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**STATE OF THE ART ABOUT ONLINE VIOLENCE
AGAINST WOMEN IN COLOMBIA**
AND THE LACK OF STRATEGIES TO COMBAT IT*

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State Actions to Counter Violence and Discrimination Against Women

The Colombian legal system made significant strides towards recognizing women's rights and overcoming the discrimination and violence women face in different areas of their lives. In this regard, it should be noted that Colombia is a signatory to the most important international and regional human rights treaties, including those that guarantee the women's rights.¹ Article 13 of the Colombian Constitution recognizes the right to equality and prohibits gender-based discrimination. It further establishes the obligation of the State to promote real and effective equality through affirmative actions. Article 43, for its part, guarantees equality of rights and opportunities for women and men, in addition to providing for the non-discrimination of women.

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* This analysis was conducted within the framework of the call by the UN Special Rapporteur on violence against women, Dubravka Šimonović, to collect inputs on the problem of digital violence against women, and was submitted on November 2, 2017.

¹ For example, the *Convention for the elimination of all forms of violence against women* (1979) or the *Inter-American Convention to prevent, punish and eradicate violence against women* (1994), known as the Belém do Par Convention.

The Colombian State has also shown significant progress in the development of laws that promote gender equality and safeguard women's rights. Examples include the *National Gender Equality Policy for Women* and the *2012 Comprehensive Plan for Ensuring Women a Life Free of Violence*. Further, it has

been diligent in the development of measures that aim to guarantee the women's right to a life free of violence in both the private and public spheres.²

Moreover, Colombian jurisprudence has reaffirmed that not only is there an obligation to recognize equality before the law, but also to the fulfillment of one's rights.³ This jurisprudence has been further developed through regulations affording recognition of historical and structural discrimination against women in the effective promotion of equality and the eradication of discrimination against women.

Violence Against Women: Disconnection Between Standards and Practices

Despite these legal developments, there is a significant gender justice gap. Many factors can explain this gap between standards and practices. These can be grouped as the persistence of sociocultural patriarchal schemes and the unequal power relations between men and women, structural problems that permeate the whole of society and its institutions.

Reviewing the rates of violence against women shows that the problem still lacks effective responses from the State. According to the National Forensic Institute statistics on violence from 2016, of 26,473 cases of domestic violence, 59% of the victims were women.⁴ In the last decade, there has been a case of domestic violence every hour, with women being the main victims and machismo one of the main triggers.

On violence between partners or ex-partners, statistics also show that it is women who bear the brunt: they are the victims in 86% of the more than half a million cases reported in 2016.⁵ Regarding femicide, the

² See, for example, the *Violence Against Women Law*, Law No. 1257 of December 4, 2008 and its regulations, or the law that creates the crime of femicide, Law No. 1761 of July 6, 2015.

³ See, for example, Supreme Court of Justice, Criminal Appeals Chamber, Ruling of September 23, 2009, Presiding Judge: Julio Enrique Socha Salamanca; Constitutional Court of Colombia (2008), Ruling T-496, Presiding Judge: Jaime Córdoba Triviño; Constitutional Court of Colombia (2011, November 8), Ruling T-843, Presiding Judge: Jorge Ignacio Pretelt Chaljub.

⁴ Instituto Nacional de Medicina Legal y Ciencias Forenses. (2017). *Forensis 2016. Datos para la vida*. Bogotá Colombia. Available at <http://www.medicinalegal.gov.co/documentos/88730/4023454/Forensis+2016+-+datos+para+la+vida.pdf/af636ef3-0e84-46d4-bc1b-abec71ac9fc1>.

⁵ *Ibid.*, p. 307.

Colombian organization Sisma Mujer estimates that a woman is murdered by her partner or former partner every 3 days, a 12% increase in this type of case since the previous year.⁶

Sexual violence also rages mainly against women: for each man assaulted, 5 women were victims of sexual

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violence.⁷ In terms of frequency, a woman is sexually assaulted every half hour.⁸ In the process carried out by the Victims Unit as part of the Colombian peace process, complaints have also been received from thousands of women who suffered gender-based violence during the more than five decades of armed conflict.⁹ This cursory look doesn't begin to assess the many forms of economic, political, and workplace violence suffered by women in Colombia.

⁶ Corporación Sisma Mujer. (2017, July 18). *Comportamiento de las violencias contra niñas y mujeres en Colombia a partir del informe Forensis 2016 del Instituto Nacional de Medicina Legal (INML-CF)*. Available at <http://www.sismamujer.org/wp-content/uploads/2017/07/Violencias-2016-A-partir-de-Forensis-18-07-2017.pdf>.

⁷ Instituto Nacional de Medicina Legal y Ciencias Forenses, *op. cit.* (note 4), p. 353.

⁸ Corporación Sisma Mujer. (2017, May 25). *Comportamiento de la violencia sexual contra niñas y mujeres en Colombia durante 2016. Del fin de la guerra a la erradicación de la violencia sexual contra las mujeres: un reto para la paz*, 12. Available at <http://www.sismamujer.org/wp-content/uploads/2017/05/Bolet%C3%ADn-25-de-mayo-de-2017-Del-fin-de-la-guerra-a-la-erradicaci%C3%B3n-de-violencia-sexual-against-women-a-challenge-for-peace.pdf>.

⁹ Unidad para la Atención y Reparación Integral a las víctimas. (n.d.). *Mujeres y conflicto armado*. Available at <https://www.unidadvictimas.gov.co/sites/default/files/documentobiblioteca/mujeres.PDF>.

Digital Violence Against Women

The figures above demonstrate the persistence of inequalities due to gender and the serious problem of violence against women, which have not been able to be corrected despite the body of legal provisions available in Colombia. An attempt to investigate digital violence against women, namely that is committed in digital environments, reveals a significant gap in available statistics. Without data the problem cannot be understood and characterized, and any policy, rule, strategy and/or action undertaken by the State will be misguided or fall short.

Current laws regarding violence against women do not yet contain strategies for addressing and controlling it in digital environments. This supposes a major challenge, since ICTs, especially the Internet, are becoming in a new field of tension for women. While it is true that

digital violence against women in digital environments replicates the dynamics and repertoires of violence in the offline world, the reality is that their impact can be more serious given the very nature of the Internet: violent content is easily and widely disseminated and shared among many people, plus they remain accessible for much longer after the initial incident.¹⁰

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Anonymity on the Internet is a problem as well, although it is not required for a woman to be a victim of digital violence, especially if one considers the context of domestic violence in digital environments, where the victim usually knows the perpetrator.

Some of its manifestations are, for example, cyberbullying through the spread of rumors, the publication of denigrating messages, the non-consensual distribution of intimate sexual content, the publication of personal information such as location, contacts, etc. (doxxing), sextorsion or blackmail with intimate image of the victim, threats of physical violence or death, etc. Its objective is none other than to damage the good name, credibility, and reputation a woman, to destabilize her and cause fear, domination, exercise control and surveillance, censorship, etc.

It can also be said that the causes behind digital violence against women are related to punishing behaviors that question or deviate from the “traditional” gender roles that are expected of a woman (e.g. confined to the domestic and private space, of modest, docile conduct, etc.). And, in that

¹⁰ Dickinson, J., Levin, E. & Pettalia, J.L. (2013). *Cyberbullying: Eliciting Harm Without Consequence. Computers in Human Behavior*. 29(6), pp. 2758–2765. DOI: 10.1016/j.chb.2013.07.020.

sense, there are groups of women more vulnerable than others: politicians, human rights defenders or activists, or advocates for the political and legal recognition of sexual and gender diversity, journalists, women belonging to historically discriminated groups (e.g. indigenous women, afrodescendants), etc. With this, we do not disregard the fact that any woman, even those who do not feel identified with any of these groups, can be subject to digital violence for the simple fact of being a woman. It should also be noted that this violence is mediated by other crosscutting factors (e.g. ethnicity, social class, sexual orientation, etc.).

Karisma Foundation, in part, corroborated the above in 2015 through a project where we worked with female journalists to characterize and understand the consequences of online violence that this group faces not only on account of their profession, but for the fact of being a woman.¹¹

One of the conclusions of this research is that digital violence is often underestimated, and the effects it has on the victim are often minimized by the authorities and/or by their immediate social surroundings –personal or in the workplace–. In fact, we could confirm that the attacks can materialize in the physical world (e.g. physical violence, changes in journalistic practices, loss of income, etc.). At other times –and these are not few– we observed psychological and emotional effects such as high degrees of anxiety and stress. It is worth noting that in many cases we established that one of the consequences was self-censorship: women who simply stopped expressing themselves online to avoid the wave of violence. Thus, we identified that the gender-based violence suffered by these women has had real consequences in their lives, which often go unrecognized and remain misunderstood by their social environment, the authorities, or the victims themselves.

¹¹ Toledo, A. (2016, February 24). *Misogyny on the Internet: Open-field bombing of Journalists* [blog post]. Bogota, Colombia: Fundación Karisma. Available at <https://karisma.org.co/misoginia-en-internet-bombardeo-a-campo-abierto-contras-las-periodistas/>.

In addition, through our work at the Karisma Foundation on digital security, privacy, and gender issues, we have been compiling cases of digital violence that range from the expression of domestic violence through the economic or physical control and surveillance of digital devices or electronic accounts (e.g. emails, social networks), to cyberbullying of feminist, lesbian, or trans women organizations or collectives, or any group that challenges the status quo, up to coordinated troll attacks aimed at silencing women.

Analysis of the Legal System *vis-à-vis* Digital Violence Against Women

In 2014, the Karisma Foundation commissioned an analysis of current legislation on violence against women and ICTs. The author acknowledges that there is no crime in the Colombian legal system that typifies digital violence against women, “that allows us to thoroughly analyze the strategies used by the aggressors and the consequences they cause for the victims.”¹² However, it suggests that it is possible to address this problem within the existing legal framework.

For example, it points out that, while there is no specific legal definition of digital violence against women in Colombia, one option is to consider digital violence as psychological violence, “because it implies a serious harm to a person’s mental and emotional well-being.”¹³ Moreover, we also believe that there are cases in which digital violence could even be considered sexual violence, especially when a woman’s body is symbolically assaulted for the attacker’s sexual satisfaction.

Given that there is no autonomous crime, in this analysis, the author identified some criminal offenses defined in the Criminal Code (CC) that may be applicable in cases of digital violence suffered by women:

¹² Castillo Vargas, E. (2014). *Violencia contra las mujeres y TIC (VCM y TIC)*. *Dokumentos*, 3. Available at <https://karisma.org.co/wp-content/uploads/2014/12/VCMyTIC.pdf>.

¹³ *Ibid.*

- Abusive access to a computer system (article 259), which defines as a crime access without consent to computer systems,
- Violation of personal data (article 269F), which typifies the disclosure without consent of personal data, and/or
- Sexual harassment (article 210A), which typifies the conduct of physical or verbal harassment with non-consensual sexual motives.

Although these crimes serve as a legal framework to combat digital violence against women, we shouldn't disregard their limitations. Abusive accesses to a computer system and the violation of personal data have been typified to "prevent cybercrime at the macro level, from a more corporate standpoint."¹⁴ Thus, they fail to fully adjust to the characteristics of a digital attack against a woman. The same applies to other crimes such as libel and slander (articles 220 and 221, CC) or crimes of discrimination (articles 134A-B, CC).

For example, cyberbullying occurs in different ways: physical threats or aggressive behaviors ranging from the spread of a rumor, the use of denigrating or pejorative language, sexual comments, to the dissemination of personal information of victims (e.g. location data, contact information, intimate images, etc.). Its objective is to produce anguish, destabilize the victim and harm her self-esteem. As already mentioned, when inflicted on a woman, gender stereotypes come into play, which condemn forms of expression that deviate from sociocultural norms. This aspect is not taken into account in the aforementioned crimes.

All of the above is compounded by a highly problematic reality: impunity. Women victims of violence, both online and offline, often fail to report it for fear of repercussions

¹⁴ Ibid., p. 7.

–for instance, to prevent confidential information (e.g. intimate images) from spreading further— or because they are unaware of their rights.

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But when a report is filed with the competent authorities, there is a high probability that the victim will be ignored or re-victimized. This is because there is no adequate protocol of action or basic understanding of technology by law enforcement or the judicial system. In these cases, the usual response that victims receive is that what happens on the Internet is not real, completely ignoring the fear that these acts provoke in the affected person. This outlook, without doubt, hinders the possibility of keeping adequate records or penalizing the perpetrators effectively, which could occur in those cases where their identity is known or can be discovered.

On the other hand, the digital platforms where much of this violence occurs exhibit many inconsistencies in the way they respond to complaints of digital violence, ranging from possibly blocking the aggressor's account or by removing the harassing or threatening content, to complete inaction by the platform or, paradoxically, the suspension of the victim's account as a result of complaints against her (a common strategy employed by the attackers). Oftentimes, this causes women victims to prefer to simply close their accounts or to do nothing, feeling there are no alternative but silence, which further violate their rights to freedom of expression or association. This, moreover, shows the problems of lack of transparency in the way platforms take measures against digital violence, the need to be clearer in which behaviors are not allowed, and their overall understanding of the problem.

As can be seen, the legal and judicial response is insufficient, and the government has not stepped up to the plate either. For example, the Ministry of Information and Communications Technologies (MinTIC, in Spanish) has launched the program En TIC Confío (wordplay meaning I trust you/ICTs), an initiative that seeks to teach how to use new technologies and the Internet in a responsible way, while raising awareness about their possible risks. Through educational content and awareness raising workshops, it deals with topics such as cyber-dependence, identity theft (phishing), harassment of minors (grooming), the dissemination of sexually explicit material of children and adolescents, cyberbullying, or the sending of sexual content (sexting).

Even though this is a governmental effort worth highlighting, it seems to us that it makes a gross mistake in framing the issue of sexting as a harmful and quasi-illegal behavior. In this sense, the program

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disregards the fact that sexting is nothing more than a way of expressing human sexuality in the digital age, as well as being part of the exercise of freedom of expression. Like any sexual expression, it has some associated risks, in this case, sextortion, damage to one's reputation, threats, domination, rape, etc. It is undeniable that women –youths and adults– are more exposed to these risks, because gender stereotypes intervene, especially those that deny the sexual enjoyment of women. However, the Government has preferred to approach the risk of this behavior by criminalizing it, and even blaming the victims themselves, instead, for example, of focusing its efforts on talking about the

non-consensual use of sexually explicit images, and the associated sexual stereotypes. This is confirmed in the narrative that it uses in its content on the subject:

1. Sexting could be illegal. If someone takes and sends photos of a minor who is nude or in sexually suggestive acts, he/she incurs in the crime of producing and distributing child pornography: even if it is the youth him/herself who takes them. It should be noted that, in some countries, users could be accused of possessing illegal material just by having these images stored on their devices (our underlining).¹⁵

This narrative is repeated in all the contents created by the *En TIC Confío* program when it deals with the subject of *sexting*.

Although so far we have identified that the legal and/or governmental response can be considered ineffective and lacking a gender-based approach, it is also worth noting that there have been some legislative initiatives aimed at limiting the occurrence of harassing or hate messages. These legal efforts have also failed to confront the inherent tension involved in controlling the free flow of information with the right to freedom of expression. Let's see an example.

The most recent legislative attempt is a bill that seeks to prohibit the creation and use of anonymous social media accounts to insult, slander, violate the personal and family privacy of another person, or to spread false news.¹⁶ Although it seems to be an initiative favorable to the fight against digital violence, we believe that, in the end, it violates the Political Constitution of Colombia, since it openly supports censorship, it could violate the right to privacy, and it criminalizes a behavior that is plainly

¹⁵ 5 keys of sexting. (2016, February 17). Available at <https://www.enticconfio.gov.co/5-claves-del-sexting>

¹⁶ Bill will seek to combat false accounts in social networks. (2017, July 24). *El Espectador*. Available at www.elespectador.com/noticias/politica/proyecto-de-ley-buscara-combatir-cuentas-falsas-en-redes-sociales

legal: anonymous speech, a right that allows us to be who we are or say what we think. In addition, it could give way to promoting the censorship of uncomfortable content for certain groups such as issues related to sexual diversity, women's rights or even for political reasons. In short, this bill runs the risk of unduly restricting freedom of expression, and that is why we believe that it is indefensible.

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Recommendations

While it replicates traditional violence, the scope of digital violence against women is little known and understudied. In addition, it has causes rooted in a patriarchal system that, as a society, we have not yet been able to transform. In this sense, and without intending to make an exhaustive list, we present below a series of general recommendations to effectively combat violence against women in digital environments:

- Diagnosis and analysis of digital violence against women. We believe that if States begin to document this information, keep records of these incidents and carries analyze data, it will be possible to develop more effective actions (e.g. policies and laws on prevention and education, etc.) to address this problem. This would also allow for a more effective examination of the relationship of these possible actions with rights such as freedom of expression, privacy, or free association. The analysis should also consider differential approaches by age, ethnicity, and other factors.

- Awareness and education programs with gender-based and differential approaches. This is essential for society to learn to make responsible and safe use of the Internet, to understand the technologies we use and the dynamics they generate in the digital environment. In addition, it would be a new opportunity to raise awareness and promote gender equality.

- Training of competent authorities in how to respond to these cases and development of action protocols. Members of the police, the prosecution, the courts, and health providers should be trained in a gender-based approach, in how these technologies work, and in the overall issue, so that they are in a better position to act in the face of a case of digital violence against a woman without taking part in her re-victimization. In this regard, we also believe it important that action protocols are developed for these cases.

- Promotion of dialogue between the public sector, the private sector –Internet intermediaries in particular–, civil society, academia and the technical community. This dialogue is important for the exchange of experiences and concerns that may inform the development of possible solutions or partnerships to combat digital violence against women.