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Ley Olimpia: Examining Policymaking Around Digital Violence

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University of San Francisco

Ley Olimpia: Examining Policymaking Around Digital Violence

An honors thesis submitted in partial satisfaction of the requirements for the distinction of Honors in the
Politics Department in the College of Arts and Sciences

by

Andrea Alejandra Capella - Castro

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Significance

The topic of this thesis is policymaking and regulations around digital gender violence. This work intends to examine what methods effectively regulate and eradicate Online-Gender Based Violence (OGBV), a new type of Gender-Based Violence (GBV). Effective policymaking for the digital space has a significant impact on our society and especially on women as they remain the most objectified, attacked, and harassed on social media platforms. Therefore, social media needs an effective policy to address digital gender violence. Furthermore, the topic is relevant because policymaking around digital gender violence will advance the feminist movement's fight and protect women and social media users.

The following thesis explores policymaking around digital violence. The essay starts with a literature review that explores the existing discussion around combating Online Gender-Based Violence. The research section is a case study for the newly created Ley Olimpia in Mexico, designed to fight digital violence. The literature review explores two main strong stances for efficacy on policies to act against OGBV. The first method is a more traditional legal system approach, which claims that it is fundamental that criminal law reforms exist to withstand OGBV effectively. In this first stance, the authors highlight what changes will make criminalization more assertive to eradicate digital violence. They stem from applying traditional laws used before for GBV to acknowledge problems such as impunity within each political context. This first approach believes that law-making would significantly impact regulating the online setting. It identifies the areas of improvement and believes criminalization used for GBV would work for OGBV. The second advocates for corporate policies from social media companies. This second view believes that corporations have human rights responsibilities for their users and the power to change and control OGBV. Explains the complicated relationship between media and regulation and extends to identifying current issues with corporate policy that need reform. This view also claims that further research is necessary to have efficient corporate policies. In other words, some believe that reforming the criminalization of OGBV will help solve the problem. Others think that the answer is holding social media platforms accountable for not enforcing and creating a safe environment. Ley Olimpia, the case study to assess effective OGBV policies, focuses mainly on criminalization and the legislation's actions and obstacles.

Adding the O to OGBV

Gender-Based Violence is not a new phenomenon; many organizations have intervened to prevent, respond, and study this occurrence. In 1993, the general assembly of the United Nations (UN) defined GBV as “any act of gender-based violence that results in or likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life,” (cited in Murhula, Singh, and Myende 2021, 85).

Online Gender-Based Violence is a recent phenomenon that combines the previous GBV with a completely new online space setting. While it is not often recognized, OGBV is a prevalent and growing issue. GBV has more recognition since extensive research and data show the severity of the problem. In 2017, the World Health Organization released a report where it showed that approximately 35 percent of women had experienced GBV in their lifetimes. The WHO report detailed that 87,000 women were intentionally killed, about 58 percent of those killed were killed by an intimate partner or a family member. An estimated 137 women are killed in the world each day by a family member (Murhula, Singh, and Myende 2021, 85-86).

On the other hand, OGBV has fewer studies, less data and, therefore, fewer policies to combat it. According to the World Association for Christian Communication, three out of four women have experienced violence online (WACC 2018). Therefore, it is essential to highlight that OGBV is a type of GBV even when society does not perceive it.

In the online space, instances of digital violence have surfaced on social media platforms like Instagram, Facebook, YouTube, etc. Online Gender-Based Violence (OGBV) is still unfamiliar within the realm of GBV, especially when dealing with what is considered OGBV and how to prevent it. While OGBV in its nature appears to not apply to “traditional” definitions of physical harm, it undoubtedly fits with mental and verbal abuse. The notion that OGBV stays online is false. Some identified types of violence online are hacking, surveillance, harassment, death threats, recruitment, and malicious distribution (WACC 2018). Other forms of digital violence include stalking, sexting, and image-based sexual abuse. Therefore, the study of media regulation is essential to combat the increasing OGBV experienced through younger generations who spend a significant portion of their time interacting with social media.

Fewer women have access to the online space than men, and, according to the WACC, 200 million fewer women are online (WACC 2018). Per this statistic, it is unacceptable that even when fewer women are online, they are the most susceptible to experience digital violence. Furthermore, studies have shown that sexual violence and the objectification of women’s bodies in media contribute to the normalization of GBV (WACC 2018). Consequently, media regulation is a topic that can help reduce OGBV, yet the regulation in this space is new and with unique and complex attributes.

Literature Review

The scholarly debate around policymaking for OGBV divides into two significantly different approaches. The first approach is reform to more traditional policymaking, criminal law to combat GBV. Reform to more traditional policymaking intends to update policies to apply to the fast-advancing technologies. Within the first approach of criminal law, there are two main arguments. The first argument

within the criminal law approach is that criminalization and laws are the only way to attack OGBV. The second argument explores that in Latin America and specifically in Mexico, past GBV laws have proved insufficient to fix the issues. The second approach to dealing with OGBV focuses on reform for corporate policies such as social media platform companies. This second approach believes that corporations have human rights responsibilities to their users and ensure safety for all.

First Approach: Reform of Criminal Law

Argument 1: Laws are the Only Way

The first argument within the reform on criminal law approach claims that laws are the most efficient way to deal with OGBV and GBV overall. The World Development Report of 2017 analyzes GBV and explores the impact of legislation criminalizing it at the national and international level. This article defends the idea that laws are essential for change and prevention for GBV. Evidence shows that countries with domestic violence laws reduced the odds of women experiencing GBV by seven percent. Additionally, those countries with legislation experience a decrease of GBV of about 2% every year (Klugman 2017, 2). For this annual decrease, legislative reform is one of the main plans to combat GBV. Statistics show that worldwide, the average rate of violence is lower in countries with GBV laws, around 10.8 percent versus 16.7 percent (Klugman 2017). This statistic is why changing the law is one of the approaches to dealing with OGBV.

Additionally, some authors defend the idea that policies that have historically dealt with GBV, like legal prohibitions and criminalization, will also work to eradicate OGBV. At the international level, GBV policies influence domestic policymaking by providing basic guidelines of what they should include. Of course, sanctions and legislation vary from country to country. The United Nations High Commissioner for Refugees (UNHCR) addresses policy for GBV. The policy sets three basic core actions: Prevention, Risk Mitigation, and Response to GBV. These components draw from human rights principles and, most importantly, are survivor centered.

The UNHCR's comprehensive policy components tackle GBV from its root causes and respond to it immediately. The UNHCR includes a brief statement about GBV, including the online format, to its definition stating that, "most recent forms of gender-related violence such as abuse that occurs online or through electronic media and communication technologies, are also included" (UNHCR 2020, 6). For the UNHCR, the prevention part of the policy is crucial. Prevention as the first core action of the policy aims to change social norms that "perpetuate gender inequality and discrimination" (UNHCR 2020, 8). Changing social norms that perpetuate GBV is tackling the problem from the root causes. As an international policy, the prevention identifies that every plan to operate to alter social norms depends on the context of each region.

Further, the risk mitigation strategy concentrates on ensuring safety. The area works with reducing risks and potential exposure of GBV. To create risk mitigation action plans, identifying risks is necessary. Mitigation should come from national authorities, depending on every context (UNHCR 2020, 9). The last component of the policy focuses on the response and assistance to GBV survivors. The response component addresses the intervention, safety, needs, and even access to justice for survivors (UNHCR 2020, 9). Following core actions include case management, assessment and monitoring, planning, prioritization, resource allocation, partnerships and coordination, and staffing. One of the most interesting parts of the policy is the mainstreaming measures to address GBV. Although this is an initiative-taking method to mitigate the problem, it has four elements. The four elements are: Safety and Dignity, Non-discrimination, Accountability, Participation, and Empowerment (UNHCR 2020, 13). These core actions show how the plan and policy are comprehensive and apply to the diverse and complex factors that entail having an effective procedure for GBV.

Argument 2: Laws are Not Working for GBV

Authors believe that criminal law needs urgent reform to adequately address instances of OGBV (Jurasz and Barker 2021). Some believe that the criminal law system does not address OGBV. The rapid growth and evolution of OGBV with technology, the misunderstanding of online environments, and the lack of acknowledgment of the impact on recipients and victims of OGBV (Jurasz and Barker 2021, 791-792). Context is also an essential factor when it comes to policymaking.

Latin American countries have complex political contexts that have different legal tools and systems from one another. There is no supranational law that deals with GBV and OGBV. About 80% of countries have legal prohibitions against GBV (Klugman 2017, 24). Because there is no supranational law within each state, there are differences in dealing with GBV. There are two main differences between countries when it comes to legislation. The difference entails whether a country focuses on criminal penalties or concentrates its efforts on mediation and conciliation (Klugman 2017, 24). By 2015, seven countries in Latin America and the Caribbean had domestic violence legislation and clear criminal penalties for domestic violence. Latin America is the only region with equal countries having both types. Worldwide, 127 countries have legislation, whereas only 90 countries have clear criminal penalties (Klugman 2017, 25). Overall, Latin America adopted a more conciliation-focused approach even though they also consider GBV a criminal offense. Conciliation is basically an obligation in Argentina, Chile, Mexico, Peru, and Bolivia. Specifically, Mexico has contradictory laws within the federal family violence laws. Its core purpose is to preserve family and protect women from GBV (Klugman 2017, 26). They suggest that law reform and criminalization contradictions hinder the fight against GBV.

The most important proof that legislation is not enough is that today, most countries in the world have laws prohibiting GBV, yet it is undeniable that it still exists. For some authors, a clear example is the non-stopping increase of femicides in Mexico despite femicide laws in place. The article “The Making and Unmaking of Femicidio/Femicidio Laws in Mexico and Nicaragua” summarizes what it is like writing policy in Latin America for femicide laws. This article brings insight into what it takes in Mexico to create approaches. The findings highlight that in the context of Mexico, the first criminalization of femicide or *femicidio* only happened after a naming and shaming campaign from local feminists (García-Del Moral & Neumann 2019, 454). According to the article, in Mexico, local feminists such as legislators were critical for passing laws that criminalize GBV.

Nonetheless, even when laws exist, in practice, they fail (García-Del Moral & Neumann 2019, 454). This article argues that passing progressive laws in Latin America sometimes proves insufficient to end GBV as the violence presents in a “multisided” manner, where there is gender inequality deeply engraved in society (García-Del Moral & Neumann 2019, 455). The case study in the article is the criminalization of *femicidio* that took place from 2004 to 2012.

Officially, since June of 2012, *femicidio* has been a crime in Mexico according to the Federal Criminal Code Article 325 that states that “crime of *femicidio* is committed where a person deprives a woman of her life for gender reasons.” The criminalization established 40-60 years of prison and 500-1000 days of fines (García-Del Moral & Neumann 2019, 466). Therefore, it is essential to analyze the road to criminalization. This road included transnational actors and advocacy. Feminist scholars and activists like Marcela Lagarde and Julia Monárrez organized transnational grassroots activism to bring attention to the disappearance and murder of hundreds of women in Ciudad Juárez. They ensured the state was held responsible for violating the CEDAW and for everlasting impunity (García-Del Moral & Neumann 2019, 466). Another problem identified with passing GBV laws in Mexico is the nature of the nation-state as a federal government. Where federal legislation does not ensure that the 32 states of the country will comply, today, all 32 states have codified *femicidio*. Yet, every state writing legislature spotlighted disparity between the definition of *femicidio* found in both the local and federal levels of government (García-Del Moral & Neumann 2019, 469). Due to these disparities, *femicidio* is still a very latent issue in Mexico, despite the constant efforts to create legislation against GBV. Even though laws may reduce the risk, they cannot eradicate all violence.

Second Approach: Corporate Policies Reform

The second approach includes authors who argue that corporate policies are the ones that would make the most impact to protect women from OGBV. Some authors believe that internet intermediaries such as telecommunications, social media platforms, and search engines and their governing policies

affect their users' lives directly online and offline. Therefore, the corporations that have such power over millions of users worldwide have human rights obligations and ethical and social responsibilities to their users (Suzor et al. 2019). Without a doubt, corporate policies affect the regulation of the media on a significant scale. Several arguments define the second approach. The first argument deals with guidelines online. The second argument raises questions about what free speech and digital violence are. The third argument identifies issues rooted in the online settings that are needed to regulate digital violence properly.

Argument 1: No Guidelines

Online spaces, in general, are new entities in which society interacts daily and has a complicated history with regulation. Such is the case that technology advances at a much faster pace than law and policymaking. As a new platform that has reached a global audience, governments are still exploring different regulatory practices (Napoli 2019,132). A widespread discussion over OGBV is whether corporate policies are the answer. Social media companies are struggling to determine not only what level of regulation their company policies should enforce, but also how strict their enforcement should be on their platforms. Media scholar Tarleton Gillespie explains that companies like Facebook and Twitter are now encountering questions about their responsibilities for their users (Napoli 2019, 133). Other authors believe that the online space is vulnerable to new sexist media and sexist discourses that exacerbate violence against women (WACC 2018). Regarding corporate policy in social media companies, there are unresolved issues.

Deliberation and damage assessment are primary issues when dealing with digital violence. Since there are no global guidelines, it is up to the interpretation of every corporation to regulate its platform. About deliberation, Kate Klonick discusses in the article “Law and Technology Content Moderation Modulation” that we only see the surface of the discussion corporations have regarding community guidelines and regulations. While “final decisions are only the visible tip of vast and mostly submerged systems of technological governance” (Klonick 2021, 29). In this sense, media regulation is different from other forms of regulation as media governance deals with the nature of the technological business world. Stakeholders and industry organizations are policymakers in this area, and NGOs and civil society are equal partners in creating public policies and regulations (Napoli 2019,133). Media governance has three distinctions from other regulations, defined as (1) the national legal jurisdictions are hard to define and enforce, (2) the origins of technology nature are decentralized, interconnected, collectivist, and commercial; and (3) the traditional regulations lack applicability and relevance in the media (Napoli 2019,133). That said, the difficulty and lack of applicability of existing traditional

regulations suggest that media governance is an unprecedented entity signaling that this new type of space needs governance with uniquely tailored policies.

Argument 2: Digital Violence or Free Speech?

Klonick exposes a recent case where an incident on Facebook created controversy on what the company's policies look like. Facebook took down a picture from the famous award-winning photographer, Nick Ut, as Facebook deemed the image of a naked nine-year-old girl running down a street during the Vietnam War as violating community standards on “sexually exploitative pictures of minors.” The case caused controversy to the Norwegian prime minister publishing a letter addressed to Mark Zuckerberg (Klonick 2021, 29). The incident brought to light several issues with media governance, including what laws to follow on a global platform. The Facebook policy was based on the U.S.’s First Amendment that is “protecting individuals from the dissemination of a particular piece of harmful information, or against particularly intrusive information collection” (Klonick 2021, 30). Yet, the policy scandal unveiled the actual Facebook procedures when a post gets flagged or reported.

When a post is flagged, it is placed in a queue to be reviewed by an employee, called a content moderator, who assesses if it violates the Facebook Community Standards. These employees are usually located off-site in places like the Philippines, India, or Ireland (Klonick 2021, 30). These policies are a hybrid between domestic policies brought to international settings, enforced by off-site employees on call centers. Hence, this exemplifies why the controversy unraveled into a series of debates about media regulation.

It is fundamental to think about the purpose of social media to understand how media governance works. In 2017, Facebook updated its mission statement to “give people the power to build community and bring the world closer together” (Cited in Napoli 2019,136). When considering social media platforms’ missions on bringing the world closer, different questions arise into understanding the alleged power granted to the user to share content and under what regulations the users’ content should be subject to review. Incidents such as Nick Ut’s famous picture violating community guidelines claim that the content is regulated to favor some. Recent user claims affirm that social media companies’ regulations are politically biased (Klonick 2021, 30). Another example involves actress Rose McGowan, Twitter, and the #MeToo movement. Twitter suspended McGowan’s account after posting a picture of an email exchange with Bob Weinstein demonstrating his awareness about his brother, Harvey Weinstein’s, sexual abuse crimes. The occurrence highlighted how social media regulations favor the political right rather than the leftist voices (Klonick 2021, 30). Cybersecurity expert Bruce Schneier argues that technologists are responsible for public policy and highlights that online and social media platforms create new worlds (Klonick 2021, 31). New worlds call for new, unprecedented, regulations.

An essential research studies policies from Facebook, Twitter, and YouTube. The study focused on three prominent cases, nudity, gender-based hate, and the normalization of graphic violence (Athar 2015, 21). Results from the research about policies from social media regarding nudity identified three common issues. The first issue concerned distinguishing nudity from obscenity and pornography. An issue distinguishing the three negatively affected women's freedom of expression. The mix-up would often silence women and create a double standard. For example, Facebook has a no nipple policy, which only applies to women's bodies; no male chests are restricted or classified obscene (Athar 2015, 21). The second issue failed to recognize GBV platforms like Facebook and Twitter would classify instances of violence against women as "humorous" or "free speech," failing to condemn such actions (Athar 2015, 21-22). The third and final issue revolved around graphic violence and normalization, especially in social media.

In 2013 a video on Facebook of a woman being beheaded went viral, and the company's Safety Advisory Committee did not flag the video as inappropriate. This case was controversial since the Committee took down the video then reinstated the post. Public demands pushed the platform to revise its policies. As a result, Facebook shifted its graphic violence policies to prohibit content that "celebrates violence" and deleted the video permanently. (Athar 2015, 22). On the other hand, YouTube, a site widely known for video content, is an example that has one of the most specific guidelines regarding inappropriate content. The site clarifies that "if your video asks others to commit an act of violence or threatens people with serious acts of violence, it will be removed from the site." The policy also specifies that acts of violence include physical attacks that involve blood or gory, the aftermath of the attack, and when the physical attack is realistic.

YouTube's hate speech policy includes language that prohibits violence against individuals based on identity groups such as race, age, immigration, religion, and sex, and gender (YouTube Creators 2019). The policy acknowledges that the platform is susceptible to OGBV and intends to create a space to redress it (Athar 2015, 23). The hate speech policy provides a reporting system to report violations and threats. Threats are a complicated part of the policy where YouTube dictates that "we [YouTube] treat implied calls for violence as real threats." The consequences for violations of the policy are clear. The first violation gets a warning; a second violation receives a strike on your channel record. Finally, if there are three strikes within 90 days, YouTube will terminate your channel. An exception to this rule is that if the violation is categorized as "severe abuse," the channel will be closed after a sole case (YouTube Creators 2019). YouTube is one of the platforms with more transparent policies.

Collaboration?

It is relevant to analyze that the digital space is a relatively new space still developing policies and needs further research. It is unclear whether companies collaborate with law enforcement, if there are rules for reviewing complaints, or if there is proper training against GBV for employees dealing with the complaints (Athar 2015, 20). It is also not clear if criminalization can benefit from collaboration with corporations. Similarly, a collaboration between corporate policies and criminal law could raise privacy concerns. The article “More research is needed on digital technologies in violence against women” shows a low, inadequate investment for research and evaluation (Jewkes & Dartnall 2019). The current issue with internet corporations such as telecommunication and social media companies is that they often do not release information on how they manage OGBV. Since there is minimal information on the internal processes for digital violence, it is tough to assess how effective such policies work (Athar 2015, 20). Also, there is enough information to believe that the internet allowed the evolution and increase of OGBV throughout its history (Jurasz and Barker 2021, 791). That is why it is important to assess regulation and effectiveness.

Nonetheless, there have already been several interventions on the internet for GBV. These include open-source mapping of sexual violence exposure, mobile apps, websites for survivors, safety, and planning tools, and many more (Jewkes & Dartnall 2019). However, it is unclear whether the benefits and contributions from the internet outweigh the negative impact of indulging in digital violence.

Research Methodology

The next section of the thesis is the qualitative case study for Ley Olimpia in Mexico. I will use Ley Olimpia as a case study around policymaking for digital violence from a new reform in Mexico that intends to fight OGBV. The research will elaborate on how the case relates to the already existing discussion between corporate policies and criminal law. Ley Olimpia is an excellent case study because it embodies one of the two approaches from the literature review, criminal law reform. The section will evaluate the origin of the law, the policies implemented, and the performance of the criminalization.

The origin of the law and its story will come from research of recent events and news articles. Since Ley Olimpia stemmed from a specific activist’s story, it is essential to include the facts that led to criminal law reform since it is fundamental to understand the current political climate.

To evaluate the policies implemented in the research section, the UNHCR will be compared and contrasted with Article 20 and Article 199, the new additions to the Mexican Federal Penal Code to criminalize digital violence. It is important to investigate the new policies’ language and compare it to the language of policies that combat GBV. This comparison allows us to analyze differences or similarities

between how to address GBV and OGBV. The three main points of comparison are: (1) the core actions of the UNHCR policy against GBV prevention, (2) risk mitigation, and (3) response.

The performance and efficiency of the new criminal reform will be measured with primary evidence directly from news articles and feminist collectives' reports. This information provides insight into how the policy is eradicating digital violence.

There are some challenges to this research and the approach. First, there is not a lot of research regarding the actual effectiveness of the Ley Olimpia. Every state passed different legislation, and, because of time constraints, this research only analyzes the reform from the Federal Penal Code. Studies comparing each state's legislation would clarify what is effective or ineffective. Another challenge is that the federal reform is the newest legislation passed from all the reforms, so evaluating its effectiveness is complicated. That is why the effectiveness is based on how many cases are solved from the total number.

Case Study Research

Working Claim

Ley Olimpia, through a criminalization approach, even though it accomplished to add legislation against OGBV at a federal level by adding articles to the federal penal code, does not effectively eradicate OGBV. In addition, deep-rooted social issues still exist that encourage GBV like impunity, lack of victim-centered policy actions, and misunderstanding of the online setting. Therefore, Ley Olimpia does not effectively prevent, mitigate, or respond to cases of OGBV and fails to criminalize and prevent impunity from perpetrators.

Context

In Mexico, online apparatuses, such as social media, are at the center of attention regarding the new setting for GBV, Online Gender-Based Violence. There are multiple debates about its numerous uses and harmful effects. About 9.4 million Mexican women suffer from digital violence, representing about 25% of women in the country. That percentage is even higher among young, reaching 33% of women ranging from 12 to 29 years old. However, only 8.6% of victims reported their GBV to authorities (García 2020). Specifically, there is also a problem with reporting digital violence cases in Mexico, where more than 90% are unreported.

Policies against GBV in Mexico usually ignore the core problems and address more superficial aspects of the prevalent issue. For example, in Tijuana, high cases of GBV were reported on public transportation. The reports came especially from teenagers and young women using the transportation to get to school, work, and back home. After years of receiving reports, the county opted to create a "pink lane" of public transportation. The lane consists of special buses only available for women to use.

However, this lane does not come without its own issues. While it temporarily gave a solution for transportation without danger, this policy did not keep anyone safe outside the bus before or after using the transit system. Therefore, offering a limited resolution, on particular grounds, ignoring the core problem culture-ingrained in *machismo* fuels gender violence.

According to the WACC, in 2016, approximately ten women used Facebook and Twitter to denounce their aggressors and tell their stories. Instead of receiving help or support, they received sexual, physical, and death threats. This act encouraged about 100,000 women to post their own stories and their aggressors on social media using the hashtag #MiPrimerAcoso, meaning my first harassment. This courageous action effectively demonstrated how widespread GBV is in the country, giving faces and names to the number of victims (Vega Montiel 2018). In reality, social media is used to post about this as one of the only viable resources for help for victims. Unfortunately, the reporting systems are close to obsolete. Impunity is the usual conclusion in cases. Authorities shame victims instead of helped.

Case Study: Ley Olimpia in Mexico

This research's primary focus is a case study about the new set of laws in Mexico known as *Ley Olimpia*, which aims to primarily criminalize Online Gender-Based Violence (OGBV) by reforming the existing criminal law. In Mexico, from 2012 to 2020, 29 out of the 32 states passed 35 legislative reforms (Aguirre et al. 2020). Ley Olimpia passed as federal law in April of 2021 (Nguyen 2021), the first time an anti-digital violence law was passed at the national level.

Ley Olimpia's origins are traced back to an initiative by Olimpia Coral Melo, a survivor, feminist, and advocate for feminist policymaking. Her story inspired thousands of women, and the feminist movement added to the agenda to push the Mexican government to pass a series of laws to protect. She was only 18 years old when an intimate video of her and her boyfriend went viral in 2012. Everyone talked about the video in her small town, Huauchinango in Puebla, and nicknamed her "la gordibuena de Huachinango," a despective name that criticized her curvy body and sexualized her at the same time. Although she and her boyfriend had been together for six years, he denied sharing the intimate content. After the video went viral, she locked herself up at home for eight months and attempted suicide three times (Rojas 2020). She later became a feminist activist and wrote a draft of what is now known as Ley Olimpia. She wanted no one else to experience what she did. This new law, Ley Olimpia, explicitly criminalizes the sharing of intimate content without consent (Tv, Redacción Uno 2020). This is a groundbreaking reform as it is the first legal tool for women experiencing violence online. Ley Olimpia intends to give the power to victims of OGBV to demand that non-consensual intimate content be eliminated and blocked. The new law also tries to inhibit and prevent digital violence by criminalizing the act of posting non-consensual content.

OGBV in Mexico

Victims of OGBV cases are disproportionately women. From 2,143 investigations in 18 states, 83% of the victims were women (Aguirre et al. 2020). Self-gender identification from the cases revealed that from 1,960 victims, 1,636 are women. The highest number of investigations regarded sexting with 446 reports in Chihuahua, followed image-based violence with 365 cases opened in Michoacan, and 306 cases opened from personal identity attacks in San Luis Potosi.

According to a study from the Center for Gender Studies and Investigation from the university UNAM, the social platforms Facebook, Twitter, Google, Instagram, and YouTube increase the probability of OGBV against women. Certain features are iconic from social media platforms like anonymity, virilization, and normalization of gender violence further digital violence (García 2020). Without a doubt, the gender violence scenario in Mexico is pervasive and it is the case that the online setting worsens the violence (Vega Montiel 2018). The data from the investigation suggests that while there exists corporate policy protecting digital violence from gender violence, consequences do not reach Mexico.

Ley Olimpia comes as a result of feminist efforts to bring light to the failures of the penal code to criminalize digital violence. This is also born from the insensitivity of authorities to the OGBV issues. According to a report from the INEGI with information from the population from 12 to 59 years old and from a poll of almost 62 million, digital violence is a prevailing problem. Around 54% of polled individuals have experienced more than one instance of digital violence in the last year. Additionally, 46% have suffered one instance of digital violence (Garcés and Ruiz 2020, 715). The results show that women receive more sexual invitations and insinuations digitally than men at a rate of 30.8% versus 13.1%. Additionally, women receive more unwanted graphic content with 23.9% versus 14.7% (Garcés and Ruiz 2020, 715). Therefore, it is imperative to create legislation and criminalization of digital violence. Compared to the previous movement and criminalization for the creation of femicide laws in Mexico, as discussed in the previous section, feminist movements are the most efficient factor to push for reform. In the *campo algodnero* (cotton field) case, more than 300 women were murdered, and indifference from authorities caused extreme anger that led to mobilization (Angulo Lopez 2019). Similarly, with Ley Olimpia, the feminist movement supported Olimpia's initiative and pushed for legislation reform in nearly every state of Mexico.

Ley Olimpia focuses the new initiative on three specific core actions. The actions include codification of cyber violence, identifying as illegal the diffusion of sexual content, and recognizing the existence of digital violence as a new crime (Garcés and Ruiz 2020, 717). For the first time, criminalization for actions performed in a digital setting.

Comparing Legislation

This section of the research is a comparison between the UNHCR policy to address GBV with the new legislation recently passed for the Mexican Federal Penal Code, including Article 199 and Article 20. This comparison serves two purposes. First, this is an evaluation of the new legislation language within international standards. Second, to compare and contrast traditional policies with new OGBV policies to find how effective the approach of criminalizing digital violence is to combat GBV.

Policy Assessment			
Core Actions	UNHCR	Article 199	Article 20
Clear Definition	✓	✓	×
Prevention	✓	×	×
Risk Mitigation	✓	✓	×
Response	✓	×	✓

Table 1.1 Policy Assessment between UNHCR, Article 199, and Article 20 to UNHCR core actions: clear definition, prevention, risk mitigation, and response

The legislation for the violation of sexual intimacy, Article 199 Octies and 199 Decies:

Artículo 199 Octies. - Comete el delito de violación a la intimidad sexual, aquella persona que divulgue, comparta, distribuya o publique imágenes, videos o audios de contenido íntimo sexual de una persona que tenga la mayoría de edad, sin su consentimiento, su aprobación o su autorización.

Así como quien videograbe, audiograbe, fotografíe, imprima o elabore, imágenes, audios o videos con contenido íntimo sexual de una persona sin su consentimiento, sin su aprobación, o sin su autorización.

Estas conductas se sancionarán con una pena de tres a seis años de prisión y una multa de quinientas a mil Unidades de Medida y Actualización.

Artículo 199 Decies. - El mínimo y el máximo de la pena se aumentará hasta en una mitad:

I.- Cuando el delito sea cometido por el cónyuge, concubinario o concubina, o por cualquier persona con la que la víctima tenga o haya tenido una relación sentimental, afectiva o de confianza;

II.- Cuando el delito sea cometido por un servidor público en ejercicio de sus funciones;

III.- Cuando se cometa contra una persona que no pueda comprender el significado del hecho o no tenga la capacidad para resistirlo;

IV.- Cuando se obtenga algún tipo de beneficio no lucrativo;

V.- Cuando se haga con fines lucrativos, o

VI.- Cuando a consecuencia de los efectos o impactos del delito, la víctima atente contra su integridad o contra su propia vida.

Translation of Article 199 Octies and Decies by author:

Article 199 Octies. - The crime of violation of sexual intimacy is committed by anyone who discloses, shares, distributes or publishes images, videos, or audios of the intimate sexual content of a person who is of legal age, without their consent, approval, or authorization.

As well as those who videotape, audio record, photograph, print or create images, audios or videos with intimate sexual content of a person without their consent, approval, or without their authorization.

These behaviors will be punished with a penalty of three to six years in prison and a fine of five hundred to one thousand Units of Measurement and Update.

Article 199 Decies. - The minimum and maximum of the penalty will be increased by up to one half:

I.- When the crime is committed by the spouse, concubine, or by any person with whom the victim has or has had a sentimental, affective or trust relationship;

II.- When the crime is committed by a public servant in the exercise of his functions;

III.- When it is committed against a person who cannot understand the meaning of the act or does not have the capacity to resist it;

IV.- When some type of non-profit benefit is obtained;

V.- When it is done for profit, or

VI.- When as a result of the effects or impacts of the crime, the victim attempts against his integrity or against his own life.

If we compare Article 199 to the basic guidelines of the international document from the UNHCR, it lacks more than one core action. The UNHCR draws three main actions to combat gender-based violence, as discussed in the literature review. The three actions, prevention, risk mitigation, and response are not clearly defined in the new Article 199. The prevention, according to the UNHCR, should attack the problem from the root and intend to change social norms. Article 199 Octies identifies the definition and parameters of the crime for violating sexual intimacy. Determines that those who share content such as images, videos, audio from someone over 18 years old without the approval of the person portrayed, will face sanctions from three to six years of prison plus a penalty fee. Defining the crime and specifying the actions that are crimes, does help to identify and acknowledge the issue. The reform to criminalize OGBV actions can help potential perpetrators from committing such actions if there can be clear prosecution against them. As it will be further discussed, impunity in Mexico is a widespread problem. So, one of the only potential streamlining for prevention based on the new Article 199 is not effective, it does not solve the root causes of the issue.

Risk mitigation needs to identify risks and create action plans. Article 199 Decies identifies potential risks and creates one action plan to mitigate the risks. The action plan augments up to half the penalization for certain high-risk cases. Section 199 Decies I identifies that there is a substantial risk from sentimental partners to commit crimes of OGBV. Section 199 Decies III identifies and penalizes the risk

when victims of OGBV suffer integrity degradation and/or are at risk of losing their life. Other risks include individuals that attempt to generate profit out of the sharing of intimate contact. So, there is a risk assessment and an action plan that intends to mitigate risks with the reform of criminal law with Ley Olimpia.

The third core action from the UNHCR guidelines is the response. The response needs assistance from survivors. Assistance includes needs to meet the victim's needs, including access to justice, and protecting the victims' safety. This part is completely missing in the reform as there are no systems in place that would ensure the victim's physical safety, mental health, or overall needs. Considering the high level of impunity in Mexico, the lack of victim assistance is most likely the highest deterrent for OGBV victims to seek justice from the typical legal apparatus.

Another part of the reform with Ley Olimpia is the change for the *Ley General de Acceso de Mujeres a una Vida Libre de Violencia* (Women's Access to a Violence-Free Life General Law). The reform added Article 20:

ARTÍCULO 20 Sexies.- Tratándose de violencia digital o mediática para garantizar la integridad de la víctima, la o el Ministerio Público, la jueza o el juez, ordenarán de manera inmediata, las medidas de protección necesarias, ordenando vía electrónica o mediante escrito a las empresas de plataformas digitales, de medios de comunicación, redes sociales o páginas electrónicas, personas físicas o morales, la interrupción, bloqueo, destrucción, o eliminación de imágenes, audios o videos relacionados con la investigación previa satisfacción de los requisitos de Ley.

En este caso se deberá identificar plenamente al proveedor de servicios en línea a cargo de la administración del sistema informático, sitio o plataforma de Internet en donde se encuentre alojado el contenido y la localización precisa del contenido en Internet, señalando el Localizador Uniforme de Recursos.

La autoridad que ordene las medidas de protección contempladas en este artículo deberá solicitar el resguardo y conservación lícita e idónea del contenido que se denunció de acuerdo a las características del mismo.

Las plataformas digitales, medios de comunicación, redes sociales o páginas electrónicas darán aviso de forma inmediata al usuario que compartió el contenido, donde se establezca de forma clara y precisa que el contenido será inhabilitado por cumplimiento de una orden judicial.

Dentro de los cinco días siguientes a la imposición de las medidas de protección previstas en este artículo deberá celebrarse la audiencia en la que la o el juez de control podrá cancelarlas, ratificarlas o modificarlas considerando la información disponible, así como la irreparabilidad del daño.

Translation by author:

ARTICLE 20 Sexies.- In the case of digital or media violence to guarantee the integrity of the victim, the Public Ministry, the judge, or the judge, will immediately order the necessary protection measures, ordering electronically or in writing to the companies of digital platforms, of

communication media, social networks or electronic pages, natural or legal persons, the interruption, blocking destruction, or elimination of images, audios or videos related to the investigation after satisfying the requirements of the Law.

In this case, the online service provider in charge of the administration of the computer system, site or Internet platform where the content is hosted and the precise location of the content on the Internet must be fully identified, indicating the Uniform Resource Locator.

The authority that orders the protection measures contemplated in this article must request the safeguarding and legal and suitable conservation of the content that was reported according to its characteristics.

Digital platforms, media, social networks or electronic pages will immediately notify the user who shared the content, where it is clearly and precisely established that the content will be disabled in compliance with a court order.

Within the five days following the imposition of the protection measures provided for in this article, the hearing must be held in which the control judge may cancel, ratify or modify them, considering the information available, as well as the irreparability of the damage.

When comparing Article 20 with the UNHCR's core actions, we find that it does not align with most of them. It does not include a clear definition of what digital violence is, or what media violence is. No prevention action plan is identified within Article 20. The core action is reactive rather than proactive. It does, however, provide somewhat of a response to the victims. Article 20 creates legislation around collaboration with social media platforms. Section Article 20 Sexies states that the way to preserve a victim's integrity is by contacting digital platforms directly. Public ministries or judges would order necessary protective measures, ordering companies to interrupt, block, destroy, and delete the media related to the investigation.

Previously, in the literature review section, we found that a clear stance within the OGBV policy debate includes corporate policy reform as one of the solutions for effectively combating the issue. While my case study of Ley Olimpia mainly focuses on the criminalization of OGBV and the creation of a language that identifies what constitutes a violation of sexual intimacy, it also opens the door for collaboration with social media companies.

Efficiency

One of the main focuses of Ley Olimpia is the criminalization of intentionally violating sexual intimacy. According to the Federal Consumer Prosecutor's Office, Ley Olimpia's sanctions range from three to six years of prison given out to perpetrators of digital violence. There are also fines from 500 to 1,000 times of the Units of Measure and Actualization (UMA). The most recent UMA in 2021 has a value of 89.62 pesos daily. You can report digital violence through your local public ministry (Procuraduría Federal del Consumidor 2021). Compared to the femicide law passed in the early 2000s in Mexico, the

years of prison sentences differs exponentially as the criminalization for femicide has been established as ranging from 40 to 60 years of prison time. This major difference suggests that there is still a notion of minimization regarding digital violence. While femicides and digital violence are not the same, treating digital violence as if it is not “real” damage, fundamentally creates mistrust from victims towards the justice systems.

Even though the law is relatively new, it already is known for perpetuating impunity. According to an article by *Animal Politico*, there have been around 2,000 cases open for non-consensual sharing of intimate content in 18 states. Of the 2,000 cases reported, 24 have advanced to criminal cases filed in court and only four cases ended in a guilty verdict. For most of the cases, about 83% are still waiting for processing. Additionally, about 17% of the cases get solved with alternative methods such as conditional suspension of the process, reparatory agreement, or abbreviated oral trial. Some even got the victim to grant forgiveness (Arteta 2020). Putting at risk the victim’s integrity, safety, and health.

Impunity is the most common denominator in Mexico when it comes to gender violence. In the case of the *campo algodono* (cotton field) in Ciudad Juárez, there were 328 femicides, according to the UN. The Inter-American Court of Human Rights stepped in as the local government would minimize the issue and it became an international responsibility. One of the first observations against the local practices is that women would have to be missing for 72 hours to report it as disappeared. Often, this would then be too late for anything to be done.

Deficiencias

Some organizations in Mexico are unsatisfied with the development and implementation of the Ley Olimpia. Social organizations like R3D, *Red en Defensa de Los Derechos Digitales* (Network for the Defense of Digital Rights) expressed their disapproval and suggestions to the government regarding Ley Olimpia’s criminalization focus (R3D 2020). The R3D organization believes that the criminal law and punitive nature of Ley Olimpia are not enough to address OGBV. According to the organization, the law fails to acknowledge the social aspect of digital violence against women. They highlight that the criminalization that the new law intends creates a negative impact on victims. When victims report cases, the law does not take into consideration the exposure and the risk it entails for the victim. Victims are affected in many ways, such as being subject to social revictimization (R3D 2020).

Regarding the Federal Penal Code and its Article 199 for crime against sexual intimacy violations, the R3D claims three problems arise from their initiative. The first entails that the article fails to consider the victim’s will. Nowhere does the article state that the victim has the right to decide what to do with the case. This observation stems from the worry that unwanted investigations may occur unraveling further problems for the victim. Also, the article does not include different or alternative routes

to proceed with cases. Not having alternative solutions increases the likelihood that victims will face revictimization (R3D 2020). The second issue relates to knowledge of consent from the perspective of the perpetrator. This observation intends to somehow clarify who is guilty of violating Ley Olimpia. The organization recommends that guilty individuals should be cognizant that the sexual content was non-consensual. In other words, complex scenarios should be considered when deeming someone guilty. For example, when there is a case where the distributor of content did not have a way to tell if such was distributed with the consent of the main subject, they should not be punished. Finally, the third issue calls for a specific definition of the concept of “sexual intimacy.” In the manner of making clear what content can be categorized as sexual intimacy since the definition is ambiguous in the Ley Olimpia law. This last observation intends to prevent obstruction for reporting and the processing of the case. Additionally, it prevents Public Ministries from having the power to decide what is and what is not considered sexual intimacy. The organization points out that Public Ministries are underprepared to deal with human rights and gender issues (R3D 2020). That way, facilitating and improving the functioning of the law.

Conclusion

In conclusion, based on the research findings of Ley Olimpia as a case study to assess the effectiveness of the criminalization approach to eradicate OGBV, simply passing legislation is not enough to ensure the victim's safety, integrity, and preservation of health which are necessary for an effective approach to combat OGBV. Comparing the research findings and the literature review, the findings suggest that criminalization does not deal with "multi-sided" issues deeply ingrained in society in Mexico. A major aspect that prevailed is impunity as this aspect has characterized other feminist laws in the past. For example, the femicide laws from the early 2000s proved insufficient since femicides are still increasing today in Mexico. Similarly, impunity is a factor that emerged from the newly reported cases for Ley Olimpia, leaving more than 80% of the cases unsolved.

Policies, whether corporate or criminal, need to include a better comprehensive victim-centered approach. Right now, policies fail to ensure the victim's overall safety and respect for their will. Resources should be available regardless of the victim's will to proceed with a report or not. Listening to victims' needs will also help identify issues within the justice system.

Comparing femicide criminalization and digital violence criminalization, both of which had similar paths toward legislation through pressure from feminists, and there are exponential disparities with the times and penalties suggesting that digital violence is still minimized. If digital violence is not taken as a serious threat and not penalized as what they are, dangerous violence outlets, justice will be obstructed for victims.

Criminalization alone does not solve problems deeply rooted in a society like impunity in the case study of Mexico and Ley Olimpia. It also does not prevent the issue from happening as well as ignore some social and contextual latent issues such as *machismo*, re-victimization within the road for justice.

More research, specifically on the effectiveness of corporate policies and what a two-sided collaboration would look like, is critical. Two-sided collaboration should be from both corporations and criminal law, cooperating to eradicate OGBV. Additionally, reforming policies should be both a corporate and criminal task.

Moving forward, there needs to be an analysis specifically addressing what effective collaboration will look like? If corporate policies reform and delete, eliminate content, will this obstruct the criminal law prosecution? Does a report from the legislative apparatus need to be in place for companies to deal with OGBV? I think social media platforms do have human and ethical responsibilities with their users. Prevention and risk mitigation would benefit greatly from collaboration with social media companies. Companies should first fix existing issues like silencing women by not properly distinguishing nudity with obscenity, normalizing graphic violence, and seriously identifying cases of

Violence Against Women instead of claiming free speech. After that, companies should create systems that identify and mitigate risks, and start preventing OGBV.

This essay is limited to the available data and research around GBV that has a focus on women and girls. There is still a long way to go until GBV is completely inclusive of everyone who experiences it. It shows specifically when data, for example, centers the GBV findings based on women's experiences with GBV. Signaling that there are studies and work yet to be done to include specific data for individuals identified as non-binary. That is why the definition of GBV will continue to evolve while the problem persists.

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