasive. This means that threats, attacks, murders or any criminal action tend to go unpunished. For crimes committed against women, macho culture is embedded in impunity too. The impunity for femicide, rape and other crimes shows that misogyny is a common social

propone-el-pan-tipificar-como-delitos-los-discursos-de-odio-y-cualquier-tipo-de-discriminacion.html> accessed 24 June 2020.

[226] Marianne Díaz Hernández, 'Discurso de Odio En América Latina. Tendencias de Regulación, Rol de Los Intermediarios y Riesgos Para La Libertad de Expresión.' <https://www.derechosdigitales.org/wp-content/uploads/discurso-de-odio-latam.pdf> accessed 31 May 2020.

[227] '5363 - Reforman Diputados Código Penal Federal, Para Tipificar El Ciberacoso y Acoso Sexual, y Sancionar La Difusión de Fotos o Videos Sexuales Sin Autorización Del Afectado' (*Cámara de Diputados H. Congreso de Unión*, 12 December 2016) <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2016/12-Diciembre/14/5363-Reforman-diputados-Codigo-Penal-Federal-para-tipificar-el-ciberacoso-y-acoso-sexual-y-sancionar-la-difusion-de-fotos-o-videos-sexuales-sin-autorizacion-del-afectado> accessed 24 June 2020.

[228] Instituto Nacional de Estadística y Geografía (n 35).

practice, now institutionalized in the judicial system.[229] As it is mentioned before, 88.4% of women who experience violence do not take action before the authorities, given the culture of impunity that exist in relation to gender-based violence.[230] Moreover, impunity in Mexico is a generalized problem; according to the 2017 Global Impunity Index (GII), Mexico is among the countries with the highest impunity index – 69.21 points in a scale for 0 to 100, where 0 represents a total absence of impunity – . Mexico placed 66th out of 69 countries under the study.[231] The Mexican state and institutions have failed to comply with the basic duty to guarantee security, both offline and now online for women and girls. In addition to this, online offences tend to be underestimated by authorities. Mexico's mission report of the Special Rapporteur on the situation of human rights defenders in 2018 noted, that threats and harassment through ICT and social media are rarely considered "real" by the authorities,[232] while they could derive in real physical and psychological harms.

Even though, there is the Federal Law to Prevent and Eliminate Discrimination, many local authorities did not have the political will or resources to create bodies that could hear complaints based on these anti-discrimination legal provisions.[233] Moreover, when it comes to gender complains, there is a lack of gender perspective in relation to investigation, prosecution and protection for the victims, which means that inadequate attention is given to the specific nature of women's issues before the authorities.[234] The Human Rights Committee has observed, that some of the challenges affecting the implementation of gender-based mechanisms are lack of financial

[229] Alejandro Anaya-Munoz and Barbara Frey, *Mexico's Human Rights Crisis* (University of Pennsylvania Press 2018).
[230] Instituto Nacional de Estadística y Geografía, 'Encuesta Nacional Sobre La Dinámica de Las Relaciones En Los Hogares (ENDIREH) 2016' (2017) <https://www.inegi.org.mx/programas/endireh/2016/> accessed 6 February 2020.
[231] Juan Antonio Le Clercq Ortega and Gerardo Rodríguez Sánchez Lara (n 24).
[232] UN Human Rights Council, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on His Mission to Mexico*' (Human Rights Council 2018) Report of the Special Rapporteur A/HRC/38/35/Add.2 <https://undocs.org/en/A/HRC/38/35/Add.2> accessed 23 April 2020.
[233] UN Special Rapporteur, 'ACNUDH | Committee on the Elimination of Racial Discrimination Reviews Mexico's Report' (*OHCHR*, 9 August 2019) <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24886&LangID=E> accessed 8 May 2020.
[234] UN Special Rapporteur, 'OHCHR | Preliminary Observations by the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Freedom of Expression of the IACHR Following Their Joint Visit to Mexico, 27 November – 4 December 2017' (*OHCHR*, 4 December 2017) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E> accessed 25 June 2020.

resources and lack of information on the side of the responsible authorities.[235] However, in recent years there has not been a positive correlation between the increase of resources in government's institutions and the reduction of violence and impunity.[236] The country has a serious problem with corrupted use of resources, a higher financial support for security and justice structures might not be sufficient. Those institutions need to function properly and respect human rights.[237] Regarding justice enforcement, Mexico has an average of 4.2 judges per 100,000 inhabitants, while the worldwide average is 16.23 judges per 100,000 inhabitants.[238] A lower number of judges decreases the capacity to deliver justice.

Among the different forms of online abuses suffered by women and girls in Mexico identified by the civil organization *Luchadoras*, the omission by regulatory actors is one of the most experienced. As noticed, there is a lack of interest by the authorities towards online hate speech targeting women and girls. Furthermore, authorities do not have the knowledge or the possibility to act properly.[239] The cases revised in Chapter 2 related to online hate speech targeting women reflect this problem. To date, there has been just one person sentenced or prosecuted for online gendered hate speech in Mexico. For example, "Legion Holk", the online groups that advocate hate and tend to harass people, as the case of the journalist Frida Guerrera (see chapter 2), are still posting hatful messages in Facebook and Twitter. The groups prevail on the web, some accounts were deactivated; however, anonymity makes it easy to create a new profile within minutes. Regarding the case "Frida Guerrera against Sayd García" (see chapter 2), Frida has criticized the FEADLE for ignoring her report.[240] Until today, her case prevails without formal sentence. On the other hand, the case of Jonnhy Escutia (see Chapter 2), is another example of the authority's omission. The only consequence against him has been the "veto" to his songs, but they are posted on YouTube again, through different channel accounts.

[235] UN Human Rights Committee, 'Concluding Observations on the Sixth Periodic Report of Mexico*' (2019) Concluding Observations CCPR/C/MEX/CO/6 <https://undocs.org/en/CCPR/C/MEX/CO/6> accessed 22 April 2020.
[236] Juan Antonio Le Clercq Ortega and Gerardo Rodríguez Sánchez Lara (n 24).
[237] ibid.
[238] ibid.
[239] Luchadoras (n 33).
[240] Frida Mendoza, '"'Aunque se amparen en el anonimato, son ubicables'", Frida Guerrera habla sobre amenazas' (*La Silla Rota*, 22 July 2019) <https://lasillarota.com/metropoli/aunque-se-amparen-en-el-anonimato-son-ubicables-frida-guerrera-habla-sobre-amenazas-la-silla-rota-frida-guerrera-activista-terapeuta/301612> accessed 25 June 2020.

The institutions in charge of combating discrimination and abuses against freedom of expression face obstacles to their proper functioning. The CONAPRED budget has not increased in the last 15 years and the human resources are reduced, in contrast with other institutions.[241] In addition, while writing this research, the President, Andres Manuel Lopez Obrador has announced the possible demise of the CONAPRED. Although, it has not been confirmed yet; 380 civil organizations have already shared their concern about this probability, since it is the only governmental organ in charge of directly combating discrimination.[242] On their part, the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Freedom of Expression of the IACHR have expressed their concern about the ineffective investigations of threats and harassment against journalists, both online and offline.[243] Regarding the FEADLE, they have criticized its poor results and attributed its inefficiency to the lack of economic and human resources. Institutions, such as FEADLE, have not included a gender perspective on their work, which many times results in inadequate management of crimes against women journalists and activists. Women tend to be discriminated in the process, discouraging them to report.[244] In general, there is a lack of gender perspective in Mexican institutions.

4.1.3 Public Policies and Campaigns

The Inter-American Commission on Human Rights (IACHR) has seen positively the actions of the National Commission to Prevent and Eradicate Violence against Women. However, at the same time, it disapproves the lack of strategy, coordination and public policy structure to firmly eradicate discriminatory socio-cultural patterns against women and girls.[245] Furthermore, the IACHR has criticized the absence of mechanisms to monitor and evaluate the advances of the

[241] Hernán Gómez Bruera, '¿Para qué ha servido Conapred?' (*LaPolíticaOnline*, 19 June 2020) <https://www.lapoliticaonline.com.mx/nota/para-que-ha-servido-conapred/> accessed 26 June 2020.
[242] Oscar Lune, 'Piden ONGs Fortalecer El Conapred' *Reforma* (20 June 2020) <https://www.reforma.com/piden-ongs-fortalecer-el-conapred/ar1970739> accessed 26 June 2020.
[243] UN Special Rapporteur, 'Preliminary Observations by the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Freedom of Expression of the IACHR Following Their Joint Visit to Mexico, 27 November – 4 December 2017' (*OHCHR*, 12 April 2017) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E> accessed 20 April 2020.
[244] ibid.
[245] Comisión Interamericana de Derechos Humanos, 'Seguimiento de Recomendaciones Formuladas por la CIDH en sus Informes de País o Temáticos' (2018) Annual report <http://www.oas.org/es/cidh/docs/anual/2018/docs/IA2018cap.5MX-es.pdf> accessed 25 June 2020.

National System for Equality and Non-Discrimination against Women. In addition, it regrets the poor participation of civil organizations in the implementation of gender equality public policies.[246] *Luchadoras* has also complained about the lack of statistical records, pointing out that it is one of the main challenges existing to know and act against technology-related violence against women and girls.[247] Without statistics it is difficult to know the dimension of the problem in the country.

The country's lack of assessment has limited this research to acknowledging the public policies and campaign impacts and outreach. However, it has identified some concerns about the campaigns target and scope. The "No hate speech movement" implemented by the CONAPRED and other governmental institutions, could be seen as the only governmental campaign, which directly addresses online hate speech issues. However, there is no information about its advances and accomplishments. On the other hand, the campaign #NavegaSegura launched by the government, reached 17.6% Mexicans in four years.[248] Nevertheless, there are no documents regarding its impact or more detailed information.

There have been other campaigns promoted by the government, such as #PensarAntesdeSextear (think before sexting[249]) or #MuchoOjoEnLaRed (not direct translation, "be careful on the web"). These campaigns were far from counter online hate speech but related with online abuses against women and girls. Both lack analysis with a comprehensive perspective of women's rights, including sexual rights. They condemn and stigmatize sexting.[250] Furthermore, the preventive measures sent messages to women and girls to "stay away" from the internet and social media. The information disseminated through the campaigns was to encourage women and girls to not send sexual images or intimate videos, to block the aggressor or not to share private information, because it could have grave consequences. This vision makes the victim responsible of the

[246] ibid.
[247] Luchadoras (n 33).
[248] CONAVIM, 'Avance En Los Indicadores de Los Programas Presupuestarios de La Administración Pública Federal' (Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres 2017) <http://www.conavim.gob.mx/work/models/CONAVIM/archivos/tf/Tercer_trimestre_mir_2017.pdf> accessed 26 June 2020.
[249] To send (someone) sexually explicit photographs or messages via mobile phone or other technology means.
[250] Luchadoras (n 33).

violence, instead of the aggressor.[251] The Mexican feminist, Lulú Barrera has expressed: "Raising awareness about risks based on fear does not seek to make informed decisions or to be more competent users of technologies, on the contrary, it immobilizes us".[252] Campaigns have given little attention to online gendered hate speech. However, any movement aiming to raise awareness and counter this issue should be directed, not just to the victims, but to the perpetrator.

4.1.4 Social Media Intermediaries

Generally, detecting hate speech is a challenge for the internet companies. Mostly because there is no agreement in the "hate speech" definition, as previously argued. Social media intermediaries have developed their own terms of service to deal with hateful content on their platforms. However, they have been unsuccessful in controlling the dissemination of online hate speech content. In general, the measures are limited to blocking the interaction or the aggressor's access to the victim's profile. This does not necessarily stop the violence and cyber-harassment; the root of the problem prevails there. According to the National Institute of Statistics and Geography, 80.6 million Mexicans use the internet and 87.8% use it to access to social media platforms.[253] The enormous amount of contents generated by the users represent a problem to enforcing the platforms policies.[254] In addition to this, although social media platforms explicitly state that they do not tolerate target abuses on the basis of gender or sex, when women have reported online violence, frequently the answer is not as fast as it would be expected, there are no repercussions for the aggressor or the content is not removed at all.[255] Social media companies should ensure that moderators are trained in identifying gendered abuses on their platforms.[256]

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[251] Internet Es Nuestra MX, 'Organizaciones Sociales Pedimos a Fundación Televisa Poner "Mucho Ojo" En Su Campaña Sobre El Sexting' (*Internet Es Nuestra MX*, 5 May 2017) <https://internetesnuestra.mx/post/160333567938/organizaciones-sociales-pedimos-a-fundaci%C3%B3n> accessed 26 June 2020.

[252] Luchadoras (n 33).

[253] Instituto Nacional de Estadística y Geografía, 'Encuesta Nacional Sobre Disponibilidad y Uso de Tecnologías de La Información' (2020) <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2020/OtrTemEcon/ENDUTIH_2019.pdf> accessed 27 June 2020.

[254] Iginio Gagliardone and others (n 74).

[255] Luchadoras (n 33).

[256] Amnesty International, 'Amnesty Reveals Alarming Impact of Online Abuse against Women' (*Amnesty International*, 19 November 2017) <https://www.amnestyusa.org/press-releases/amnesty-reveals-alarming-impact-of-online-abuse-against-women/> accessed 2 May 2020.

For some time now, Facebook has been struggling to control online hate speech on its platform. The platform has recognized its inefficiency in identifying and removing hate speech, particularly around issues of gender-based hate.[257] The chief executive officer of the Anti-Defamation League (ADL), have recently criticized the ineffective work of Facebook to shut down hate speech on its platform: "We have long seen how Facebook has allowed some of the worst elements of society into our homes and our lives", said Jonathan Greenblatt, "our organizations have tried individually and collectively to push Facebook to make their platforms safer, but they have repeatedly failed to take meaningful action".[258] On the other hand, Twitter has launched joint campaigns with different institutions and civil organizations to identify and fight online hate speech. For example, in 2017 Twitter and the CONAPRED signed a partnership to combat online hate speech. This has improved its mechanism to remove hatred content from the platform.[259] Nevertheless, what is true is that social media users are still struggling to have their requests solved. Unfortunately, it has been found that women and girls are the most vulnerable users when they report cyber-harassment. Companies and governments have focused on fighting against extremist, leaving behind female victims of online hate speech and online harassment. As a consequence, women and girls have to respond themselves to online abuses.[260]

4.2 Solution Oriented Attitude

This work has recognized various recommendations and several observations about hate speech on the internet, emitted by civil organizations and NGOs, as well as strategies implemented in other countries to counter online hate speech. The research has identified possible solutions to prevent and combat cyber-hate against women and girls, that could be implemented by the Mexican government, without interfering with the right to freedom of expression in the country. The research admits that not all interventions on online hate speech could be valid, even if it is

[257] Marne Levine, 'Facebook' (*Facebook*, 28 May 2013) <https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054> accessed 27 June 2020.
[258] Kari Paul, 'Facebook Faces Advertiser Revolt over Failure to Address Hate Speech' (*the Guardian*, 23 June 2020) <http://www.theguardian.com/technology/2020/jun/22/facebook-hate-speech-advertisers-north-face> accessed 27 June 2020.
[259] Raúl Cruz, '¿Cómo Twitter y Conapred trabajan en conjunto para frenar el discurso de odio?' (*Plumas Atómicas*, 14 December 2017) <https://plumasatomicas.com/noticias/mexico/conapred-twitter-discurso-de-odio/> accessed 3 August 2020.
[260] Billy Perrigo, 'Facebook Says It's Removing More Hate Speech Than Ever Before. But There's a Catch' (*Time*, 4 November 2019) <https://time.com/5739688/facebook-hate-speech-languages/> accessed 2 May 2020.

done in the name of human rights. Hence, the solutions proposed are aligned with the right to freedom of expression. As stressed before, censorship of the internet is not the answer, because the internet is not the reason for human rights violations committed in there. The solutions proposed are compounded by a set of recommendations already presented before. The research has determined as suggestion, what could positively work in the Mexican context to address gender-based online hate speech.

Aside from the challenges posed by national jurisdiction and legislation, there also the challenges the internet's nature represents. Since the internet is a global network, crimes committed through it in a country could have their victim in another country. This is why internet legislation should be harmonized with the international community and states' legislation; it requires international cooperation.[261] A concern that might be taken into consideration, when establishing a transnational legal framework for the use of internet is, that even if hate speech were universally criminalized, online hate speech could move underground, making it more difficult to monitor and control.[262] Combating online hate speech in general, might require more than just one actor and various means. However, any measure taken should be in line with international human rights norms, particularly protecting the right to freedom of opinion and expression.

What is evident in the Mexican context is, that the existing legal framework is too vague and broad. A clear definition of "hate speech" and what constitutes "hate speech" or not, should be precisely written in legal definitions. Definition and terminology are important concepts not just to address the problem, but to collect and compare statistics. Thus, developing an effective legislation to prevent and punish cyber-hate and to protect its victims.[263] However, the initiatives proposed on this regard have been pointless. Moreover, to have a strong legal framework does not necessarily mean that it would be respected and effective, as the country has an enormous problem with impunity and an institutional corruption crisis. Besides, as if this were not enough, the lack of gender perspective among the institutions, allows women to be discriminated; not just when they

[261] OSCE, 'Incitement to Hatred vs. Freedom of Expression: Challenges of Combating Hate Crimes Motivated by Hate on the Internet' (Office for Democratic Institutions and Human Rights 2010) <https://www.osce.org/files/f/documents/8/5/68750.pdf> accessed 28 June 2020.
[262] ibid.
[263] Adriane Van Der Wilk (n 79).

suffer online hate speech, but when they report before the authorities. In this scenario, the main question is whether there are other measures to address gendered online hate speech. This research has identified two possible actions. One is a reactive response through the involvement to a higher degree of social media intermediaries and the state and the second is oriented to preventive measures.

4.2.1 Social Media Intermediaries Engagement

Social media intermediaries should recognize their moral and social responsibility to promote, protect and respect human rights, established in the Guiding Principles on Business and Human Rights.[264] This applies to combat hate speech on their platforms, even when the majority of the content is generated by others, they facilitate the means of communication. Nowadays, there is a growing tendency towards holding social media and internet intermediaries responsible for hate content on the web. Some Europe and Latin American countries have adopted or are in the process of approving new laws to punish internet intermediaries when they avoid removing hatred or discriminatory content from their platforms. This is the case of Germany, France[265] and Ecuador.[266] Nevertheless, these measures have been highly criticized because of the consequences that they could have, as unjustified restrictions on the right to freedom of expression. The French National Consultative Commission of Human Rights has qualified those measures as "inadequate and disproportional".[267]

On the other hand, in the United States, Facebook is currently facing a confrontation against companies, which have suspended their advertising on the platform, because of its failure to address hate speech.[268] In South Africa and Nova Scotia, in order to address online violence and cyber-harassment, the legislation recognizes that electronic communications facilitate anonymity.

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[264] UN High Commissioner (n 165).
[265] Silvia Ayuso, 'Francia se dota de una ley contra el odio en Internet' *El País* (Madrid, 9 July 2019) <https://elpais.com/internacional/2019/07/09/actualidad/1562689055_153988.html> accessed 5 June 2020.
[266] Marianne Díaz Hernández (n 220).
[267] 'Commission Nationale Consultative Des Droits de l'Homme' (*CNCDH*) <https://www.cncdh.fr/fr> accessed 5 June 2020.
[268] Kari Paul, 'Facebook Faces Advertiser Revolt over Failure to Address Hate Speech' *the Guardian* (23 June 2020) <http://www.theguardian.com/technology/2020/jun/22/facebook-hate-speech-advertisers-north-face> accessed 27 June 2020.

Therefore, the providers should respond to requests for information about the identity of the perpetrator.[269] So far, Mexico has remained conservative when it comes to its jurisdiction. There are no initiatives or proposals to hold social media intermediaries responsible on this issue.

On the other hand, the Anti-Defamation League has made some suggestions to internet providers regarding hate speech, consisting among others, on clearly defining and prohibiting hate speech, using a friendly reporting mechanism and acting quickly to remove the request.[270] It is important to remark on these suggestions, that companies should inform its users about why a report of hate speech is being rejected. However, taking into consideration the enormous amount of content posted and disseminated on the internet, this could be practically impossible. Though, the ADL recommends posing a mechanism to facilitate information about it, such as providing key cases examples or a FAQ section, where they explain why they are removing or not the content; in order to increase transparency between users and companies.[271] In some European countries, such as Germany and the United Kingdom, it was attempted to set a list of keywords, filters or "blacklists" at a national level to filter online hate speech content in the systems. Nevertheless, this measure was disapproved, because it could lead to limitations to freedom of expression and its effectiveness was uncertain.[272]

The large number of users, in Mexico and in the entire world, make the role of social media companies more important in avoiding online hate speech. To confer more responsibility to the social media intermediaries could be part of the solution, since they have the autonomy to regulate what is posted on their platforms. For this reason, they could have greater influence on the right to freedom of expression, in negative or positive ways. To prevent negative effects, any intent of self-regulation should be well-defined in the norms. Explicit limits should be set on freedom of expression and standards should be recognized to correctly identify hate speech. Besides, the decision-making process should be extremely transparent regarding the removal of content. Moreover, the provisions should be harmonized with international human rights legal framework.

[269] UNDP and UN Women, 'Cyber Violence against Women and Girls: A World-Wide Wake-up Call' (Broadband Commission 2015) <https://www.broadbandcommission.org/publications/Pages/bb-and-gender-2015.aspx> accessed 29 June 2020.
[270] Anti-Defamation League (n 77).
[271] ibid.
[272] OSCE (n 255).

Thus, an effective monitoring and reporting mechanism could be created in collaboration with different actors, such as governments, civil society, social media companies and other relevant stakeholders.[273] Although these measures refer to online hate speech in general, some recommendations and observations have been specifically made towards social media intermediaries addressing online harassment and hate speech targeting women and girls, such as the case of In South Africa and Nova Scotia.

Furthermore, the lack of gender perspective and women's representation in the decision-making process prevails as an obstacle to address gender related issues on the internet. To increase female leadership in social media organizations could have a positive effect on online advocacy campaigns, focusing on women and girls' rights, as particular issues.[274] In addition, as previously mentioned, social media's terms of service moderators should be trained to identify gendered abuses on their platforms.[275]

4.2.2 Education and Media Literacy

Rather than investing time and resources in formulating legal documents, Mexico should focus on improving the effectiveness of their actions, particularly in its preventive actions. Medium term and long-term solutions to online hate speech should be based primarily on education and media literacy.[276] Taking into consideration that, in Mexico violence against women is a structural and not an isolated phenomenon, addressing misogyny speech on the internet requires to change gender stereotypes in all aspects of daily life. Article 5 of the CEDAW makes a remark the state's obligation to "take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".[277] In order to confront gendered online hate speech,

[273] Article 19, 'Self-Regulation and "Hate Speech" on Social Media Platforms' (2018) <https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-%E2%80%98hate-speech%E2%80%99-on-social-media-platforms_March2018.pdf> accessed 29 June 2020.
[274] Estelle Loiseau and Keiko Nowacka, 'Can Social Media Effectively Include Women's Voices in Decision-Making Processes?' <https://www.oecd.org/dev/development-gender/DEV_socialmedia-issuespaper-March2015.pdf> accessed 29 June 2020.
[275] Amnesty International (n 250).
[276] Iginio Gagliardone and others (n 74).
[277] UN General Assembly Convention on the Elimination of All Forms of Discrimination Against Women (n 16).

the first step is changing social attitudes and social norms.[278] In this scenario, social and cultural gender norms must be addressed, bringing these efforts into the digital world.[279] Particularly, prevention and community mobilization towards a zero tolerance for violence against women programs must involving boys and girls to change misogyny behavior.[280] This solution would give young users the skills to critically assess, analyze and process online content.[281]

The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression recognizes that schools should include internet literacy in their curricula.[282] New technologies and social media have changed the role of the media; individuals are now both, consumers and creators of content. An educational approach responding to online hate speech could advocate a more viable response to internet particularities, involving complexities to ban or censor online content.[283] In this regard, the Mexican government efforts have been focused in federal protection mechanisms. Little attention has been given to address issues of prevention of online gender based violence.[284] To adopt prevention measures is important, in order to address root causes, but most importantly to protect freedom of expression.[285] The UNHRC stressed on its resolution on the promotion, protection and enjoyment of human rights on the internet the importance of combating advocacy of hatred on the internet by promoting tolerance, education and dialogue.[286]

We cannot deny the need to improve education and access to information in order to combat online hate speech.[287] However, these measures should come along with an efficient legal framework. Laura Geraghty from the "No Hate Speech Movement" has affirmed: "Education is key to prevent hate speech online. It is necessary to raise awareness and empower people to get online in a

[278] UNDP and UN Women (n 263).
[279] ibid.
[280] ibid.
[281] Iginio Gagliardone and others (n 74).
[282] UN Human Rights Council, 'Promotion and Protection of the Right to Freedom of Opinion and Expression' (Human Rights Council 2011) A/66/290 <https://undocs.org/en/A/66/290> accessed 30 June 2020.
[283] Iginio Gagliardone and others (n 43).
[284] OHCHR (n 35).
[285] ibid.
[286] The Human Rights Council, 38/... The promotion, protection and enjoyment of human rights on the Internet 2018 [A/HRC/38/L.10/Rev.1].
[287] Iginio Gagliardone and others (n 74).

responsible way; however, you still need the legal background and instruments to prosecute hate crimes, including hate speech online, otherwise the preventive aspect will not help."[288] Education and media literacy may constitute a relevant strategy to combat and address online hate speech. However, any response to the issue should come with other types of measures, and most important, they should be based on fundamental human rights.

[288] Ibid.

Conclusion

"Words kill" the first sentence of this thesis' title, alludes to the fact that gender-based online hate speech, could have real and severe consequences in women and girls' lives, which several times remain unnoticed by the Mexican authorities. The digital future is already here, states must ensure that laws and policies are based on fundamental rights. Furthermore, government must guarantee the same rights that people have offline are protected online.[289] Throughout this research, which has adopted a multidisciplinary approach, it has been noticed the failure of the Mexican state to guarantee a cyberspace free from misogyny and gendered hateful speeches. This thesis tried to identify where the state is failing to assure women and girls dignity and equality, within the Technologies of Information and Communication, specifically social media. First, by defining key concepts; taken into consideration the particular characteristics of gender-based online hate speech. This phenomenon was divided in three, because it involves three different concepts, each of them with specific particularities, which obliged us to addressed them in separate sections: gender-based violence, hate speech and the unique characteristics of the online world.

On the other hand, the research has overviewed the international, regional and national legal framework to delimited what has been said in every level, reading gender-based online hate speech. This has helped us to delimitated where is the Mexican state failing. Finally, the research determined that, Mexican legal framework could be used to protect women and girls in the cyber-sphere, under the online/offline principle and if it is flexible interpreted. The problem in Mexico is not the legislation, the country counts with an extensive legal structure. The main issue is its vague and overbroad legal framework, which has derived in abuses, and deficiencies in the law enforcement. In addition, impunity, ineffective justice enforcement and lack of gender perspective in the institutions have exacerbate violence against women and undermined online gender issues. After all, two key factors to deal with online hate speech targeting women and girls in Mexico were suggested: the deeper engagement of social media intermediaries along with the state; and the implementation of preventive measures through education and media literacy.

[289] UN Human Rights Council 38/... The promotion, protection and enjoyment of human rights on the Internet (n 41).

This thesis understands the importance of freedom of speech and expression in every democratic society. This right is essential and fundamental for people's dignity and the enjoyment of other rights. For this reason, any restriction or regulation to hate speech must be align with the human rights international law. It is important to recognize that, posting harmful online comments could insult a person or a group of people. Sometimes, those expressions might seem hateful. However, "is not the function of hate speech regulations to protect against hurt feelings."[290] On the other hand, the absence of restrictions against gendered online hate speech, might restrict women internet access, silence them and at the same time, violate their right to freedom of expression. It could derivate in phycological, even physical violence against women and girls. This is why, Mexican legal framework needs a clear definition of "hate speech." Moreover, information regarding online misogyny speech is still limited in the country, which has made the problem either, invisible or "accepted" as another hostile way of interaction. There is a tendency to not report these aggressions before the authorities, for this reason perpetrators do not fear repercussions. Besides, the authorities tend to undermine online problems, which left victims in a vulnerable place.

"Words kill." To date, there are few studies and limited evidence regarding the connection between online hate speech and offline violence. It is difficult to prove such connection. However, I believe two things: first, as Waldron wrote: "the accepted vocabulary of a culture can become part of its established environment";[291] and second, as Penny stated, "the Internet has a way of making hidden things visible".[292] To me, online hateful expressions that aim to disturb women and girls – in a country where in "real life" each day 10 women are killed –, it is urgent and essential to pay attention to the minor incidents. The actions must go far beyond a well written instrument. Although, Mexican laws should prioritize a concrete definition of "hate speech" to address this issue, actions must involve more than one actor. States have the positive obligation to ensure, that private parties respect and protect human rights, they should encourage the participation of social media intermediaries to address online hate speech. A joint strategy should be adopted, together with social media intermediaries, governments, international organizations, civil society and

[290] Waldron (n 45).
[291] ibid. P. 222
[292] Laurie Penny (n 81). P. 312

academics, as other relevant parties. In addition, measures to deal with gender-based hate speech must be directed to different actors, such as the authorities, public officials, boys and girls, as men and women. In this research, it was identified that perpetrators of online hate speech are mainly males; this shows the importance to involve boys and men in the process to counter online gendered hate speech.

So, it could be concluded that, online hate speech targeting women and girls is an extension of the structural gender-based violence in the country, which is perpetuated, not only by common citizens, the system, authorities and governmental institutions are part of it. Misogyny online speech cannot be treated as a separate issue from offline violence, otherwise it tends to be underestimated and not considered "real". Regulations of hate speech must be specifically provided by law, and any attempt to approach online gendered hatful expression must be accompanied by multiple strategies. In addition, there is an urgent need of statistics and information to take into consideration this issue. The Mexican state must combat violence against women in all its manifestations, this obligation is stablished in Article 2 of the CEDAW.[293] By not doing so, the state is violating international human rights law. Mexico is failing to protect women and girls' rights both, online and offline. The authority's inaction when dealing with online hate speech against women and girls can be interpreted as a subliminal message to society that it is tolerated, that Mexican women and girls could be target online without any consequences. "Nations that do not demand strong security and justice systems, within a framework of the respect of human rights, are condemned to live in a spiral of chronic violence and insecurity".[294]

[293] UN General Assembly Convention on the Elimination of All Forms of Discrimination Against Women (n 16).
[294] Juan Antonio Le Clercq Ortega and Gerardo Rodríguez Sánchez Lara (n 24).

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