



# Online Gender Violence

CONSIDERATIONS PARA EL DEBATE  
PÚBLICO Y PARLAMENTARIO

## **Online Gender Violence**

### **Considerations for the Public and Congressional Debate**

ADC

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## **Executive Summary**

At the end of 2021, the Argentinian Ministry of Women, Gender, and Diversity (MMGyD) announced the launch of a participatory and federal process to reform Law No. 26,485 on comprehensive protection to prevent, punish and eradicate violence against women in the environments in which they develop their interpersonal relationships. As a result, a new bill is expected to be drafted in November 2022. This situation offers an unparalleled opportunity to debate extensively on the digital dimension of gender-based violence and its possible inclusion in the regulatory update.

Thus, ADC here presents a series of thoughts and recommendations on the question to contribute to the public debate on the strategies for coping with it, building around four major challenges: obtaining engagement from government in the formulation of responses that prevent and fight online gender-based violence; maintaining the balance between different rights in each of these responses; assessing the role of Internet intermediaries; and establishing a definition of the problem and its scope.

In certain cases, we draw upon legal antecedents, congressional proposals, public policies, and court cases to illustrate our concepts, with no intention, however, to be understood as their thorough and systematic review. The report closes with a recap of all that is set forth throughout the text.

## **Introduction**

On November 25, 2021, the Argentinian Ministry of Women, Gender, and Diversity (MMGyD) announced<sup>1</sup> the launch of a participatory and federal process to reform Law No. 26,485 on comprehensive protection to prevent, punish and eradicate violence against women in the environments in which they develop their interpersonal relationships. The initiative seeks to adjust the norms to the current needs and demands regarding new types of abuse, adopt the diversity perspective and provide mechanisms to strengthen the role of government at its different levels, as well as social organizations in the territorial approach to this problem. As a result, a new bill is expected to be drafted in November 2022.

This situation offers an unparalleled opportunity to debate extensively on the digital dimension of gender-based violence and its possible inclusion in the regulatory update. As a contribution to that purpose, the Association for Civil Rights (ADC) prepared this report with considerations that we deem relevant for the public and parliamentary debate on the subject.

ADC is a civil society organization that has been striving for the promotion and defense of fundamental rights in Argentina<sup>2</sup> and Latin America<sup>3</sup> since 1995, paying special attention to people and social groups in vulnerable situations. During the last decade, technological change has brought unique risks for the access and exercise of a diverse array of rights, and, consequently, ADC has decided to incorporate a digital perspective into its activity.

In 2017, we reported on the state of online gender-based violence in Argentina and Latin America to the United Nations Special Rapporteur on

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<sup>1</sup> The process of reforming Law 26.485 on Integral Protection begins (November 25, 2021).

www.argentina.gob.ar. Retrieved March 23, 2022 from

<https://www.argentina.gob.ar/noticias/comienza-el-proceso-de-reforma-de-la-ley-26485-de-proteccion-integral>

<sup>2</sup> Association for Civil Rights (ADC). (November, 2017). *Situation of online violence against women in Argentina. Report submitted to the United Nations Special Rapporteur on violence against women.* <https://adc.org.ar/wp-content/uploads/2019/06/ADC-violencia-contra-mujeres-en-AR-ONU.pdf>

<sup>3</sup> Edited by Paz Peña Ochoa, on behalf of and with the collaboration of Latin American organizations (November, 2017). Report on the situation in Latin America on gender-based violence exercised through electronic means. [https://adc.org.ar/wp-content/uploads/2019/06/Latin-American-Report-on-Online-Gender-Violence-final\\_v2.pdf](https://adc.org.ar/wp-content/uploads/2019/06/Latin-American-Report-on-Online-Gender-Violence-final_v2.pdf)

Violence against Women. For this purpose, we provided insight into the local development of legislation, public policies, and cases of online attacks against women.

Stemming from these initial observations, and others arising later, ADC here presents a series of thoughts and recommendations on online or digital gender violence (also called cyber-violence) to contribute to the public debate on the ways of coping with it. The paper will be built around four major challenges, which we judge that are key to an effective approach to its treatment:

- 1. Obtaining engagement from government in the formulation of responses that prevent and fight online gender-based violence**
- 2. Maintaining the balance between different rights in each of these responses**
- 3. Assessing the role of Internet intermediaries**
- 4. Establishing a definition of the question and its scope.**

In certain cases, we draw upon legal antecedents, congressional proposals, public policies, and court cases to illustrate our concepts, with no intention, however, to be understood as their thorough and systematic review. The report closes with a recap of all that is set forth throughout the text.

**Challenge no. 1: Obtaining engagement from government in the formulation of responses to prevent and fight online gender-based violence**

Gender-based aggression is a complex issue that has taken on new dimensions due to the spread of the Internet and IT technologies. The sexism prevalent in our society and culture has expanded to the digital sphere through novel forms of exercise and manifestation. ADC considers, however, that this does not constitute a new and separate phenomenon altogether, but a particular form of the customary gender violence with unique traits and challenges for its treatment.

In 2018,<sup>4</sup> the UN Special Rapporteur on Violence against Women examined gender-based violence channeled through IT technologies and the virtual sphere from a human rights perspective and noted: "At this stage of the development of information and communications technology (ICT), different forms of online violence against women and girls should be tackled through legislative or other measures that combat and prevent such violence, while respecting the right to freedom of expression, including the access to information, the right to privacy and data protection, as well as women's rights that are protected by the international human rights framework."

Online gender-based violence affects the dignity and fundamental rights, widely recognized in different international instruments,<sup>5</sup> **of** women, children, and gender dissidents.

Nonetheless, there is still a regulatory vacuum in our domestic legislation due to the lack of a comprehensive approach that admits the specific type of violence taking place within the virtual sphere. On the other hand, several legislative microsystems refer to rights that may come into play but do not combine the gender diversity and digital perspectives. Examples of such microsystems are Data Protection Law No. 25,326, Intellectual Property Law No. 11,723, or articles 51, 52, 53, 55, 1170, and 1171 of the Civil and Commercial Code, on personal rights, restraining orders, and the prevention and remediation of damage, among others.

The fact that cyber violence against women and girls is not addressed by the norms in force has repercussions in several aspects, among them, the lack of official statistics on the matter. The data collected by the 144 gender-violence counseling hotline do not specify online forms of harassment as they rely on

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<sup>4</sup> UN Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonovi (July, 2018). *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.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/61/PDF/G1818461.pdf?OpenElement>

<sup>5</sup> Among them, the American Convention on Human Rights, the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and the Sexual Orientation and Gender Identity in Human Rights Law, also known as the Yogyakarta Principles.

those described in the current law on comprehensive protection to prevent, punish and eradicate violence against women.<sup>6</sup>

In recent years, several civil society organizations in Argentina have been active in raising awareness of online gender-based violence as a real threat with serious implications on those who suffer it. Among them are the *Fundación Activismo Feminista Digital* (Online Feminist Activism Foundation) and the *Asociación Civil Comunicación para la Igualdad* (Communication for Equality Civil Association).

These efforts found an echo in the drafting of several Congress bills related to the topic, either through the reform of the Criminal Code or Law No. 26,485 itself, mostly with compensatory and/or punitive approaches.

Although these initiatives, considered separately, achieved varying degrees of success, as a whole they evidenced the need for a comprehensive public response against this new form of aggression.

The announced reform process of Law No. 26,485 can serve as a means to finally attain this official commitment and outline the kind of measures that should be taken.

Here it is worth highlighting the importance of preventive actions when dealing with the matter, in particular those related to digital security,<sup>7</sup> understood as the resources employed to avoid and reduce online risks and those that may arise offline.

In this sense, we stress that measures aimed at promoting digital security should enhance people's well-being rather than remediating the damages. This is achieved by placing people at the center of the initiatives, offering theoretical and practical means that enable them to make their risk assessments and decide how to handle them, instead of concentrating on the consequences of the cyber-harassment itself.

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<sup>6</sup> 144 Crisis line of the Argentinian Ministry of Women, Gender and Diversity (July 13, 2021). Argentina.gob.ar. <https://www.argentina.gob.ar/generos/linea-144>

<sup>7</sup> Association for Civil Rights (ADC) (December, 2020). Digital safety for the prevention of online gender-based violence. Retrieved March 23, 2022 from <https://adc.org.ar/2020/12/18/seguridad-digital-para-la-prevencion-de-violencia-en-linea-por-razones-de-genero/>

The situations arising from online gender-based violence feed back into the inequalities in access to the digital world. Therefore, raising standards for the protection of women, girls and dissidents also contributes to narrowing the digital divide. In addition, the recognition of a specific cyber-dimension of gender-based violence in a comprehensive regulation can serve to coordinate institutional efforts and public policies, which so far appear to be disjointed and scattered.

For example, the National Action Plan against online gender violence (2020-2022)<sup>8</sup> developed by the MMGyD recognizes the role of IT technologies in providing solutions but fails to consider them as a specific means through which gender-based aggression happens as well. Likewise, the National Plan for Equality in Diversity (2021-2023),<sup>9</sup> developed by the same ministry, addresses the reduction of the technological gender gap without expressly linking it to online violence. The Argentinian Ministry of Justice and Human Rights also has a program called "Con Vos en la Web" (With You on the Web),<sup>10</sup> offering information and guidance on different problems related to the virtual sphere, without specifically naming gender-based violence. It is only referred to through other related issues such as sextortion.<sup>11</sup>

The National Bureau against Discrimination, Xenophobia, and Racism (INADI) has an Internet Discrimination Observatory, as part of its Digital Inclusion Program. This agency includes online discrimination against women and dissidence among its concerns and provides for a claims procedure in virtual

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<sup>8</sup> Argentinian Ministry of Women, Gender and Diversity (June, 2020). *National Action Plan against gender-based violence (2020-2022) For the prevention, assistance and eradication of all forms of gender-based violence.*

[https://www.argentina.gob.ar/sites/default/files/plan\\_nacional\\_de\\_accion\\_2020\\_2022.pdf](https://www.argentina.gob.ar/sites/default/files/plan_nacional_de_accion_2020_2022.pdf)

<sup>9</sup> Argentinian Ministry of Women, Gender and Diversity (May, 2021). *National Plan for Equality in Diversity (2021-2023).*

[https://www.argentina.gob.ar/sites/default/files/plan\\_nacional\\_de\\_accion\\_2020\\_2022.pdf](https://www.argentina.gob.ar/sites/default/files/plan_nacional_de_accion_2020_2022.pdf)

<sup>10</sup> Argentinian Ministry of Justice and Human Rights (December 9, 2021). *Con Vos on the Web.* Argentina.gob.ar. Retrieved March 23, 2022 from <https://www.argentina.gob.ar/justicia/convosenlaweb>

<sup>11</sup> Defined as a form of blackmail or extortion in which a person is threatened with the disclosure of their intimate sex images and videos.

format<sup>12</sup> that can be activated as long as there has been a previous complaint made "through the internal channels offered by the social media platform or website where you suffered discrimination" and if the content in question has not been removed. This is a necessary step for the office to begin a course of action that should end in the removal of the offensive material or the cancellation of the accounts producing it.

Finally, the Media and Communications Public Defender's Office (*Defensoría del Pùblico de Servicios de Comunicación Audiovisual*) has begun monitoring online violent political speech against female pre-candidates in Buenos Aires, organized workshops on the subject and recently published a book, *Violencia digital por motivos de géneros en América Latina. Ataques contra periodistas, políticas y activistas en las redes sociales* (Online Gender-based Violence in Latin America. Attacks against journalists, politicians and activists in social media).<sup>13</sup>

## **Challenge no. 2: Maintaining a balance between different rights in the responses to prevent and fight digital gender-based violence**

Nowadays, IT technologies and the Internet extend to almost all areas of daily life. The lockdown measures dictated to contain the spread of the COVID-19 pandemic revealed the benefits that digitalization can represent for the access to and the exercise of several human rights, as well as the threats facing them.

Global interconnectedness, transnationality, and spatial dispersion, among other characteristics of the digital realm, pose unique challenges for the treatment of the problems that take place within it. One of them is to preserve the balance of rights in the measures to be adopted against situations of

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<sup>12</sup> Argentinian Bureau against Discrimination, Xenophobia and Racism (INADI). (July 16, 2019). Reporting discrimination on the Internet. Argentina.gob.ar. Retrieved March 23, 2022 from <https://www.argentina.gob.ar/denunciar-discriminacion-en-internet>

<sup>13</sup> Media and Communications Public Defender's Office (2022). *Online Gender-based Violence in Latin America. Attacks against journalists, politicians and activists in social media*. <https://defensadelpublico.gob.ar/wp-content/uploads/2022/03/violencia-digital-por-motivos-de-generos-1.pdf>

online gender-based violence and discrimination. The attempts to regulate online hate speech and the heated discussions around them are the situations that best represent the validity and dimension of this challenge.

This paper does not intend to delve deeply into the subject matter of online hate speech on social media, since ADC has already published a research study<sup>14</sup> dedicated exclusively to the subject. It is enough to point out that this is one of the most controversial issues of Internet regulation due to the ease with which IT technologies have allowed the massive spread of derogatory and insulting comments and behavior, and as a consequence, people in vulnerable situations are exposed to attacks, humiliation and other affronts to their dignity. On the other hand, it is acknowledged that excessive regulation puts freedom of expression at risk since a vital part of this guarantee is to tolerate remarks that may be hostile or annoying.

There is broad consensus that freedom of expression does not cover hate speech. Different, however, is the case of offensive, shocking or disturbing discourse, which must be protected despite the discomfort it may generate. The main difficulty lies in drawing the line between the two without falling into extreme bias, leading to inconsistent results. Within cyberspace, these decisions are made by the platforms through their content moderation policies and are constantly the subject of dispute, either because they restrict more than is necessary or else, they are too permissive, allowing content that should be removed.

ADC believes that public initiatives dealing with online gender-based violence should take special care to avoid infringing fundamental rights such as freedom of expression and protest, as well as access to information, among others. This applies especially to proposals that delegate responsibility to internet intermediaries for third-party content, as this may result in greater incentives to eliminate more content than necessary.

One example of this type of measure with potential adverse consequences is Draft Law No. 569 of the National Senate (2021),<sup>15</sup> which aims to ensure the

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<sup>14</sup> Association for Civil Rights (ADC). (May, 2020). *More than words. Seeking consensus to define hate speech.* <https://adc.org.ar/wp-content/uploads/2020/07/ADC-More-than-words-7-2020.pdf>

<sup>15</sup> Draft Law on Protection against Abusive Publications on the Internet (S 569-21)- Argentinian Senate (2021). <https://www.senado.gob.ar/parlamentario/parlamentaria/444701/downloadPdf>

protection of rights against abusive social media and website publications made through a series of corrective actions to be applied by Internet Service Providers. Although the project lacks a gender and diversity perspective and disregards the phenomenon of sexist violence in the online sphere, it is the most obvious example of the above-mentioned obligation of intermediaries "...to create a permanently visible email account or online form on their websites, in order to receive claims or reports of abusive publications and take prompt corrective action to delete and prevent its further dissemination through their platforms, services and tools, under penalty of being charged as participants in legal proceedings resulting from such abusive publication". There are other motions suggesting more proportionate courses of action, such as Draft Law No. 278 of the National Senate (2021),<sup>16</sup> which provides for a court order to remove content. This initiative has the favorable opinion of the Women Committee and seeks to include online gender-based offenses in Law No. 24,865 as a particular instance in which violence against women is exercised.

Although its definition is limited to the non-consensual dissemination of intimate images, it compels "the owners or administrators of digital platforms to delete real or apocryphal sex photos or videos exhibited without consent from the women affected in order to safeguard their integrity, dignity, intimacy and private life" as an urgent preventive measure of the judicial process. Another type of action to combat online gender violence that may pose a risk to other rights is those that seek to criminalize the mere exercise of anonymity in the virtual sphere. Indeed, online anonymity is a means to exercise freedom of expression, individual autonomy, and privacy, and its possible abuse cannot be an argument to suppress it. Anonymity on the Internet and social media allows users to have their names and identities go unknown. Even so, anonymous accounts are not always managed by real people or for the same purposes.

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<sup>16</sup> Draft Bill amending Law 26.485 on Comprehensive Protection to prevent, punish and eradicate violence against women, to include digital or online violence (S 278-20) Argentinian Senate (2020) <https://www.senado.gob.ar/parlamentario/parlamentaria/430193/downloadPdf>

Although namelessness online and/or the use of pseudonyms (pseudonymity) are expressly recognized as rights in our country, they are banned in others.<sup>17</sup> It must be remembered that the Argentinian legal system admits the principle of permissibility, namely, “everything which is not forbidden is allowed.” The reasons why someone may choose to use online confidentiality may be contextual, circumstantial, or personal. If we conceive the Internet as an extension of the civic space, in an authoritarian scenario, for example, anonymity is a guarantee of the right to protest online. In other words, it can elude prior censorship and ensure the right to freedom of expression. Likewise, the use of pseudonyms has allowed many women and dissidents to publicly denounce situations of sexist violence through the Internet and social media.

Thus, any policy attempting to force people to reveal their true identity online, or establishing requirements that constrain their confidentiality, is likely to produce the opposite effect of the goal intended.<sup>18</sup>

### **Challenge no. 3: Assessing the role of Internet intermediaries in dealing with online gender-based violence**

The online world as a transnational and interconnected sphere is sometimes frictional with the various domestic legal systems it crosses. This tension between national laws and the cross-border nature of the digital infrastructure tends to be resolved through the self-regulation of intermediaries, operated by private big tech firms.

This particular form of regulation has been under discussion for some time: it usually represents an asset since it avoids the interference of governments with authoritarian tendencies that threaten freedom of expression and the right to protest online. However, the situation may be reversed and become a

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<sup>17</sup> For example, the secrecy of journalistic sources in the Constitution, Art. 43 and Law No.18,248, Art. 23 for name registration of natural persons.

<sup>18</sup> Association for Civil Rights (08-20-27). Haters, trolls, bots, and anonymity: Separate issues? adc.org.ar. Retrieved March 23, 2022. <https://adc.org.ar/2020/08/27/haters-trolls-bots-y-anonimato-asuntos-separados/>

setback for the same reason, as Internet companies are not responsible for the user-generated content posted on their platforms.

Indeed, they take liability for setting the terms and policies of their use and the mechanisms of their operation. From this equivocal situation arises the challenge of determining the role of Internet intermediaries regarding online gender-based violence.

Internet intermediaries can be defined as all those entities that facilitate transactions between third parties on the Internet. In the report titled, "Fostering Freedom Online: The Role of Internet Intermediaries," the United Nations Educational, Scientific and Cultural Organization (UNESCO) identifies three types of business-operated intermediaries: Internet service providers (ISPs), search engines, and social media platforms.

These companies establish community standards that determine what content and behavior will be banned, the sanctions that will be applied, and the appeal mechanisms that users have if they believe a decision to be wrongful.

Generally, community standards and moderation policies are presented in association with the terms of use, which must be accepted to access a platform. However, these terms are becoming ever more lengthy and obscure, making them impossible to read carefully, and even more so, to keep abreast of any changes that occur.

These rules, policies, and terms of use lack a cross-cutting gender and diversity perspective in many of the platforms, which is revealed when someone seeks to report gender-based violence and comes across many barriers to do so. In addition to this, there are obstacles to obtaining accurate information about the criteria, procedures, and deadlines for dealing with such claims. Furthermore, companies tend to export cultural criteria from their countries of origin when designing the rules, omitting the local contexts in which they operate, which are key to offering effective responses to any problem.<sup>19</sup>

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<sup>19</sup> Asociación para el Progreso de las Comunicaciones (Association for Progress in Communications) (2020) *Declaration on Facebook's content moderation policies*.

<https://www.apc.org/es/pubs/declaracion-sobre-las-normas-internas-de-facebook-para-la-moderacion-de-contenidos>

Internet intermediaries play a central role in the fight against online gender-based harassment, both as part of the solution and sometimes, as part of the problem. They can take immediate steps to improve their terms of use and modes of operation to reduce such violence when committed by third parties, and they can also stop carrying it out through their own policies, such as when women and gender dissidents' bodies are censored with little transparency, based on arbitrary parameters.<sup>20</sup>

Online gender violence is an issue that has reached the judiciary, presenting cases in both criminal and civil, and family courts. In this sense, whether they are ordinary or federal, of first instance or appeals, in the capital or the interior of the country, the legal system faces a challenge due to the complexity of the subject and the recurring presence of this new actor in the scene: the mentioned Internet intermediaries.

As regards civil court self-enforcing or protection measures within Law No. 26,485, it is worth mentioning the decision in Formosa,<sup>21</sup> in which a duly accredited case of harassment reported by a woman against her male ex-partner, together with threats of non-consensual intimate image dissemination, led to the following provision related to online violence: "a) To order and urge the aggressor to refrain from publishing photos and/or videos and/or comments about Ms.... ..., her husband, children, and family in Facebook accounts created in her name and/or any other computer and/or graphic media or social media platform in general. b) Order Facebook Argentina S.R.L. to immediately remove all content or data referring to the accounts identified as "la puta de chango más" and/or any other publication identifying the complainant, and henceforward, refrain from enabling the use of links, blogs, forums, groups, fan sites that insult, offend, attack, violate or undermine the personal privacy of the complainant, all under penalty of law."

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<sup>20</sup> Association for Civil Rights (August, 2021) espaciocivicoenlinea.adc.org.ar. Retrieved March 23, 2022. <https://espaciocivicoenlinea.adc.org.ar/moderacion-de-contenidos-poca-transparencia-en-la-censura-de-cuerpo/>

<sup>21</sup> Family Court of Formosa, February 17, 2017, "T., A. E. c. L., C. M. s/ violencia familiar (domestic violence)", SAIJ: FA17250000.

## **Challenge no. 4: Establishing a definition and scope of online gender-based violence**

The digital dimension of violence against women has become more visible in recent years; yet, there is still no unequivocal definition of its scope. Reaching an approach that describes online gender-based violence which gathers broad consensus is another great challenge to overcome for its effective treatment. With the intent to contribute to this complex task, first, we present some of the conceptual definitions formulated so far, and then, we seek to identify convergent aspects in this respect.

In 2018, the United Nations Special Rapporteur on violence against women and girls stated<sup>22</sup> that in its online form, it "extends to any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately."

According to UN Women,<sup>23</sup> "online or digital violence against women is any act of violence committed, assisted or aggravated by the use of information and communications technology (cell phones, Internet, social media, video games, text messages, emails, etc.) against a woman because she is a woman." In addition, the following figures are incorporated into the definition:

- Cyberbullying: sending intimidating or threatening messages.
- Sexting: sending messages or photos of explicit content without permission from the recipient.
- Doxing: publishing private or identifying information about the victim.

At the end of 2021, the Inter-American Committee against Terrorism (CICTE) and the OAS (Organization of American States) Inter-American Commission

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<sup>22</sup> UN Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović (July, 2018). *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.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/61/PDF/G1818461.pdf?OpenElement>

<sup>23</sup> UN Women (n. d.). Frequently asked questions: Types of violence against women and girls. Retrieved March 23, 2022, from <https://www.unwomen.org/es/what-we-do/ending-violence-against-women/faqs/types-of-violence>

of Women (CIM) launched the publication<sup>24</sup> Online Gender-Based Violence against Women and Girls: Guide of Basic Concepts, Digital Safety Tools and Response Strategies.

The document recognizes the difficulty in formulating a concept of a phenomenon that is in constant change, providing a descriptive list of its basic characteristics instead:

- It is not a new occurrence. It happens within a context of gender-based discrimination and systemic violence against women in all areas of life.
- It is not disconnected from the violence that takes place offline: it is part of a continuum of multiple, recurring and interrelated manifestations of violence against women and girls that now flows in the online-offline world and cuts across it.
- It entails diverse human rights violations against women and girls.
- It is a dynamic expression that encompasses diverse violent practices facilitated or reconfigured by information and communication technologies (ICTs).
- It causes victims psychological, physical, sexual, and/or economic harm and suffering, and affects family, society, and the world at large.

The document presents a descriptive guide of the online behaviors and attacks facilitated by ICTs that could be considered specific forms of violence against women and girls based on their gender.

At the national level, a 2018 court sentence<sup>25</sup> introduces online gender-based violence in its arguments to give an adequate response to the following events narrated by a victim:

- Her ex-partner was putting their son's psycho-physical well-being at risk by sending him obscene remarks about his mother through phone messages, including an image showing explicit content.

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<sup>24</sup> Organization of American States (OAS). (2019). Combating Online Violence against Women. A Call for Protection. <https://www.oas.org/en/sms/cicte/docs/Guide-basic-concepts-Online-gender-based-violence-against-women-and-girls.pdf>

<sup>25</sup> Family Court no. 5 of Cipoletti, Río Negro, "P. M. B. S/ INCIDENTE DENUNCIA POR VIOLENCIA DE GÉNERO (LEY 26485)" (report of gender-based violence incident, Law 26485) May 7, 2018

- Her ex-partner was sending private intimate photos of hers to her co-workers and third parties, also posting hostile, aggressive, and insulting comments, offending and damaging her morale.
- Her ex-partner spread erotic photos of hers without her consent, including invitations to share such content with other contacts and Facebook friends.

The ruling mentions online gender-based violence as a "novel form of traditional gender violence, with specific features that render it independent, yet still replicating a gender-based hierarchy of power between the aggressor and his victim, adjusting it to the new reality of digital communications, which include social media, instant messaging, and others, and that affect the woman in her moral and emotional integrity, leaving her exposed to friends, acquaintances and strangers."

It then points out that, as happens in the case, a publicly accessible social media platform is used to assert dominance over the victim, damaging her reputation and establishing a type of psychological and moral pressure that is detrimental to her well-being. It continues stating that this exercise of gender-based violence through the dissemination of obscene material on social networks exceeds the private sphere and goes viral, thus perpetuating the situation of violence. It concludes that machismo has found a new form of control and humiliation of women in the use of ICTs and social media.

In 2021, in what became the first case<sup>26</sup> of conviction for non-consensual dissemination of intimate images in the country, a court in the province of La Rioja sentenced a man to five years imprisonment, holding him criminally liable for the offenses of minor injuries aggravated by kinship and coercion in real concurrence (Criminal Code articles 89, 92, 149 bis, second paragraph, and 55), ruling<sup>27</sup> the act as one of Violence Against Women (Law 26.485, articles 3, 4 and 5; Province Law 8561/2009).

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<sup>26</sup> Página 12 (June 11, 2021). *First trial for "revenge porn": 5 years of effective imprisonment for disseminating intimate photos*. Retrieved March 23, 2022, <https://www.pagina12.com.ar/347329-primer-juicio-por-pornovenganza-5-anos-de-prision-efectiva-p>

<sup>27</sup> Guilty verdict, imprisonment, minor injuries, coercion, real concurrence, appreciation of evidence, WhatsApp, harassment or mistreatment, psychological damage. summary of ruling (July, 2021). <http://www.sajj.gob.ar/sentencia-condenatoria-prision-lesiones-leves-coaccion-concurso-real-apreciacion-prueba-whatsapp-hostigamiento-maltrato-dano-psiquico-su90001920/123456789-0abc->

The perpetrator and his victim had been in cohabitation, smoothly at first but gradually escalating in aggression. In this context, the abuser engaged in "coercion" against his partner by forcing her to continue the relationship against her will, warning that he would disclose "intimate photos and videos" if she attempted to end it.

The threat was carried out through a WhatsApp group, distressing the victim's mental health. The injuries inflicted were considered aggravated on grounds of gender-based violence.

Criminal threats have been typified as one of the possible offenses encompassed by online gender-based violence, with precedents such as the decision of the Seventh Court of Appeals in Criminal and Correctional Matters<sup>28</sup>, who confirmed the charges against a violent male by considering the repeated electronic messages sent to a woman as evidence of a possible crime. In such messages, he threatened to post her intimate photos on Facebook and Whatsapp to force her to meet him personally. The harassment included the creation of false Facebook profiles under her name in which she appeared to be offering sex, as well as the publication of YouTube videos with her image.

Finally, it is worth mentioning Draft Law No. 4157, introduced in the Lower House of the National Congress (2021),<sup>29</sup> which seeks to protect women's rights and assets online, their development and permanence in the cyberspace, as well as their dignity, identity, and reputation. The norm

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[0009soiramus?&o=9&f=Total%7CFecha%5B50%2C1%5D%7CEstado%20de%20Vigencia%5B5%2C1%5D%7CTema/Derecho%20penal/concurso%20de%20delitos%7COrganismo%5B5%2C1%5D%7CAutor%5B5%2C1%5D%7CJurisdicci%F3n%5B5%2C1%5D%7CTribunal%5B5%2C1%5D%7CPublicaci%F3n%5B5%2C1%5D%7CColecci%F3n%20tem%E1tica%5B5%2C1%5D%7CTipo%20de%20Documento/Jurisprudencia&t=1954](#)

<sup>28</sup> CNA Criminal and Correctional Chamber no. 7, June 7, 2019, "G. J., H. D. s/procesamiento - amenazas coactivas." (indictment - coercive threats)

<sup>29</sup> Draft Bill amending Law No. 26.485, for Integral Protection to prevent, punish and eradicate violence against women, in order to add digital and electronic violence. Digital Literacy. Derechos Digitales, (D 4157-21) Argentinian House of Representatives (2021)  
<https://www4.hcdn.gob.ar/dependencias/dsecretaría/Periodo2021/PDF2021/TP2021/4157-D-2021.pdf>

proposes to amend Law No. 26,485, establishing online harassment against women as a type of gender violence carried out through electronic means. In the mentioned draft law, online violence against women is defined as one that "affects her dignity by damaging one or more of her digital assets and/or rights, such as reputation, freedom, existence, domicile, privacy and digital inclusion, or affecting her access and/or use of ICTs, as well as her development and permanence in cyberspace. It will also be considered in cases which affect the cyber-security of the equipment, platforms, applications and all the techno resources used by a woman for her personal, professional, commercial and recreational development, with obvious purposes to control her person, as well as in cases in which her online identity is directly infringed by the exercise of violence against women in any of its forms".

In turn, it defines electronic violence as that which is exercised through the use or assistance of ICTs, violating not exclusively a woman's online rights but all those protected by the current regulations, including the ones established before the digital era.

Given what has been presented so far, we can identify certain traits that are common to all the conceptualizations presented and can help us reach a consensus to define it. Namely, that online gender-based harassment:

- is one of the forms in which male violence can occur;
- is committed, assisted, or aggravated through the use of ICTs, exclusively or in part;
- affects the dignity of those suffering it by infringing one or more of their rights in and through the virtual environment;
- attacks the integrity of persons and is likely to cause psychological, sexual, economic, and emotional harm, among others;
- can have social and collective impacts;
- encompasses a variety of practices that emerge and are dynamically reconfigured.

All this considered, we deem that formulating a definition of the problem and its scope will imply attempting complementary measures to be carried out by the enforcement authority of Law No. 26,485, aiming to:

- develop tools for the detection and identification of the different forms taken by online gender-based violence;

- conduct reports and build statistics that determine the extension of the problem and assess the actions taken so far;
- raise awareness of the problem among the general public;
- train court staff to deal with online gender-based violence cases and avoid re-victimization;
- create protocols for action and provide the necessary instrumental resources for the care of the victims of online gender-based violence;
- improve access to justice for women and dissidents, for example, through free and specialized legal representation in cases of online violence.

## **Conclusions**

The following is a summary of the considerations made by ADC to contribute to the public and congressional debate on online violence against women and dissidents:

- Gender-based aggression is a complex issue and the spread of digital technologies and the Internet create novel forms of its expression. The macho violence present in our culture and society has extended to the virtual sphere, giving the phenomenon a new dimension. Hence, gender-based harassment exercised through electronic means indeed has traits of its own and poses challenges for its particular approach, but is not a separate issue from gender violence on the whole.
- Online gender violence affects the dignity and fundamental rights of women, children, and dissidents.
- There is still a regulatory vacuum at the domestic level due to the lack of comprehensive legislation against gender violence that admits its online variant as a type and/or modality, which has repercussions in several aspects, namely, the absence of official figures in this regard. Instead, different legislative microsystems refer to different rights that may come into play but do not combine the gender diversity and digital perspectives.
- The announced reform process of Law No. 26,485 can serve as a means to finally attain this official commitment and outline the kind of measures that should be taken.
- Preventive measures to address the problem are vital for its effective treatment, especially those related to cyber-security.

- The acknowledgement of this type of violence within a comprehensive set of norms can serve to coordinate institutional efforts and public policies, which so far appear to be disjointed and scattered.
- Public initiatives dealing with online gender-based violence should take special care to avoid infringing fundamental rights such as freedom of expression and protest, as well as access to information, among others. This applies especially to proposals that delegate responsibility to internet intermediaries for third-party content, as this may result in greater incentives to eliminate more content than necessary.
- Internet intermediaries play a central role in the fight against online gender-based harassment, both as part of the solution and sometimes, as part of the problem. They can take immediate steps to improve their terms of use and modes of operation to reduce such violence when committed by third parties, and they can also stop carrying it out through their own policies.
- The digital dimension of violence against women has become more visible in recent years; nonetheless, there is still no unequivocal definition of its scope. Reaching an approach that describes online gender-based violence which gathers broad consensus is another great challenge to overcome for its effective treatment.
- It is possible to identify certain traits that are common to all the conceptualizations presented and can help us reach a consensus to define it. Namely, that it is one of the ways in which gender-based violence is perpetuated; that it is committed, assisted, or aggravated through the use of ICTs, exclusively or in part; that it affects the dignity of those who suffer it by violating one or more of their rights in and through the virtual environment; that it undermines the integrity of individuals, and is likely to cause psychological, sexual, economic and emotional harm, among others; that it can have social and collective impacts; and that it encompasses a variety of practices that emerge and are dynamically reconfigured.
- All this considered, we deem that formulating a definition of the problem and its scope will imply attempting complementary measures to be carried out by the enforcement authority of Law No. 26,485, aiming to: develop tools for the detection and identification of the different forms taken by online gender-based violence; conduct reports and build statistics that determine the

extension of the problem and assess the actions taken so far; raise awareness of this problem among the general public; train court staff to deal with online gender-based violence cases and avoid re-victimization; create protocols for action and provide the necessary instrumental resources for the care of the victims of online gender-based violence; and improve access to justice for women and dissidents, for example, through free and specialized legal representation in cases of online violence.

## **Online Gender Violence**

### **Considerations for the Public and Congressional Debate**

ADC

March 2022

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## **Executive Summary**

At the end of 2021, the Argentinian Ministry of Women, Gender, and Diversity (MMGyD) announced the launch of a participatory and federal process to reform Law No. 26,485 on comprehensive protection to prevent, punish and eradicate violence against women in the environments in which they develop their interpersonal relationships. As a result, a new bill is expected to be drafted in November 2022. This situation offers an unparalleled opportunity to debate extensively on the digital dimension of gender-based violence and its possible inclusion in the regulatory update.

Thus, ADC here presents a series of thoughts and recommendations on the question to contribute to the public debate on the strategies for coping with it, building around four major challenges: obtaining engagement from government in the formulation of responses that prevent and fight online gender-based violence; maintaining the balance between different rights in each of these responses; assessing the role of Internet intermediaries; and establishing a definition of the problem and its scope.

In certain cases, we draw upon legal antecedents, congressional proposals, public policies, and court cases to illustrate our concepts, with no intention, however, to be understood as their thorough and systematic review. The report closes with a recap of all that is set forth throughout the text.

## **Introduction**

On November 25, 2021, the Argentinian Ministry of Women, Gender, and Diversity (MMGyD) announced<sup>1</sup> the launch of a participatory and federal process to reform Law No. 26,485 on comprehensive protection to prevent, punish and eradicate violence against women in the environments in which they develop their interpersonal relationships. The initiative seeks to adjust the norms to the current needs and demands regarding new types of abuse, adopt the diversity perspective and provide mechanisms to strengthen the role of government at its different levels, as well as social organizations in the territorial approach to this problem. As a result, a new bill is expected to be drafted in November 2022.

This situation offers an unparalleled opportunity to debate extensively on the digital dimension of gender-based violence and its possible inclusion in the regulatory update. As a contribution to that purpose, the Association for Civil Rights (ADC) prepared this report with considerations that we deem relevant for the public and parliamentary debate on the subject.

ADC is a civil society organization that has been striving for the promotion and defense of fundamental rights in Argentina<sup>2</sup> and Latin America<sup>3</sup> since 1995, paying special attention to people and social groups in vulnerable situations. During the last decade, technological change has brought unique risks for the access and exercise of a diverse array of rights, and, consequently, ADC has decided to incorporate a digital perspective into its activity.

In 2017, we reported on the state of online gender-based violence in Argentina and Latin America to the United Nations Special Rapporteur on

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<sup>1</sup> The process of reforming Law 26.485 on Integral Protection begins (November 25, 2021).

www.argentina.gob.ar. Retrieved March 23, 2022 from

<https://www.argentina.gob.ar/noticias/comienza-el-proceso-de-reforma-de-la-ley-26485-de-proteccion-integral>

<sup>2</sup> Association for Civil Rights (ADC). (November, 2017). *Situation of online violence against women in Argentina. Report submitted to the United Nations Special Rapporteur on violence against women.* <https://adc.org.ar/wp-content/uploads/2019/06/ADC-violencia-contra-mujeres-en-AR-ONU.pdf>

<sup>3</sup> Edited by Paz Peña Ochoa, on behalf of and with the collaboration of Latin American organizations (November, 2017). Report on the situation in Latin America on gender-based violence exercised through electronic means. [https://adc.org.ar/wp-content/uploads/2019/06/Latin-American-Report-on-Online-Gender-Violence-final\\_v2.pdf](https://adc.org.ar/wp-content/uploads/2019/06/Latin-American-Report-on-Online-Gender-Violence-final_v2.pdf)

Violence against Women. For this purpose, we provided insight into the local development of legislation, public policies, and cases of online attacks against women.

Stemming from these initial observations, and others arising later, ADC here presents a series of thoughts and recommendations on online or digital gender violence (also called cyber-violence) to contribute to the public debate on the ways of coping with it. The paper will be built around four major challenges, which we judge that are key to an effective approach to its treatment:

- 1. Obtaining engagement from government in the formulation of responses that prevent and fight online gender-based violence**
- 2. Maintaining the balance between different rights in each of these responses**
- 3. Assessing the role of Internet intermediaries**
- 4. Establishing a definition of the question and its scope.**

In certain cases, we draw upon legal antecedents, congressional proposals, public policies, and court cases to illustrate our concepts, with no intention, however, to be understood as their thorough and systematic review. The report closes with a recap of all that is set forth throughout the text.

**Challenge no. 1: Obtaining engagement from government in the formulation of responses to prevent and fight online gender-based violence**

Gender-based aggression is a complex issue that has taken on new dimensions due to the spread of the Internet and IT technologies. The sexism prevalent in our society and culture has expanded to the digital sphere through novel forms of exercise and manifestation. ADC considers, however, that this does not constitute a new and separate phenomenon altogether, but a particular form of the customary gender violence with unique traits and challenges for its treatment.

In 2018,<sup>4</sup> the UN Special Rapporteur on Violence against Women examined gender-based violence channeled through IT technologies and the virtual sphere from a human rights perspective and noted: "At this stage of the development of information and communications technology (ICT), different forms of online violence against women and girls should be tackled through legislative or other measures that combat and prevent such violence, while respecting the right to freedom of expression, including the access to information, the right to privacy and data protection, as well as women's rights that are protected by the international human rights framework."

Online gender-based violence affects the dignity and fundamental rights, widely recognized in different international instruments,<sup>5</sup> **of** women, children, and gender dissidents.

Nonetheless, there is still a regulatory vacuum in our domestic legislation due to the lack of a comprehensive approach that admits the specific type of violence taking place within the virtual sphere. On the other hand, several legislative microsystems refer to rights that may come into play but do not combine the gender diversity and digital perspectives. Examples of such microsystems are Data Protection Law No. 25,326, Intellectual Property Law No. 11,723, or articles 51, 52, 53, 55, 1170, and 1171 of the Civil and Commercial Code, on personal rights, restraining orders, and the prevention and remediation of damage, among others.

The fact that cyber violence against women and girls is not addressed by the norms in force has repercussions in several aspects, among them, the lack of official statistics on the matter. The data collected by the 144 gender-violence counseling hotline do not specify online forms of harassment as they rely on

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<sup>4</sup> UN Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonovi (July, 2018). *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.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/61/PDF/G1818461.pdf?OpenElement>

<sup>5</sup> Among them, the American Convention on Human Rights, the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and the Sexual Orientation and Gender Identity in Human Rights Law, also known as the Yogyakarta Principles.

those described in the current law on comprehensive protection to prevent, punish and eradicate violence against women.<sup>6</sup>

In recent years, several civil society organizations in Argentina have been active in raising awareness of online gender-based violence as a real threat with serious implications on those who suffer it. Among them are the *Fundación Activismo Feminista Digital* (Online Feminist Activism Foundation) and the *Asociación Civil Comunicación para la Igualdad* (Communication for Equality Civil Association).

These efforts found an echo in the drafting of several Congress bills related to the topic, either through the reform of the Criminal Code or Law No. 26,485 itself, mostly with compensatory and/or punitive approaches.

Although these initiatives, considered separately, achieved varying degrees of success, as a whole they evidenced the need for a comprehensive public response against this new form of aggression.

The announced reform process of Law No. 26,485 can serve as a means to finally attain this official commitment and outline the kind of measures that should be taken.

Here it is worth highlighting the importance of preventive actions when dealing with the matter, in particular those related to digital security,<sup>7</sup> understood as the resources employed to avoid and reduce online risks and those that may arise offline.

In this sense, we stress that measures aimed at promoting digital security should enhance people's well-being rather than remediating the damages. This is achieved by placing people at the center of the initiatives, offering theoretical and practical means that enable them to make their risk assessments and decide how to handle them, instead of concentrating on the consequences of the cyber-harassment itself.

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<sup>6</sup> 144 Crisis line of the Argentinian Ministry of Women, Gender and Diversity (July 13, 2021). Argentina.gob.ar. <https://www.argentina.gob.ar/generos/linea-144>

<sup>7</sup> Association for Civil Rights (ADC) (December, 2020). Digital safety for the prevention of online gender-based violence. Retrieved March 23, 2022 from <https://adc.org.ar/2020/12/18/seguridad-digital-para-la-prevencion-de-violencia-en-linea-por-razones-de-genero/>

The situations arising from online gender-based violence feed back into the inequalities in access to the digital world. Therefore, raising standards for the protection of women, girls and dissidents also contributes to narrowing the digital divide. In addition, the recognition of a specific cyber-dimension of gender-based violence in a comprehensive regulation can serve to coordinate institutional efforts and public policies, which so far appear to be disjointed and scattered.

For example, the National Action Plan against online gender violence (2020-2022)<sup>8</sup> developed by the MMGyD recognizes the role of IT technologies in providing solutions but fails to consider them as a specific means through which gender-based aggression happens as well. Likewise, the National Plan for Equality in Diversity (2021-2023),<sup>9</sup> developed by the same ministry, addresses the reduction of the technological gender gap without expressly linking it to online violence. The Argentinian Ministry of Justice and Human Rights also has a program called "Con Vos en la Web" (With You on the Web),<sup>10</sup> offering information and guidance on different problems related to the virtual sphere, without specifically naming gender-based violence. It is only referred to through other related issues such as sextortion.<sup>11</sup>

The National Bureau against Discrimination, Xenophobia, and Racism (INADI) has an Internet Discrimination Observatory, as part of its Digital Inclusion Program. This agency includes online discrimination against women and dissidence among its concerns and provides for a claims procedure in virtual

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<sup>8</sup> Argentinian Ministry of Women, Gender and Diversity (June, 2020). *National Action Plan against gender-based violence (2020-2022) For the prevention, assistance and eradication of all forms of gender-based violence.*

[https://www.argentina.gob.ar/sites/default/files/plan\\_nacional\\_de\\_accion\\_2020\\_2022.pdf](https://www.argentina.gob.ar/sites/default/files/plan_nacional_de_accion_2020_2022.pdf)

<sup>9</sup> Argentinian Ministry of Women, Gender and Diversity (May, 2021). *National Plan for Equality in Diversity (2021-2023).*

[https://www.argentina.gob.ar/sites/default/files/plan\\_nacional\\_de\\_accion\\_2020\\_2022.pdf](https://www.argentina.gob.ar/sites/default/files/plan_nacional_de_accion_2020_2022.pdf)

<sup>10</sup> Argentinian Ministry of Justice and Human Rights (December 9, 2021). *Con Vos on the Web.* Argentina.gob.ar. Retrieved March 23, 2022 from <https://www.argentina.gob.ar/justicia/convosenlaweb>

<sup>11</sup> Defined as a form of blackmail or extortion in which a person is threatened with the disclosure of their intimate sex images and videos.

format<sup>12</sup> that can be activated as long as there has been a previous complaint made "through the internal channels offered by the social media platform or website where you suffered discrimination" and if the content in question has not been removed. This is a necessary step for the office to begin a course of action that should end in the removal of the offensive material or the cancellation of the accounts producing it.

Finally, the Media and Communications Public Defender's Office (*Defensoría del Pùblico de Servicios de Comunicación Audiovisual*) has begun monitoring online violent political speech against female pre-candidates in Buenos Aires, organized workshops on the subject and recently published a book, *Violencia digital por motivos de géneros en América Latina. Ataques contra periodistas, políticas y activistas en las redes sociales* (Online Gender-based Violence in Latin America. Attacks against journalists, politicians and activists in social media).<sup>13</sup>

## **Challenge no. 2: Maintaining a balance between different rights in the responses to prevent and fight digital gender-based violence**

Nowadays, IT technologies and the Internet extend to almost all areas of daily life. The lockdown measures dictated to contain the spread of the COVID-19 pandemic revealed the benefits that digitalization can represent for the access to and the exercise of several human rights, as well as the threats facing them.

Global interconnectedness, transnationality, and spatial dispersion, among other characteristics of the digital realm, pose unique challenges for the treatment of the problems that take place within it. One of them is to preserve the balance of rights in the measures to be adopted against situations of

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<sup>12</sup> Argentinian Bureau against Discrimination, Xenophobia and Racism (INADI). (July 16, 2019). Reporting discrimination on the Internet. Argentina.gob.ar. Retrieved March 23, 2022 from <https://www.argentina.gob.ar/denunciar-discriminacion-en-internet>

<sup>13</sup> Media and Communications Public Defender's Office (2022). *Online Gender-based Violence in Latin America. Attacks against journalists, politicians and activists in social media*. <https://defensadelpublico.gob.ar/wp-content/uploads/2022/03/violencia-digital-por-motivos-de-generos-1.pdf>

online gender-based violence and discrimination. The attempts to regulate online hate speech and the heated discussions around them are the situations that best represent the validity and dimension of this challenge.

This paper does not intend to delve deeply into the subject matter of online hate speech on social media, since ADC has already published a research study<sup>14</sup> dedicated exclusively to the subject. It is enough to point out that this is one of the most controversial issues of Internet regulation due to the ease with which IT technologies have allowed the massive spread of derogatory and insulting comments and behavior, and as a consequence, people in vulnerable situations are exposed to attacks, humiliation and other affronts to their dignity. On the other hand, it is acknowledged that excessive regulation puts freedom of expression at risk since a vital part of this guarantee is to tolerate remarks that may be hostile or annoying.

There is broad consensus that freedom of expression does not cover hate speech. Different, however, is the case of offensive, shocking or disturbing discourse, which must be protected despite the discomfort it may generate. The main difficulty lies in drawing the line between the two without falling into extreme bias, leading to inconsistent results. Within cyberspace, these decisions are made by the platforms through their content moderation policies and are constantly the subject of dispute, either because they restrict more than is necessary or else, they are too permissive, allowing content that should be removed.

ADC believes that public initiatives dealing with online gender-based violence should take special care to avoid infringing fundamental rights such as freedom of expression and protest, as well as access to information, among others. This applies especially to proposals that delegate responsibility to internet intermediaries for third-party content, as this may result in greater incentives to eliminate more content than necessary.

One example of this type of measure with potential adverse consequences is Draft Law No. 569 of the National Senate (2021),<sup>15</sup> which aims to ensure the

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<sup>14</sup> Association for Civil Rights (ADC). (May, 2020). *More than words. Seeking consensus to define hate speech.* <https://adc.org.ar/wp-content/uploads/2020/07/ADC-More-than-words-7-2020.pdf>

<sup>15</sup> Draft Law on Protection against Abusive Publications on the Internet (S 569-21)- Argentinian Senate (2021). <https://www.senado.gob.ar/parlamentario/parlamentaria/444701/downloadPdf>

protection of rights against abusive social media and website publications made through a series of corrective actions to be applied by Internet Service Providers. Although the project lacks a gender and diversity perspective and disregards the phenomenon of sexist violence in the online sphere, it is the most obvious example of the above-mentioned obligation of intermediaries "...to create a permanently visible email account or online form on their websites, in order to receive claims or reports of abusive publications and take prompt corrective action to delete and prevent its further dissemination through their platforms, services and tools, under penalty of being charged as participants in legal proceedings resulting from such abusive publication". There are other motions suggesting more proportionate courses of action, such as Draft Law No. 278 of the National Senate (2021),<sup>16</sup> which provides for a court order to remove content. This initiative has the favorable opinion of the Women Committee and seeks to include online gender-based offenses in Law No. 24,865 as a particular instance in which violence against women is exercised.

Although its definition is limited to the non-consensual dissemination of intimate images, it compels "the owners or administrators of digital platforms to delete real or apocryphal sex photos or videos exhibited without consent from the women affected in order to safeguard their integrity, dignity, intimacy and private life" as an urgent preventive measure of the judicial process. Another type of action to combat online gender violence that may pose a risk to other rights is those that seek to criminalize the mere exercise of anonymity in the virtual sphere. Indeed, online anonymity is a means to exercise freedom of expression, individual autonomy, and privacy, and its possible abuse cannot be an argument to suppress it. Anonymity on the Internet and social media allows users to have their names and identities go unknown. Even so, anonymous accounts are not always managed by real people or for the same purposes.

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<sup>16</sup> Draft Bill amending Law 26.485 on Comprehensive Protection to prevent, punish and eradicate violence against women, to include digital or online violence (S 278-20) Argentinian Senate (2020) <https://www.senado.gob.ar/parlamentario/parlamentaria/430193/downloadPdf>

Although namelessness online and/or the use of pseudonyms (pseudonymity) are expressly recognized as rights in our country, they are banned in others.<sup>17</sup> It must be remembered that the Argentinian legal system admits the principle of permissibility, namely, “everything which is not forbidden is allowed.” The reasons why someone may choose to use online confidentiality may be contextual, circumstantial, or personal. If we conceive the Internet as an extension of the civic space, in an authoritarian scenario, for example, anonymity is a guarantee of the right to protest online. In other words, it can elude prior censorship and ensure the right to freedom of expression. Likewise, the use of pseudonyms has allowed many women and dissidents to publicly denounce situations of sexist violence through the Internet and social media.

Thus, any policy attempting to force people to reveal their true identity online, or establishing requirements that constrain their confidentiality, is likely to produce the opposite effect of the goal intended.<sup>18</sup>

### **Challenge no. 3: Assessing the role of Internet intermediaries in dealing with online gender-based violence**

The online world as a transnational and interconnected sphere is sometimes frictional with the various domestic legal systems it crosses. This tension between national laws and the cross-border nature of the digital infrastructure tends to be resolved through the self-regulation of intermediaries, operated by private big tech firms.

This particular form of regulation has been under discussion for some time: it usually represents an asset since it avoids the interference of governments with authoritarian tendencies that threaten freedom of expression and the right to protest online. However, the situation may be reversed and become a

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<sup>17</sup> For example, the secrecy of journalistic sources in the Constitution, Art. 43 and Law No.18,248, Art. 23 for name registration of natural persons.

<sup>18</sup> Association for Civil Rights (08-20-27). Haters, trolls, bots, and anonymity: Separate issues? adc.org.ar. Retrieved March 23, 2022. <https://adc.org.ar/2020/08/27/haters-trolls-bots-y-anonimato-asuntos-separados/>

setback for the same reason, as Internet companies are not responsible for the user-generated content posted on their platforms.

Indeed, they take liability for setting the terms and policies of their use and the mechanisms of their operation. From this equivocal situation arises the challenge of determining the role of Internet intermediaries regarding online gender-based violence.

Internet intermediaries can be defined as all those entities that facilitate transactions between third parties on the Internet. In the report titled, "Fostering Freedom Online: The Role of Internet Intermediaries," the United Nations Educational, Scientific and Cultural Organization (UNESCO) identifies three types of business-operated intermediaries: Internet service providers (ISPs), search engines, and social media platforms.

These companies establish community standards that determine what content and behavior will be banned, the sanctions that will be applied, and the appeal mechanisms that users have if they believe a decision to be wrongful.

Generally, community standards and moderation policies are presented in association with the terms of use, which must be accepted to access a platform. However, these terms are becoming ever more lengthy and obscure, making them impossible to read carefully, and even more so, to keep abreast of any changes that occur.

These rules, policies, and terms of use lack a cross-cutting gender and diversity perspective in many of the platforms, which is revealed when someone seeks to report gender-based violence and comes across many barriers to do so. In addition to this, there are obstacles to obtaining accurate information about the criteria, procedures, and deadlines for dealing with such claims. Furthermore, companies tend to export cultural criteria from their countries of origin when designing the rules, omitting the local contexts in which they operate, which are key to offering effective responses to any problem.<sup>19</sup>

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<sup>19</sup> Asociación para el Progreso de las Comunicaciones (Association for Progress in Communications) (2020) *Declaration on Facebook's content moderation policies*.

<https://www.apc.org/es/pubs/declaracion-sobre-las-normas-internas-de-facebook-para-la-moderacion-de-contenidos>

Internet intermediaries play a central role in the fight against online gender-based harassment, both as part of the solution and sometimes, as part of the problem. They can take immediate steps to improve their terms of use and modes of operation to reduce such violence when committed by third parties, and they can also stop carrying it out through their own policies, such as when women and gender dissidents' bodies are censored with little transparency, based on arbitrary parameters.<sup>20</sup>

Online gender violence is an issue that has reached the judiciary, presenting cases in both criminal and civil, and family courts. In this sense, whether they are ordinary or federal, of first instance or appeals, in the capital or the interior of the country, the legal system faces a challenge due to the complexity of the subject and the recurring presence of this new actor in the scene: the mentioned Internet intermediaries.

As regards civil court self-enforcing or protection measures within Law No. 26,485, it is worth mentioning the decision in Formosa,<sup>21</sup> in which a duly accredited case of harassment reported by a woman against her male ex-partner, together with threats of non-consensual intimate image dissemination, led to the following provision related to online violence: "a) To order and urge the aggressor to refrain from publishing photos and/or videos and/or comments about Ms.... ..., her husband, children, and family in Facebook accounts created in her name and/or any other computer and/or graphic media or social media platform in general. b) Order Facebook Argentina S.R.L. to immediately remove all content or data referring to the accounts identified as "la puta de chango más" and/or any other publication identifying the complainant, and henceforward, refrain from enabling the use of links, blogs, forums, groups, fan sites that insult, offend, attack, violate or undermine the personal privacy of the complainant, all under penalty of law."

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<sup>20</sup> Association for Civil Rights (August, 2021) espaciocivicoenlinea.adc.org.ar. Retrieved March 23, 2022. <https://espaciocivicoenlinea.adc.org.ar/moderacion-de-contenidos-poca-transparencia-en-la-censura-de-cuerpo/>

<sup>21</sup> Family Court of Formosa, February 17, 2017, "T., A. E. c. L., C. M. s/ violencia familiar (domestic violence)", SAIJ: FA17250000.

## **Challenge no. 4: Establishing a definition and scope of online gender-based violence**

The digital dimension of violence against women has become more visible in recent years; yet, there is still no unequivocal definition of its scope. Reaching an approach that describes online gender-based violence which gathers broad consensus is another great challenge to overcome for its effective treatment. With the intent to contribute to this complex task, first, we present some of the conceptual definitions formulated so far, and then, we seek to identify convergent aspects in this respect.

In 2018, the United Nations Special Rapporteur on violence against women and girls stated<sup>22</sup> that in its online form, it "extends to any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately."

According to UN Women,<sup>23</sup> "online or digital violence against women is any act of violence committed, assisted or aggravated by the use of information and communications technology (cell phones, Internet, social media, video games, text messages, emails, etc.) against a woman because she is a woman." In addition, the following figures are incorporated into the definition:

- Cyberbullying: sending intimidating or threatening messages.
- Sexting: sending messages or photos of explicit content without permission from the recipient.
- Doxing: publishing private or identifying information about the victim.

At the end of 2021, the Inter-American Committee against Terrorism (CICTE) and the OAS (Organization of American States) Inter-American Commission

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<sup>22</sup> UN Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović (July, 2018). *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.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/61/PDF/G1818461.pdf?OpenElement>

<sup>23</sup> UN Women (n. d.). Frequently asked questions: Types of violence against women and girls. Retrieved March 23, 2022, from <https://www.unwomen.org/es/what-we-do/ending-violence-against-women/faqs/types-of-violence>

of Women (CIM) launched the publication<sup>24</sup> Online Gender-Based Violence against Women and Girls: Guide of Basic Concepts, Digital Safety Tools and Response Strategies.

The document recognizes the difficulty in formulating a concept of a phenomenon that is in constant change, providing a descriptive list of its basic characteristics instead:

- It is not a new occurrence. It happens within a context of gender-based discrimination and systemic violence against women in all areas of life.
- It is not disconnected from the violence that takes place offline: it is part of a continuum of multiple, recurring and interrelated manifestations of violence against women and girls that now flows in the online-offline world and cuts across it.
- It entails diverse human rights violations against women and girls.
- It is a dynamic expression that encompasses diverse violent practices facilitated or reconfigured by information and communication technologies (ICTs).
- It causes victims psychological, physical, sexual, and/or economic harm and suffering, and affects family, society, and the world at large.

The document presents a descriptive guide of the online behaviors and attacks facilitated by ICTs that could be considered specific forms of violence against women and girls based on their gender.

At the national level, a 2018 court sentence<sup>25</sup> introduces online gender-based violence in its arguments to give an adequate response to the following events narrated by a victim:

- Her ex-partner was putting their son's psycho-physical well-being at risk by sending him obscene remarks about his mother through phone messages, including an image showing explicit content.

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<sup>24</sup> Organization of American States (OAS). (2019). Combating Online Violence against Women. A Call for Protection. <https://www.oas.org/en/sms/cicte/docs/Guide-basic-concepts-Online-gender-based-violence-against-women-and-girls.pdf>

<sup>25</sup> Family Court no. 5 of Cipoletti, Río Negro, "P. M. B. S/ INCIDENTE DENUNCIA POR VIOLENCIA DE GÉNERO (LEY 26485)" (report of gender-based violence incident, Law 26485) May 7, 2018

- Her ex-partner was sending private intimate photos of hers to her co-workers and third parties, also posting hostile, aggressive, and insulting comments, offending and damaging her morale.
- Her ex-partner spread erotic photos of hers without her consent, including invitations to share such content with other contacts and Facebook friends.

The ruling mentions online gender-based violence as a "novel form of traditional gender violence, with specific features that render it independent, yet still replicating a gender-based hierarchy of power between the aggressor and his victim, adjusting it to the new reality of digital communications, which include social media, instant messaging, and others, and that affect the woman in her moral and emotional integrity, leaving her exposed to friends, acquaintances and strangers."

It then points out that, as happens in the case, a publicly accessible social media platform is used to assert dominance over the victim, damaging her reputation and establishing a type of psychological and moral pressure that is detrimental to her well-being. It continues stating that this exercise of gender-based violence through the dissemination of obscene material on social networks exceeds the private sphere and goes viral, thus perpetuating the situation of violence. It concludes that machismo has found a new form of control and humiliation of women in the use of ICTs and social media.

In 2021, in what became the first case<sup>26</sup> of conviction for non-consensual dissemination of intimate images in the country, a court in the province of La Rioja sentenced a man to five years imprisonment, holding him criminally liable for the offenses of minor injuries aggravated by kinship and coercion in real concurrence (Criminal Code articles 89, 92, 149 bis, second paragraph, and 55), ruling<sup>27</sup> the act as one of Violence Against Women (Law 26.485, articles 3, 4 and 5; Province Law 8561/2009).

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<sup>26</sup> Página 12 (June 11, 2021). *First trial for "revenge porn": 5 years of effective imprisonment for disseminating intimate photos*. Retrieved March 23, 2022, <https://www.pagina12.com.ar/347329-primer-juicio-por-pornovenganza-5-anos-de-prision-efectiva-p>

<sup>27</sup> Guilty verdict, imprisonment, minor injuries, coercion, real concurrence, appreciation of evidence, WhatsApp, harassment or mistreatment, psychological damage. summary of ruling (July, 2021). <http://www.sajj.gob.ar/sentencia-condenatoria-prision-lesiones-leves-coaccion-concurso-real-apreciacion-prueba-whatsapp-hostigamiento-maltrato-dano-psiquico-su90001920/123456789-0abc->

The perpetrator and his victim had been in cohabitation, smoothly at first but gradually escalating in aggression. In this context, the abuser engaged in "coercion" against his partner by forcing her to continue the relationship against her will, warning that he would disclose "intimate photos and videos" if she attempted to end it.

The threat was carried out through a WhatsApp group, distressing the victim's mental health. The injuries inflicted were considered aggravated on grounds of gender-based violence.

Criminal threats have been typified as one of the possible offenses encompassed by online gender-based violence, with precedents such as the decision of the Seventh Court of Appeals in Criminal and Correctional Matters<sup>28</sup>, who confirmed the charges against a violent male by considering the repeated electronic messages sent to a woman as evidence of a possible crime. In such messages, he threatened to post her intimate photos on Facebook and Whatsapp to force her to meet him personally. The harassment included the creation of false Facebook profiles under her name in which she appeared to be offering sex, as well as the publication of YouTube videos with her image.

Finally, it is worth mentioning Draft Law No. 4157, introduced in the Lower House of the National Congress (2021),<sup>29</sup> which seeks to protect women's rights and assets online, their development and permanence in the cyberspace, as well as their dignity, identity, and reputation. The norm

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<sup>28</sup> CNA Criminal and Correctional Chamber no. 7, June 7, 2019, "G. J., H. D. s/procesamiento - amenazas coactivas." (indictment - coercive threats)

<sup>29</sup> Draft Bill amending Law No. 26.485, for Integral Protection to prevent, punish and eradicate violence against women, in order to add digital and electronic violence. Digital Literacy. Derechos Digitales, (D 4157-21) Argentinian House of Representatives (2021)  
<https://www4.hcdn.gob.ar/dependencias/dsecretaría/Periodo2021/PDF2021/TP2021/4157-D-2021.pdf>

proposes to amend Law No. 26,485, establishing online harassment against women as a type of gender violence carried out through electronic means. In the mentioned draft law, online violence against women is defined as one that "affects her dignity by damaging one or more of her digital assets and/or rights, such as reputation, freedom, existence, domicile, privacy and digital inclusion, or affecting her access and/or use of ICTs, as well as her development and permanence in cyberspace. It will also be considered in cases which affect the cyber-security of the equipment, platforms, applications and all the techno resources used by a woman for her personal, professional, commercial and recreational development, with obvious purposes to control her person, as well as in cases in which her online identity is directly infringed by the exercise of violence against women in any of its forms".

In turn, it defines electronic violence as that which is exercised through the use or assistance of ICTs, violating not exclusively a woman's online rights but all those protected by the current regulations, including the ones established before the digital era.

Given what has been presented so far, we can identify certain traits that are common to all the conceptualizations presented and can help us reach a consensus to define it. Namely, that online gender-based harassment:

- is one of the forms in which male violence can occur;
- is committed, assisted, or aggravated through the use of ICTs, exclusively or in part;
- affects the dignity of those suffering it by infringing one or more of their rights in and through the virtual environment;
- attacks the integrity of persons and is likely to cause psychological, sexual, economic, and emotional harm, among others;
- can have social and collective impacts;
- encompasses a variety of practices that emerge and are dynamically reconfigured.

All this considered, we deem that formulating a definition of the problem and its scope will imply attempting complementary measures to be carried out by the enforcement authority of Law No. 26,485, aiming to:

- develop tools for the detection and identification of the different forms taken by online gender-based violence;

- conduct reports and build statistics that determine the extension of the problem and assess the actions taken so far;
- raise awareness of the problem among the general public;
- train court staff to deal with online gender-based violence cases and avoid re-victimization;
- create protocols for action and provide the necessary instrumental resources for the care of the victims of online gender-based violence;
- improve access to justice for women and dissidents, for example, through free and specialized legal representation in cases of online violence.

## **Conclusions**

The following is a summary of the considerations made by ADC to contribute to the public and congressional debate on online violence against women and dissidents:

- Gender-based aggression is a complex issue and the spread of digital technologies and the Internet create novel forms of its expression. The macho violence present in our culture and society has extended to the virtual sphere, giving the phenomenon a new dimension. Hence, gender-based harassment exercised through electronic means indeed has traits of its own and poses challenges for its particular approach, but is not a separate issue from gender violence on the whole.
- Online gender violence affects the dignity and fundamental rights of women, children, and dissidents.
- There is still a regulatory vacuum at the domestic level due to the lack of comprehensive legislation against gender violence that admits its online variant as a type and/or modality, which has repercussions in several aspects, namely, the absence of official figures in this regard. Instead, different legislative microsystems refer to different rights that may come into play but do not combine the gender diversity and digital perspectives.
- The announced reform process of Law No. 26,485 can serve as a means to finally attain this official commitment and outline the kind of measures that should be taken.
- Preventive measures to address the problem are vital for its effective treatment, especially those related to cyber-security.

- The acknowledgement of this type of violence within a comprehensive set of norms can serve to coordinate institutional efforts and public policies, which so far appear to be disjointed and scattered.
- Public initiatives dealing with online gender-based violence should take special care to avoid infringing fundamental rights such as freedom of expression and protest, as well as access to information, among others. This applies especially to proposals that delegate responsibility to internet intermediaries for third-party content, as this may result in greater incentives to eliminate more content than necessary.
- Internet intermediaries play a central role in the fight against online gender-based harassment, both as part of the solution and sometimes, as part of the problem. They can take immediate steps to improve their terms of use and modes of operation to reduce such violence when committed by third parties, and they can also stop carrying it out through their own policies.
- The digital dimension of violence against women has become more visible in recent years; nonetheless, there is still no unequivocal definition of its scope. Reaching an approach that describes online gender-based violence which gathers broad consensus is another great challenge to overcome for its effective treatment.
- It is possible to identify certain traits that are common to all the conceptualizations presented and can help us reach a consensus to define it. Namely, that it is one of the ways in which gender-based violence is perpetuated; that it is committed, assisted, or aggravated through the use of ICTs, exclusively or in part; that it affects the dignity of those who suffer it by violating one or more of their rights in and through the virtual environment; that it undermines the integrity of individuals, and is likely to cause psychological, sexual, economic and emotional harm, among others; that it can have social and collective impacts; and that it encompasses a variety of practices that emerge and are dynamically reconfigured.
- All this considered, we deem that formulating a definition of the problem and its scope will imply attempting complementary measures to be carried out by the enforcement authority of Law No. 26,485, aiming to: develop tools for the detection and identification of the different forms taken by online gender-based violence; conduct reports and build statistics that determine the

extension of the problem and assess the actions taken so far; raise awareness of this problem among the general public; train court staff to deal with online gender-based violence cases and avoid re-victimization; create protocols for action and provide the necessary instrumental resources for the care of the victims of online gender-based violence; and improve access to justice for women and dissidents, for example, through free and specialized legal representation in cases of online violence.



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