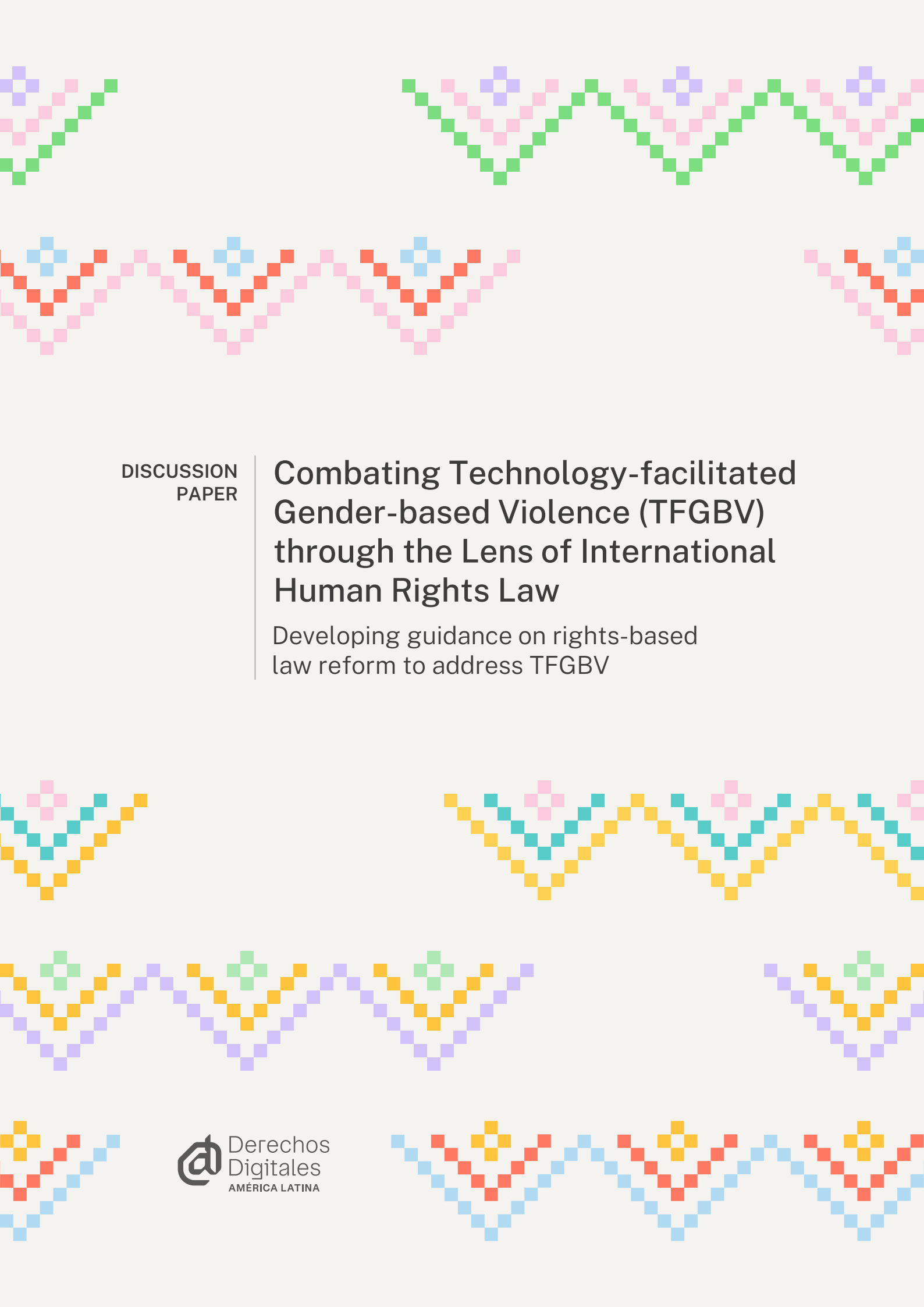


The page features a decorative border composed of repeating geometric patterns in various colors (purple, green, pink, blue, orange, yellow) arranged in a wave-like fashion along the top and bottom edges.

DISCUSSION  
PAPER

# Combating Technology-facilitated Gender-based Violence (TFGBV) through the Lens of International Human Rights Law

Developing guidance on rights-based  
law reform to address TFGBV

## DISCUSSION PAPER

### Combating Technology-facilitated Gender-based Violence (TFGBV) through the Lens of International Human Rights Law



---

**Text:** Paloma Lara Castro and Marina Meira  
**Research Assistant:** Valentina Vera Quiroz  
**Supervision:** Jamila Venturini  
**Design:** Francisca Balbontín  
**Proofreading:** Urgas Traductoras

**2024**

This publication was created by Derechos Digitales, an independent non-profit organization, founded in 2005, whose mission is the defense, promotion, and development of human rights in digital environments in Latin America.

This publication was made possible thanks to the support of the United Nations Population Fund (UNFPA).

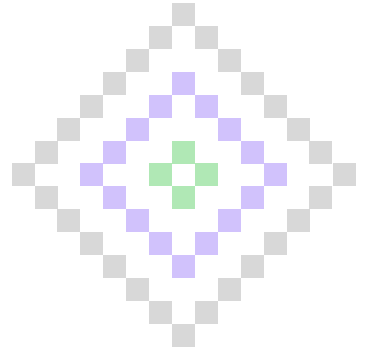
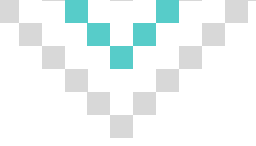
This report was made possible thanks to the valuable advice of the following experts: Bishaka Datta, Bridget Harris, Denisse Albornoz, Diana Arango, Eliana Quiroz, Eva Blum, Juliet Nanfuka, Lorna Woods, Lucie Domain, Lulú V. Barrera, Malavika Rajkumar, Manuel Contreras-Urbina, Merrin Muhammed Ashraf, Mirta Moragas, Muthoni Muriithi, Paola Ricaurte, Paz Peña, Peace Oliver Amugee, Priscilla Ruiz, Shubha Kayastha, Suzie Dunn, Sven Pfeiffer, Tigist S. Hussen, and Tsitsi Matekaire.



This work is licensed under Creative Commons Attribution 4.0 International.  
<https://creativecommons.org/licenses/by/4.0/deed.en>

# Index

|                                                                                                   |           |
|---------------------------------------------------------------------------------------------------|-----------|
| <b>Acronyms</b>                                                                                   | <b>4</b>  |
| <b>1.Presentation</b>                                                                             | <b>5</b>  |
| <b>2.Methodology</b>                                                                              | <b>7</b>  |
| <b>3.Introduction</b>                                                                             | <b>12</b> |
| Overview: Gender inequality increases the risk of TFGBV, and TFGBV, in turn, increases inequality | 12        |
| 3A. Recognizing rights in technological interactions                                              | 12        |
| 3B. The dual character of technology in the achievement of gender equality                        | 14        |
| 3C. TFGBV and its implications                                                                    | 16        |
| 3D. Feminist frameworks to combat TFGBV                                                           | 23        |
| <b>4.Analysis</b>                                                                                 | <b>26</b> |
| 4A. Conceptualization and types of TFGBV                                                          | 26        |
| Definition of TFGBV                                                                               | 27        |
| Other definitions                                                                                 | 31        |
| Acts that constitute TFGBV                                                                        | 32        |
| Summary                                                                                           | 38        |
| 4B. Legislative strategy                                                                          | 39        |
| Specific thematic scope                                                                           | 39        |
| Integration with GBV legal frameworks                                                             | 41        |
| Link to morality standards                                                                        | 42        |
| Summary                                                                                           | 46        |
| 4C. Legislative approach                                                                          | 47        |
| Criminal and repressive approach                                                                  | 48        |
| Balance of rights                                                                                 | 49        |
| Obstacles and limitations of legal actions                                                        | 51        |
| Remedies and redress mechanisms                                                                   | 54        |
| The liability of digital business                                                                 | 56        |
| Summary                                                                                           | 57        |
| 4D. Other challenges related to TFGBV legislation                                                 | 59        |
| <b>5.Concluding remarks</b>                                                                       | <b>61</b> |



# Acronyms

---

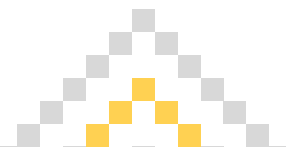
**GBV:** gender-based violence

**ICT:** Information and Communications Technology

**LGBTQIA+:** lesbian, gay, bisexual, transgender, queer, intersex and asexual. The “+” refers to all other identities not encompassed in the acronym

**TFGBV:** technology-facilitated gender-based violence

**UN:** United Nations



# 1. Presentation

The digital age has generated new spaces for the exercise and enjoyment of human rights. As such, international law has confirmed that the protections provided to human rights must be enforced both offline and online. This applies to all rights, including the rights to freedom of opinion and expression<sup>1</sup>, and States' obligation to combat all forms of discrimination against women<sup>2</sup> and to protect their human rights<sup>3</sup>. While international human rights bodies have articulated the importance of understanding the impact of new technologies and digital spaces on the protection of human rights, few countries have specific norms in this regard<sup>4</sup>.

Technology-facilitated gender-based violence (TFGBV) is a pervasive global issue that infringes on the international human rights<sup>5</sup> of women and LGBTQIA+ people, creating differentiated impacts on individuals with intersecting identities. It acts as a hindrance, impeding the full exercise of their human rights and fundamental freedoms, and constituting a barrier to their participation in economic, social, cultural, and political spheres, thereby obstructing the realization of gender equality. TFGBV, deeply rooted in patriarchal systems, is not an isolated phenomenon but a continuum of gender-based violence (GBV) within society, where online and offline manifestations complement and mirror each other<sup>6</sup>.

In response to growing concerns surrounding the surge in TFGBV and its far-reaching impact on individuals and society, efforts are being made at the global, regional, and national levels to establish standards and policies to address this issue. However, comprehensive global research indicates significant shortcomings in local legal systems, which fail to effectively protect women and LGBTQIA+ peoples' fundamental rights.

---

1 UN Human Rights Council. (2012). Promotion, protection and enjoyment of human rights on the Internet. A/HRC/RES/20/8. <https://undocs.org/A/HRC/RES/20/8>

2 All mentions to "women" in this text encompass cis and transgender women.

3 Šimonović, D. (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. A/HRC/38/47. <https://undocs.org/A/HRC/38/47>

4 Affoum, N., et al. Protecting Women and Girls from Cyber Harassment: A Global Assessment of Existing Laws. <https://documents1.worldbank.org/curated/en/099456506262310384/pdf/IDU0c7c3a5a70b56a04b250a31b0b32b8f5cd856.pdf>

5 UN Women. Technology-Facilitated Gender-Based Violence. <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/tech-facilitated-gender-based-violence>

6 Pollicy. (2020). Legal Analysis: A Comparative Study of Legislation Addressing Technology-Facilitated Gender-Based Violence. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

Although there are contextual variations, many challenges find commonalities globally such as the lack of consideration of this type of violence as a gender-based human rights violation due to its digital nature, the prevalence of the use of the criminal justice system to address it, the failure to balance rights, the barriers experienced by victims/survivors<sup>7</sup> in the judicial system, and the prevalence of impunity. In many cases, legislation itself has not only been ineffective in protecting the expression of women and LGBTQIA+ people, but also puts them at risk<sup>8</sup>.

These shared challenges, deeply rooted in the construct of sexism as a social and institutional phenomenon, necessitate differentiated responses. The contextual nature of gender-based violence, intertwined with social, economic, State, political, and cultural factors, requires tailored strategies.

With the goal of developing a human rights-based, victim/survivor-centered guide for advancing legislation to respond to TFGBV based on an intersectional approach that takes into account the principles of proportionality, necessity and legality, this discussion paper synthesizes research on legal and policy frameworks, incorporating an analysis of local legislation addressing TFGBV. A comprehensive examination, it aims to identify best practices and challenges that can inform the formulation of guidelines and will serve as a basis for future discussions with international experts advising on their development<sup>9</sup>.

The research findings gathered in this paper have also served as a basis for the drafting of “Making All Spaces Safe: A Guidance on rights-based law reform to address TFGBV”, which contains actionable steps and guidelines on how to legislate against TFGBV, and has been published by the United Nations Population Fund (UNFPA).

This document is organized into four sections besides this presentation. The first section details the methodology adopted to conduct the research materialized in this paper. The following section introduces an overview of TFGBV within the international human rights law framework, and the subsequent section presents the analysis of the key nodes identified for the structure of TFGBV legislation: conceptualization and types of TFGBV, legislative strategies, and legislative approaches to TFGBV. The analysis section explores critical aspects, concerns raised by research, insights from experts in the field, and trends observed in local legislation. Finally, the last section of the document presents concluding remarks and suggests a checklist of steps to be taken when drafting legislation on TFGBV.

7 The terms “victim(s)” and “survivor(s)” are both used throughout this text, as there are women and LGBTQIA+ individuals who have suffered TFGBV that identify with each of them. This duality is also reflected in research and other types of statements on the topic.

8 Derechos Digitales and APC. (2023). When protection becomes an excuse for criminalization: gender considerations in cybercrime frameworks. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

9 We acknowledge and appreciate the advice of the following experts: Bishaka Datta, Bridget Harris, Denisse Albornoz, Diana Arango, Eliana Quiroz, Eva Blum, Juliet Nanfuka, Lorna Woods, Lucie Domain, Lulú V. Barrera, Malavika Rajkumar, Manuel Contreras-Urbina, Merrin Muhammed Ashraf, Mirta Moragas, Muthoni Muriithi, Paola Ricarte, Paz Peña, Peace Oliver Amugee, Priscilla Ruiz, Shubha Kayastha, Suzie Dunn, Sven Pfeiffer, Tigist S. Hussen, Tsitsi Matekaire.

# 2.Methodology

This report is the result of an investigation carried out via desk research between August 2023 and March 2024 that included the following phases:

**a. Literature Review** of research on legal and policy frameworks, considering both online and offline consequences of TFGBV and including legislative and policy options.

The literature review concentrated on qualitative research and legal analyses, examining national and global studies on legal frameworks, policy approaches, and the broader socio-legal context surrounding TFGBV

**b. Analysis of statements and standards issued by human rights bodies**, which involved the creation of a matrix that considered several key dimensions. The following is an overview of the analytical criteria applied:

TABLE 1: Criteria for analyzing human rights standards

| Criterion                           | Definition                                                                                                                                                                                                                    |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Context                             | A brief overview of the context that led to the issuance of the statement was provided                                                                                                                                        |
| Definition of gender-based violence | An examination of whether the declaration or statement employed any specific definition of gender-based violence                                                                                                              |
| Key concepts                        | An exploration of whether the declaration or statement provided definitions for key concepts related to GBV                                                                                                                   |
| Definition of TFGBV                 | A consideration of whether the declaration or statement incorporated any definition of Technology-Facilitated Gender-Based Violence                                                                                           |
| Types of TFGBV                      | An assessment of whether the declaration or statement acknowledged or defined emerging forms of violence against women with ICT-related names, such as “doxxing,” “sextortion,” “trolling,” etc.                              |
| Thematic Approach                   | An evaluation of whether the declaration or statement focused on specific thematic approaches, such as disinformation, political violence, or others                                                                          |
| Differential Approach               | An examination of whether the pronouncement adopted a differential approach, particularly regarding victims of TFGBV belonging to historically marginalized groups, LGBTQIA+ people, children, people with disabilities, etc. |

| Criterion                                               | Definition                                                                                                                                                                                |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legal remedies                                          | An exploration of whether the declaration or statement foresaw any legal remedies for TFGBV                                                                                               |
| Non-Legal remedies                                      | An assessment of whether the declaration or statement considered non-legal remedies for TFGBV                                                                                             |
| Recommendations                                         | An analysis of whether the declaration or statement issued legal and/or non-legal recommendations to relevant stakeholders, including government officials, internet intermediaries, etc. |
| Application of the international human rights framework | Specification of whether the body issuing the decision cited or made reference to international and/or regional legal norms or judicial decisions applicable to TFGBV                     |
| National law or jurisprudence                           | Identification of the legal norms or judicial decisions from national authorities that the body issuing the decision cited or made reference to                                           |

**c. Analysis of national legislation addressing TFGBV**, which involved the examination of eight pieces of legislation from various geographical regions: Mexico City’s Olimpia Law (Mexico, 2020), Legislative Decree 1410 (Peru, 2018), Protecting Canadians from Online Crime Act (Canada, 2014), Online Safety Act (Australia, 2021), Hate Speech and Disinformation Prevention and Suppression Proclamation (Ethiopia, 2020), Anti-Photo and Video Voyeurism Act (Philippines, 2009), Information Technology Bill (Nepal, 2019)<sup>10</sup>, and Amend. SG 74/2015 to the Criminal Code (Bulgaria, 2015). The selection aimed for geographical diversity and representation, with a focus on countries from the Global South.

The laws were also chosen to reflect a diversity of TFGBV approaches and subjects, including both those that specifically address TFGBV and others that touch on related themes like hate speech, disinformation, and broader issues not directly related to TFGBV. The following table presents information on each law’s content:

TABLE 2: Analyzed legislation

| Law                          | Country | Specific on TFGBV | Content                                                                                                                                     |
|------------------------------|---------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Olimpia Law from Mexico City | Mexico  | Yes               | Online sexual harassment, non-consensual dissemination of intimate images (NCDII), threat (involving NCDII) and extortion (involving NCDII) |
| Legislative Decree 1410      | Peru    | Yes               | Online harassment, online sexual harassment, sexual blackmail, NCDII                                                                        |

10 At the time of the legislative analysis conducted for this paper (September 2023), the bill had been approved by the Development and Technology Committee of the House of Representatives. In August 2025, the law was enacted as the Information Technology and Cyber Security Act, with some amendments.

| Law                                                                    | Country     | Specific on TFGBV | Content                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------|-------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Protecting Canadians from Online Crime Act                             | Canada      | No                | NCDII, crimes of undesired contact (message in false name, false information, indecent communication, harassing communication, online crimes indirectly related to TFGBV (e.g., fraudulent obtaining of a computer service, interception of a computer system, obtaining a telecommunication service without payment and making available a device that is designed or adapted primarily to commit an offense) |
| Online Safety Act                                                      | Australia   | No                | Cyberbullying, cyber-abuse, NCDII, other types of material (violent material, X 18+ sexual content material)                                                                                                                                                                                                                                                                                                   |
| Hate Speech and Disinformation Prevention and Suppression Proclamation | Ethiopia    | No                | Disinformation, hate speech                                                                                                                                                                                                                                                                                                                                                                                    |
| Anti-Photo and Video Voyeurism Act                                     | Philippines | Yes <sup>11</sup> | Non-consensual capture of intimate content, NCDII, sale of sexual content material, publishing or broadcast of sexual content material                                                                                                                                                                                                                                                                         |
| Information Technology Bill                                            | Nepal       | No                | Unauthorized access to electrical information, unauthorized use of personal data, online harassment, threatening, intimidation, defamation and discrimination, hate speech, threat to national security, cyberbullying, online sexual harassment, production and distribution of obscene material, other subjects unrelated to TFGBV (e.g., electronic transactions and digital signatures)                    |
| Amend. SG 74/2015 to the Criminal Code                                 | Bulgaria    | No                | Grooming, collecting information for grooming, recruiting children to participate in pornographic material, production, broadcasting and sale of pornographic material, hate speech, other subjects unrelated to TFGBV (e.g., terrorism, lewdness, sexual intercourse with children, electoral crimes, tax crimes, alcoholic driving crimes)                                                                   |

A standardized model was developed to guide the analysis of each piece of legislation, with the following criteria: context of approval, reference to other legislation or international treaties, definition

<sup>11</sup> The Philippine Anti-Photo and Video Voyeurism Act foresees in its scope conducts that are considered TFGBV. It was, however, drafted after an episode involving the leak and sales of intimate videos of a cis heterosexual male public figure, and it doesn't address the category of "gender" or refer to "women" or LGBTQIA+ groups, nor does it acknowledge the conducts it foresees as part of gender-based violence, which might suggest that the law was not necessarily created with a gendered intention.

of TFGBV, key concepts, mechanisms for the prevention of TFGBV, mechanisms for investigation and requirements for criminal prosecution, considerations on evidence, considerations on procedure (criminal and civil), remedies, mechanisms for redress, safeguards, participatory mechanisms, provisions aimed at other actors than the perpetrators, and derived policies.

Each criterion was examined to provide a comprehensive understanding of the legislative landscape surrounding TFGBV. The analysis also considered whether the legislation had implications for other actors involved in TFGBV, such as social media platforms, and explored any derived policies linked to the laws. Such an approach aimed to capture the strengths, weaknesses, and nuances of each legislative framework in addressing TFGBV.

The information produced by the analysis of each policy was systematized into trends, which will be presented in the following sections of this document. Recognizing that the intention to provide protection against TFGBV is a first step for States to comply with their obligation to combat all forms of discrimination and violence against women in all their diversity, good practices and remaining challenges were identified through an assessment of legality, necessity, and proportionality. The systematization aimed to highlight patterns and initiatives that appear to contribute positively to responding to TFGBV while also identifying areas where legal frameworks may present challenges, ensuring a comprehensive evaluation grounded in human rights principles and victim/survivor-focused considerations.

The efforts to produce such analysis were conducted under the method of feminist legal analysis, as proposed by Elkayam-Levy (2021)<sup>12</sup>, which proposes the analysis of laws and policies through asking *the gender question*:

 *This method strives for a greater understanding of the consequences that specific norms or practices have on women or persons who identify themselves as women. While this question seeks to highlight and address the continuing injustice that women experience, it also allows scholars to see beyond the gender binary in ways that take into consideration a spectrum of genders and the impact of the law on people of all genders.*

The method consists of three steps:

1. Mapping existing regulations and stakeholders involved in a specific issue; in this case, TFGBV.
2. Considering the regulations' gaps, opportunities and silences, assessing their impact in the lives and experiences of gendered communities (especially women, but also LGBTQIA+ people); and
3. Proposing paths to advance such regulations through a gendered lens.

**d. Expert consultations.** An Advisory Committee, comprising experts from diverse backgrounds and regions, was constituted, and two meetings were held to discuss key aspects of addressing TFGBV

---

<sup>12</sup> Cochav Elkayam-Levy. (2021). A Path to Transformation: Asking "The Woman Question" in International Law, 42 MICH. J. INT'L L. 429. <https://repository.law.umich.edu/mjil/vol42/iss3/2>.

legislatively. The discussions revolved around three primary axes: (i) conceptualization: discussing the legal definition of TFGBV in different contexts and its typologies; (ii) regulatory frameworks: requesting input into different regulatory models identified during the policy analysis and enabling an exploration of alternatives; and (iii) legislative approach: discussing the possible strategies to combat TFGBV, including in terms of governance models and the implications of criminal approaches in different contexts.

# 3. Introduction

## OVERVIEW: GENDER INEQUALITY INCREASES THE RISK OF TFGBV, AND TFGBV, IN TURN, INCREASES INEQUALITY

This section delves into key considerations for combating TFGBV. Acknowledging the profound impact of technology on power dynamics, we explore its dual character, wherein it both empowers marginalized groups and contributes to reproducing and deepening existing oppressions, as well as generating new forms of gender-based rights violations. The intersection of technology and gender inequality is further examined through the lens of TFGBV, emphasizing its manifestation beyond digital spaces. As we analyze the implications of TFGBV, we recognize its gendered nature rooted in broader inequalities, underscoring the need for a comprehensive understanding that extends across diverse forms of technology and offline experiences. This introductory overview sets the stage for a nuanced exploration of gender dynamics in the TFGBV landscape.

## 3A. RECOGNIZING RIGHTS IN TECHNOLOGICAL INTERACTIONS

In the ever-evolving landscape of our technologically driven society, the intricate dynamics of TFGBV within societies and the corresponding State responses need to be understood within a broader context of persisting and emerging inequalities and growing authoritarianism that also have expressions in the digital realm. Central to this is the acknowledgment that technology holds a profound influence not only on the ways individuals relate to one another but also on the actions of States within an increasingly techno-centric environment.

As technology becomes a pivotal tool harnessed by corporations, shaping business models and influencing societal structures, a *continuum* is increasingly observed regarding the inseparable connection between online and offline contexts. This connection is properly recognized by international bodies and establishes a critical backdrop where rights exercised online are intricately intertwined with their offline consequences<sup>13</sup>. Within this emerging social landscape, it is necessary to understand the influence of technologies on power relations and their repercussions on gender as a pivotal social category.

<sup>13</sup> Khan, I. (2021). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/76/258. <https://undocs.org/A/76/258>

The pervasive impact of digital technologies has ushered in an unprecedented transformation of societal structures, fundamentally altering the dynamics of both social and economic realms by reshaping subjectivity and interpersonal interactions<sup>14</sup>.

The incorporation of technologies into societies marked by pre-existing structural inequalities has shown how far digital spaces and technologies are from neutral. While they can facilitate the exercise of human rights, they also hold the potential to perpetuate and exacerbate the violation of those rights.

The potential of the Internet to be a catalyst for the right to freedom of expression and its role in facilitating the exercise of other human rights<sup>15</sup> was the basis for a 2012 UN Human Rights Council (HRC) Resolution, which acknowledged that “the rights of people must also be protected on the internet, in particular the freedom of expression, which is applicable regardless of borders and by any procedure chosen.”<sup>16</sup> In 2016, the Special Rapporteur on violence against women reinforced the principle and stated that the interaction of technology and women’s human rights norms is characterized by the recognition that the rights of individuals must also be protected on the Internet<sup>17</sup>. In the same vein, another Resolution adopted by the HRC in 2018 recognizes that the definition of violence against women applies equally to the digital space and condemns all forms of such (including sexual and gender-based violence) committed through the use of digital technologies<sup>18</sup>.

When it comes to the forms in which technology can be used to violate rights, the Committee on the Elimination of Discrimination against Women has referred to the issue of internet and communications technology (ICT)-facilitated violence against women in several general recommendations and concluding observations regarding the Convention on the Elimination of All Forms of Discrimination against Women. General Recommendation No. 35<sup>19</sup>, which is an update to General Recommendation No. 19, clarified that the Convention is fully applicable to technological environments, such as the Internet and digital spaces.

Therefore, acknowledging the intricate impact of technology on power dynamics and gender relations, it is imperative for States to actively guarantee equal access to the digital realm, recognize the harms and inequalities technological advancement brings along,

14 IT for Change. (2019). Born Digital, Born Free: A Synthesis Report. [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

15 UN – Human Rights Council. (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. para. 22.

16 UN – Human Rights Council. (2012). Promotion, protection and enjoyment of human rights on the Internet. A/HRC/RES/20/8.

17 UN – General Assembly. (2016). Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet. UN A/HRC/RES/32/13.

18 UN – General Assembly. (2018). Resolution to accelerate efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts. UN Doc. A/HRC/RES/38/5.

19 UN – Committee on the Elimination of Discrimination against Women. (2017). General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19. UN Doc. CEDAW/C/GC/35.

and protect online rights. This requires not only recognizing the inextricable link between online and offline contexts but also taking proactive measures to uphold individuals' rights in the evolving landscape of technological interactions, in line with international law, resolutions and recommendations.

### 3B. THE DUAL CHARACTER OF TECHNOLOGY IN THE ACHIEVEMENT OF GENDER EQUALITY

---

The historically imbalanced power dynamics between men and women, coupled with systemic gender-based discrimination, have increasingly gained attention as a matter of serious concern. Nevertheless, despite the fact that gender equality is recognized in many international<sup>20</sup> and regional<sup>21</sup> human rights instruments, gender-based violence remains one of the most pervasive structural issues affecting the fulfillment of human rights achievement across cultures, classes, and countries<sup>22</sup>. Additionally, it is important to note that even though the main focus on GBV has been directed to cis-women and girls, as gender norms have impact on sexual orientation and gender expression, LGBTQIA+ people are also harmed by gender-based violence, including when it is facilitated by technology<sup>23</sup>.

In this scenario, “the intersection between tech[nology] and gender inequality is nuanced, possessing a dual nature.”<sup>24</sup> On the one hand, digital technologies have contributed towards countering the historical exclusion of marginalized communities within the public space as digital technologies have been instrumental in enabling women's exercise of a number of rights, in particular freedom of expression and freedom of association, as well as new forms of protest<sup>25</sup>. This can be seen very clearly in the consolidation of the use of the digital space as a socio-political tool of great relevance by women and LGBTQIA+ rights activists to influence public debate and make their social demands visible<sup>26</sup>. The results have been significant in the recognition of rights and the development of public

---

20 For example, the Convention on the Elimination of All Forms of Discrimination Against Women <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

21 Such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para”. <http://www.oas.org/juridico/english/treaties/a-61.html>

22 Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

23 Suzie Dunn. (2021). “Technology-facilitated Gender-Based Violence — An Overview.” CIGI Supporting a Safer Internet Paper No. 1. <https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/>

24 UN – Human Rights Council. (2013). Report of the Working Group on the issue of discrimination against women in law and in practice. A/HRC/23/50. Paras. 48 and 66.

25 Moolman, J. (2022). Freedom of Expression and Participation in Digital Spaces. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.14\\_Jan%20Moolman.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.14_Jan%20Moolman.pdf)

26 Derechos Digitales. (2023). Gender Considerations on Cybercrime Laws: When protection becomes an excuse for criminalization. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

policies<sup>27</sup>. Given the historical marginalization of these groups from the political domain, the Internet's and other technologies' impact on human rights, civic participation, and democracy takes on heightened significance, marking a transformative dimension in their inclusion in societal and political narratives.

On the other hand, the integration of technology into the dominant structures of patriarchy produces new patterns of gender oppression<sup>28</sup> as technologies and online spaces not only reproduce the structural misogyny to which women have been subject for centuries offline but also provide specific tools and processes that can exponentially amplify issues of structural inequality<sup>29</sup>. This is further compounded by the disparity in the swift progress of technological development compared to the relatively slower advancements (and, at times, setbacks) in gender equality. Consequently, the evolution of technology has given rise to corresponding advancements in forms of harassment<sup>30</sup>, marking an intricate interplay between technological innovation and the perpetuation of gender-based inequalities.

In summary, the Internet can be understood both as a space that empowers women and LGBTQIA+ people to initiate or enhance their participation in political and public life, and as a locus for various forms of GBV<sup>31</sup>.

The dual character of the Internet can be extended to some of its features and associated technological tools such as access to anonymous or, more often, pseudonymous forms of discourse, and to encryption<sup>32</sup>. Although these tools allow the safe expression of historically marginalized and other at-risk groups, including human rights defenders, they have also been portrayed as something that can be used by perpetrators of GBV to evade identification and punishment. Any legislative response to the violation of rights facilitated by technology should, thus, (a) recognize such dual characteristics and (b) find balanced approaches based on the

27 See: Goldsman, F., & Venturini, J. (2021). Building a Feminist Internet. Centre for International Governance Innovation. <https://www.cigionline.org/articles/building-feminist-internet>

28 IT for Change. (2019). Born Digital, Born Free: A Synthesis Report. [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

29 Derechos Digitales. (2023). Gender Considerations on Cybercrime Laws: When protection becomes an excuse for criminalization. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

30 Moolman, J. (2022). Freedom of Expression and Participation in Digital Spaces. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.14\\_Jan%20Moolman.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.14_Jan%20Moolman.pdf)

31 UN–Human Rights Council. (2013). Report of the Working Group on the issue of discrimination against women in law and in practice. A/HRC/23/50. Paras. 48 and 66.

32 When someone uses the Internet, their communications travel around the world through special computers known as servers and routers. These computers can see individuals' communications traffic, which entails a serious security and privacy problem. Encryption, through mathematics, makes such information unreadable so that third parties cannot read it. One uses encryption when they connect to a website and do not want a third party to be able to see their username and password when these are being authenticated, but also so that their activity on that website cannot be monitored. Encryption is a fundamental tool to have security on the Internet for financial transactions, authentication, confidentiality and for privacy in general.

principles of legality, necessity and proportionality<sup>33</sup>, since there is a serious risk of undermining the few possibilities for free and safe expression by the same groups they want to protect.

### 3C. TFGBV AND ITS IMPLICATIONS

---

TFGBV is both a reflection and a consequence of interconnected discriminatory State, corporate, and social systems. The concept of TFGBV extends beyond the idea of online violence, manifesting not only in digital spaces but also through various forms of technology; both old and new. This includes devices like phones, GPS tracking devices, drones, or recording devices that may not be connected to the Internet<sup>34</sup>. It may, thus, affect people who are connected to the Internet, but also members of the one-third of the world's population who, according to the International Telecommunications Union (ITU), are not<sup>35</sup>. In this sense it is ironic to observe that while most conversations around TFGBV are still focused on its online aspects, for the most marginalized groups, such forms of violence may be experienced even without connectivity. Taking those groups into consideration when developing policies to address TFGBV is crucial for the latter to be fair and effectively address the experiences of diverse groups.

Accordingly, although there are several terms to name the phenomenon of discriminatory expression and abusive behavior committed or aggravated by technologies and/or in digital spaces (such as online gender-based violence, digital violence, cyber violence against women, among others that refer to similar practices) we consider that the concept of TFGBV is better suited to reflect an intersectional approach<sup>36</sup>.

As noted by Dubravka Šimonović, former UN Special Rapporteur on violence against women, its causes and consequences, these modern forms of violence must be understood within the broader scope of GBV<sup>37</sup>. Such understanding allows us to comprehend how normalized abuse and discrimination play a key role in the way technologies are being developed, deployed and used, as well as on how society reacts to that usage and its impacts. This idea of a *continuum* highlights how TFGBV is not a new and isolated phenomenon: it is not only conditioned by broader gender inequality but also backed by common

---

33 Legality, necessity and proportionality are defined in the International Covenant on Civil and Political Rights (ICCPR) as the criteria to be fulfilled for restricting the exercise of the right to freedom of expression.

34 UNFPA. Technology-Facilitated Gender-Based Violence. [https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV\\_Brochure-1000x560.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV_Brochure-1000x560.pdf)

35 ITU. (2024). ITU-D ICT Statistics. <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

36 Hicks, J. (2021). Global evidence on the prevalence and impact of online gender-based violence. K4D Helpdesk Report. Institute of Development Studies. <https://www.ids.ac.uk/publications/global-evidence-on-the-prevalence-and-impact-of-online-gender-based-violence-ogbv/>

37 UN – Human Rights Council. (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. UN Doc. A/HRC/38/47.

social attitudes that minimize and excuse violence against women in its different forms<sup>38</sup>.

At the same time, a key part of such a *continuum* involves contemplating that just as violence that exists offline moves into online spaces where it is reproduced, amplified and reinvented in numerous forms, practices of violence that occur online have implications beyond the digital environment, posing serious threats to women's and LGBTQIA+ peoples' safety and physical integrity<sup>39</sup>. Instances of online violence, including threats and hate speech, may generate psychological harm, affect social relations, encourage sexual or physical violence and even lead to femicide<sup>40</sup>.

In summary, despite its particularities and evolving nature<sup>41</sup>, the common denominator for TFGBV lies in its gendered nature and roots in gender inequality<sup>42</sup>. However, the specific characteristics related to the digital nature of TFGBV and its acute and far-reaching impacts make it particularly unique. These include but are not limited to the transborder nature of the Internet, the rapid dissemination of and wide access to digital content, relative anonymity<sup>43</sup> and facilitated opportunities for perpetrators to organize attacks through online platforms<sup>44</sup>.

38 Mantilla, K., Henry, N., & Flynn, A. (2019). Human Rights Responsibilities of Platforms for Addressing Gender-based Violence Online. <https://eprints.qut.edu.au/121223/2/Human%20Rights%20Responsibilities%20of%20Platforms%20for%20Addressing%20Gender-based%20Violence%20Online%20-%20final%20pre-peer%20review.pdf>

39 UNFPA. (2021). Tech-Facilitated Gender-Based Violence Brochure. [https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV\\_Brochure-1000x560.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV_Brochure-1000x560.pdf)

40 UNFPA. (2021). 2022 Global Symposium on Technology-facilitated Gender-based Violence. [https://www.unfpa.org/sites/default/files/pub-pdf/TF%20GBV%20Final%20Publication\\_7.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/TF%20GBV%20Final%20Publication_7.pdf)

41 UNFPA. (2021). Tech-Enabled Gender-Based Violence Brochure. [https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV\\_Brochure-1000x560.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV_Brochure-1000x560.pdf)

42 UNFPA. Tech-Enabled Gender-Based Violence. <https://www.unfpa.org/TFGBV>

43 One's activity on the Internet always leaves a trace. The Internet provider or network administrator can monitor one's activity and at least know which places on the Internet individuals connect to. The websites accessed on the Internet can identify people by browser cookies or by their IP address.

The anonymity tools available on the Internet work mainly by hiding the IP address. A virtual private network (VPN) works by creating a tunnel between a device and the VPN server somewhere in the world. One's Internet provider or network administrator will be able to know only that they're connecting to the VPN and nothing else. The website one connects to will not know their location and will only be able to know that they are using the VPN. On the other hand, the VPN provider will be able to know where one connects to. In a way, using a VPN transfers one's trust from the Internet Service Provider (ISP) to the VPN provider. Tools like Tor go a step further and hide one's IP address through thousands of servers on the Internet managed by volunteers around the world. In this way, one's traffic is sent in encrypted form through three random servers on the Tor network, hiding their activity from both the local provider and the website to which they connect. Thus, not even the people from Tor or those who manage the nodes (servers) can know what they use the internet for, thus preserving anonymity.

44 Suzie Dunn. (2021). "Technology-facilitated Gender-Based Violence — An Overview" CIGI Supporting a Safer Internet Paper No. 1. <https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/> and Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

While each form of TFGBV has its own unique traits, many of them overlap<sup>45</sup>. The table below presents a non-exhaustive list of conducts that fall under the concept of TFGBV along with their definitions.

**TABLE 3: TFGBV conducts and their definitions**

| Conduct                                    | Definition                                                                                                                                                                                                                                                                                        | Source                                                                                                                                                                    |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sextortion                                 | The use of ICT to blackmail a victim where the perpetrator threatens to release intimate pictures of the victim to extort additional explicit photos, videos, sexual acts, or sex from the victim                                                                                                 | 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 (2018) |
| Trolling                                   | The posting of messages, the uploading of images or videos, and the creation of hashtags for the purpose of annoying, provoking, or inciting violence against women and girls                                                                                                                     | 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 (2018) |
| Online mobbing                             | The online equivalents of mobbing or harassment on social platforms, the internet, in chat rooms, instant messaging, and mobile communications                                                                                                                                                    | 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 (2018) |
| Online stalking                            | The repeated harassment of individuals, perpetrated by means of mobile phones or messaging applications, in the form of crank calls or private conversations on online applications or in online chat groups                                                                                      | 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 (2018) |
| Online sexual harassment                   | Any form of online unwanted verbal or nonverbal conduct of a sexual nature with the purpose or effect of violating the dignity of a person, by creating an intimidating, hostile, degrading, humiliating, or offensive environment                                                                | 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 (2018) |
| Unauthorized access and controlling access | Unauthorized attacks to gain access to the accounts or devices of others. This may involve unauthorized collection of information, as well as blocking or deactivating the victim's account; or the use of the hacked account to exercise behavior that generates discredit of the account holder | Luchadoras and SocialTic. Take back the tech! (2018)                                                                                                                      |

| Conduct                                                                | Definition                                                                                                                                                                                                                                  | Source                                               |
|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| Control and manipulation of information                                | The collection or theft of information may imply a loss of information, as well as its modification without authorization                                                                                                                   | Luchadoras and SocialTic. Take back the tech! (2018) |
| Non-consensual dissemination of intimate images or private information | Disseminating private (or sensitive, controversial) information with the intention of damaging reputation                                                                                                                                   | Luchadoras and SocialTic. Take back the tech! (2018) |
| Doxxing                                                                | Investigating and disseminating information that allows the identification of a person without their consent, often with the intention of having access or contact with the person for the purposes of harassment or other harmful purposes | Luchadoras and SocialTic. Take back the tech! (2018) |
| Surveillance                                                           | Constant monitoring of a person's online activities, daily life, or information, whether public or private                                                                                                                                  | Luchadoras and SocialTic. Take back the tech! (2018) |
| Spyware                                                                | Use of software to spy on and obtain information from other devices or access to accounts without the user's consent                                                                                                                        | Luchadoras and SocialTic. Take back the tech! (2018) |
| Impersonation and identity theft                                       | Using someone's identity without their consent, or creating and disclosing false personal data, with the intention of damaging the reputation of a person or organization                                                                   | Luchadoras and SocialTic. Take back the tech! (2018) |
| Delete, send or manipulate emails or other content without consent     | Deleting, sending or manipulating emails or other content without consent                                                                                                                                                                   | Luchadoras and SocialTic. Take back the tech! (2018) |
| Distortion of images or videos or other false content                  | Preparation of false, manipulated or out-of-context content, and its dissemination in order to discredit and harm a person or group                                                                                                         | Luchadoras and SocialTic. Take back the tech! (2018) |
| Defamation and damage to reputation                                    | Defamation and damage to reputation through false and offensive online comments                                                                                                                                                             | Luchadoras and SocialTic. Take back the tech! (2018) |
| Harassment                                                             | Repeated, unsolicited acts against a person or organization that are perceived as intrusive or threatening                                                                                                                                  | Luchadoras and SocialTic. Take back the tech! (2018) |
| Cyberbullying                                                          | Cyberbullying and repeated harassment through messages with an offensive and/or disqualifying tone                                                                                                                                          | Luchadoras and SocialTic. Take back the tech! (2018) |

| Conduct                                            | Definition                                                                                                                                                                                                                                                                                                                                                       | Source                                               |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| Hate speech                                        | Speech that reflects cultural models that incite violence, whether through comments, insults, or verbal attacks                                                                                                                                                                                                                                                  | Luchadoras and SocialTic. Take back the tech! (2018) |
| Threats                                            | Speech and content (verbal or written, in images, etc.) with an aggressive and/or threatening tone. Direct threats of violence of any kind                                                                                                                                                                                                                       | Luchadoras and SocialTic. Take back the tech! (2018) |
| Abusive comments                                   | Abusive comments                                                                                                                                                                                                                                                                                                                                                 | Luchadoras and SocialTic. Take back the tech! (2018) |
| Sending and receiving unsolicited sexual materials | Sending and receiving unsolicited sexual materials                                                                                                                                                                                                                                                                                                               | Luchadoras and SocialTic. Take back the tech! (2018) |
| Extortion                                          | Forcing a person to act according to the will of another person, through threats and intimidation                                                                                                                                                                                                                                                                | Luchadoras and SocialTic. Take back the tech! (2018) |
| Coordinated attacks                                | Those that are carried out in a coordinated manner and by more than one person towards another, a specific publication or a page on the networks. The purpose can be varied: dissemination of personal data to cause harassment or even achieve the elimination of the victims' profiles, create false identities in order to spread false publications and news | Luchadoras and SocialTic. Take back the tech! (2018) |
| Use of GPS                                         | Use of GPS or other geolocation services to track movements                                                                                                                                                                                                                                                                                                      | Luchadoras and SocialTic. Take back the tech! (2018) |

The overlapping character of TFGBV conducts can be seen, for example, in cases where a person can be subjected to harassment, doxxing and the dissemination of private content in one act. At the same time, the use of technology can be another manifestation of existing abuse in an intimate partner relationship, for example. The use of technology can also be an added element that enables monitoring and stalking through the use of devices, and it can be an additional form of violence in cases of documenting or broadcasting sexual assault<sup>46</sup>. The possibilities are endless, illustrating the complexity of the needed approach.

Numerous studies show how women and LGBTQIA+ people are systematically subjected to TFGBV. According to the Economist Intelligence Unit (EIU), the prevalence of personally experiencing online violence against women globally is at a staggering 38%, which is nearly 2 out of every 5 women, and 85% of women who are online have witnessed digital violence against other women<sup>47</sup>. Furthermore,

<sup>46</sup> Ibid.

<sup>47</sup> Economist Intelligence Unit. (2021). Measuring the prevalence of online violence against women. <https://onlineviolencewomen.eiu.com/> cited in [https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/GDC-Submission\\_UNFPA.pdf](https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/GDC-Submission_UNFPA.pdf)

nearly three-quarters of women surveyed expressed concern about online abuse escalating to offline threats<sup>48</sup>.

Although not a new phenomenon, TFGBV has escalated rapidly in recent years<sup>49</sup>, posing significant threats to human rights at the individual level and in social spheres. The COVID-19 pandemic has been identified as a relevant period for this global increase in TFGBV, referred to by UN Women as the “shadow pandemic.”<sup>50</sup> The same report identifies growth in coordination among perpetrators.

While online violence happens to people regardless of their gender, the forms of the attacks (sexualized harassment being a particularly prevalent form of online abuse<sup>51</sup>) and the impact of these attacks on the lives of women and LGBTQIA+ people show that this violence is gendered, given the structural inequality and discrimination they face<sup>52</sup>.

Higher levels of harassment and abuse are faced by people with intersecting inequality factors<sup>53</sup> such as race, sexuality, gender identity, class, disability, and immigration status, among others, as revealed by various studies<sup>54</sup>.

In this sense, the Working Group on the Issue of Discrimination against Women in Law and in Practice has acknowledged that even though women are affected differently by discriminatory laws and practices, there are shared aspects of discrimination that persist throughout all cultures. In that vein, they recommend that legal guarantees that benefit all women must be “responsive to the intersections of gender-based discrimination with other grounds of discrimination.”<sup>55</sup>

Presence in public life is also identified as a major factor when it comes to TFGBV. Human rights defenders, politicians, journalists and activists face differentiated impacts and are particularly subject

---

48 Ibid.

49 UN Women. Tech-Facilitated Gender-Based Violence. <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/tech-facilitated-gender-based-violence>

50 UN Women. Findings and recommendations from the Expert Group Meeting on the priority theme (10-13 October 2022). <https://www.unwomen.org/sites/default/files/2023-02/Report.pdf>

51 Hicks, J. (2021). Global evidence on the prevalence and impact of online gender-based violence. K4D Helpdesk Report. Institute of Development Studies. <https://www.ids.ac.uk/publications/global-evidence-on-the-prevalence-and-impact-of-online-gender-based-violence-ogbv/>

52 Moolman, J. (2022). Freedom of Expression and Participation in Digital Spaces. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.14\\_Jan%20Moolman.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.14_Jan%20Moolman.pdf)

53 Hicks, J. (2021). Global evidence on the prevalence and impact of online gender-based violence. K4D Helpdesk Report. Institute of Development Studies. <https://www.ids.ac.uk/publications/global-evidence-on-the-prevalence-and-impact-of-online-gender-based-violence-ogbv/>

54 See Plan International (2020), cited in [https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_1\\_coverupdate.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_1_coverupdate.pdf) and Jardim, L., & Penteado, C. L. (2021). Cyber Violence Against Women: An Empirical Approach. In M. Khosrow-Pour (Ed.), *Encyclopedia of Criminal Activities and the Deep Web* (pp. 103–117). Springer. [https://link.springer.com/chapter/10.1007/978-3-030-83734-1\\_7](https://link.springer.com/chapter/10.1007/978-3-030-83734-1_7)

55 United Nations Human Rights Council. (2018). Report of the Working Group on the issue of discrimination against women in law and in practice. [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/A\\_HRC\\_38\\_46\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/A_HRC_38_46_EN.pdf)

to gender-based forms of violence and threats for expressing themselves or simply for having a leadership role<sup>56</sup>. Research shows how attacks are part of a longer trend in violence predicated on gender biases and existing discrimination<sup>57</sup>. Examples include defamatory or disinformation campaigns that often rely on gender stereotyping, sexualized images and the social imaginary as part of their tactics<sup>58</sup>.

TFGBV manifests as a complex and unique threat, generating a pervasive “climate of unsafety”<sup>59</sup> within society that reverberates through both the individual and social spheres in multifaceted ways. These attacks not only prompt valid safety concerns and involve egregious invasions of privacy but also result in a significant consequence: the silencing of women’s and LGBTQIA+ people’s voices in digital spaces<sup>60</sup>. As highlighted by the Special Rapporteur on Freedom of Expression, given that online spaces serve as the primary domain for freedom of expression in the digital era, the silencing of voices from these groups on the Internet raises the risk of their perspectives going unheard altogether<sup>61</sup>.

At an individual level, victims/survivors experience long-term impacts on their psychosocial, political, professional, economic and emotional lives<sup>62</sup>. In fact, emotional abuse is known to predict poor mental health as strongly as physical or sexual abuse<sup>63</sup>. Evidence-based research demonstrates a significant impact on the psychological well-being of victims/survivors, manifesting in hindrances to everyday life experiences, such as the ability to freely come and go, as per their right<sup>64</sup>. As reported, TFGBV leads to self-censorship and even to withdrawal from professional or activist activities, or even from social

---

56 Khan, I. (2021). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/76/258. <https://undocs.org/A/76/258>

57 Dhanaraj Thakur, C., & Allen, A. (2022). The Impacts of Online Gender-Based Violence and Disinformation on Women Politicians in Representative Democracies. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.12\\_Dhanaraj%20Thakur%20and%20Asha%20Allen.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.12_Dhanaraj%20Thakur%20and%20Asha%20Allen.pdf)

58 Ibid.

59 Hicks, J. (2021). Global evidence on the prevalence and impact of online gender-based violence. <https://www.ids.ac.uk/publications/global-evidence-on-the-prevalence-and-impact-of-online-gender-based-violence-ogbv/>

60 Suzie Dunn. (2021). “Technology-facilitated Gender-Based Violence—An Overview.” CIGI Supporting a Safer Internet Paper No. 1. <https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/>

61 Khan, I. (2021). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/76/258. <https://undocs.org/A/76/258>

62 Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

63 Yoshihama M, Horricks J, Kamano S. The role of emotional abuse in intimate partner violence and health among women in Yokohama, Japan. *Am J Public Health*. 2009;99(4):647–653. doi: 10.2105/AJPH.2007.118976

64 Cochav Elkayam-Levy. (2021). A Path to Transformation: Asking “The Woman Question” in International Law, 42 MICH. J. INT’L L. 429. <https://repository.law.umich.edu/mjil/vol42/iss3/2>.

interactions. In extreme cases, although not unusual, it can also lead to forced relocations, migration, exile<sup>65</sup> and suicide.

At the societal level, the systemic impact of the silencing produced by TFGBV therefore strikes at the core of democracy and the rule of law by impacting the civil-political rights of women and LGBTQIA+ people, their aspirations (and possibilities) to be part of the public sphere, and the public sphere itself<sup>66</sup>. Their silencing not only means that the public loses relevant and diverse voices and points of view (media freedom is compromised, content related to equity and human rights is reduced<sup>67</sup>), attacking pluralism as an essential element of freedom of expression and democracy<sup>68</sup>; it also reinforces patriarchal gender roles, norms and structures, leads to an increase in the gender gap, and becomes a major barrier to gender equality and the achievement of the Sustainable Development Goals<sup>69</sup>.

This scenario brings with it obvious complexities as to how to harmonize human rights practices, in a context of persistent structural inequalities and exponentially growing technological development. Harm often precedes legal recourse, underscoring an urgent demand for protection. **Recognizing TFGBV as a manifestation of underlying structural matters, as has been stated by International laws, it is important to note that frameworks addressing this issue need to be part of a broader, multifaceted strategy that also involves non-legal measures aimed at removing systemic and structural barriers to gender equality.**

### 3D. FEMINIST FRAMEWORKS TO COMBAT TFGBV

Some feminist groups have held a complex relationship with legal institutions, which are viewed as an integral component of patriarchal social structures targeted for dismantling. Accordingly, the discursive space of law could offer only a partial resolution in alignment with ideals of feminist justice. Feminist endeavors historically resulted in the enactment of pioneering laws addressing oppressive practices against women, such as dowry, sex-selective abortion, and workplace sexual harassment. However, the subsequent failure of these progressive legal frameworks to bring about meaningful transformations within institutional patriarchies, particularly in the judicial and law enforcement systems, disillusioned many within the feminist movement. A subsequent generation of feminists expressed

65 Moolman, J. (2022). Freedom of Expression and Participation in Digital Spaces. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.14\\_Jan%20Moolman.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.14_Jan%20Moolman.pdf)

66 IT for Change. (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

67 Hicks, J. (2021). Global evidence on the prevalence and impact of online gender-based violence (OGBV). <https://www.ids.ac.uk/publications/global-evidence-on-the-prevalence-and-impact-of-online-gender-based-violence-ogbv/>

68 Inter-American Court of Human Rights. Case of Bedoya Lima et al v. Colombia. Judgment of August 26, 2021. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_431\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_431_ing.pdf)

69 UNFPA. Tech-Facilitated Gender-Based Violence (TFGBV) Brochure. [https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV\\_Brochure-1000x560.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/TFGBV_Brochure-1000x560.pdf)

reservations about the tendency of these laws to depict women as “passive victims without agency.”<sup>70</sup>

Despite these concerns, forsaking the law is not a viable option in the pursuit of gender-transformative social change. The law holds considerable symbolic significance, representing the State’s commitment to the constitutional value of anti-discrimination. For individuals from marginalized communities, the law can contribute to fostering a sense of belonging within a polity traditionally marked by denial of full membership. Scholars studying violence against women emphasize the importance of community-embedded approaches addressing cultural norms for the effectiveness of strategies in combating the issue<sup>71</sup>.

In this sense, it is key to acknowledge the fundamental contribution of legal feminisms to the field of law, which are grounded in understanding that law is not merely a set of written norms, but rather deeply influenced by culture. Further, legal feminisms assert that, devoid of a gender perspective, the law serves as a tool to legitimize and perpetuate the subordination of women and LGBTQIA+ people. The critique contends that the purported impartiality and objectivity of the discipline and its institutions stem from the universalization and cultural validation of masculine values, a phenomenon known as androcentrism. To surmount this challenge, feminist theorists have pioneered new legal methodologies aimed at transforming androcentric laws that have historically failed to reflect the needs, potential, and characteristics of women. This intellectual endeavor advocates for a reimagined legal framework created by and for women and the LGBTQIA+ community, incorporating alternative sources, methods, and institutions that center women as a foundational perspective<sup>72</sup>.

When it comes to GBV, a critical component of this approach is the victim/survivor-centric perspective. As defined by the Inter-Agency Standing Committee of the UN, a victim/survivor-centric approach “centers on placing the rights, wishes, needs, safety, dignity, and well-being of the victim/survivor at the core of all prevention and response measures.”<sup>73</sup>

This is in line with international recommendations. During the thematic discussions and conclusions of the 67th Session of the Commission on the Status of Women (CSW67), while they stress the need to develop, and where it already exists, to strengthen and enforce legislation prohibiting gender-based violence, recommendations underscore that these measures should be crafted around principles centered on the

70 IT for Change. (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

71 Ibid

72 Hiperderecho. (2021). Después de la Ley: Informe Nro 2. [https://hiperderecho.org/wp-content/uploads/2020/12/Informe-2\\_Después-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2020/12/Informe-2_Después-de-la-ley.pdf)

73 Inter-Agency Standing Committee. (2023). IASC Definition & Principles of a Victim/Survivor Centered Approach. <https://interagencystandingcommittee.org/iasc-champion-protection-sexual-exploitation-and-abuse-and-sexual-harassment/iasc-definition-principles-victim-survivor-centered-approach>

rights and well-being of victims and survivors, upholding human rights, access to justice, transparency, accountability, and proportionality<sup>74</sup>.

As expounded in the preceding sections, TFGBV has emerged as a pressing and substantial issue, and resulted in novel and intensified instances of rights infringements facilitated by the internet and technology. It is imperative to underscore that despite the numerous concerns associated with TFGBV, these challenges should not diminish the exercise of rights and the legal protection afforded to them<sup>75</sup>. It is the collective responsibility of the State and the community to foster a technology culture imbued with a gender perspective that upholds and respects human rights<sup>76</sup>.

**The elimination of all forms of gender-based discrimination requires a human rights-based approach which ensures that individuals are at the center of States' efforts to implement international standards guaranteeing human rights. International bodies have called upon States to fulfill their human rights obligations and to recognize TFGBV as a human rights violation and a form of gender-based discrimination.**

---

74 CSW67 Agreed Conclusions. Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls (advance unedited version, 10 March 2023). [https://www.unwomen.org/sites/default/files/2023-03/CSW67\\_Agreed%20Conclusions\\_Advance%20Unedited%20Version\\_20%20March%202023.pdf](https://www.unwomen.org/sites/default/files/2023-03/CSW67_Agreed%20Conclusions_Advance%20Unedited%20Version_20%20March%202023.pdf)

75 Paula Jaramillo & J. Carlos Lara. Derechos Fundamentales en Internet y su defensa ante el Sistema Interamericano de Derechos Humanos (Santiago de Chile: Derechos Digitales). <https://www.derechosdigitales.org/wp-content/uploads/Derechos-fundamentales-en-Internet-y-su-defensa-ante-el-Sistema-Interamericano-de-Derechos-Humanos.pdf>

76 Hiperderecho. (2021). Después de la Ley: Informe Nro 3. [https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3\\_Despues-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3_Despues-de-la-ley.pdf)

# 4. Analysis

This section will delve into examination of the crucial points pinpointed in this study concerning legislation on TFGBV. Drawing insights from the literature review, scrutiny of local laws, input from experts, and statements from international bodies, the analysis is organized into three segments: (1) the initial segment focusing on conceptualization and typologies; (2) the second segment addressing legislative evolution and challenges; and (3) the final segment tackling legislative approach.

State efforts to meet international obligations have proven both inadequate and insufficient; in some instances, they have exacerbated existing inequalities while giving rise to new forms of violence through the creation and execution of laws. As highlighted earlier, this is a multifaceted issue that poses numerous challenges linked to the continuum of structural violence and its expression in legislative frameworks, as well as the unique features of the digital realm in TFGBV. Civil society has emphasized that discussions on TFGBV often involve tensions among multiple rights. Additionally, it is crucial to note that the dynamic social relationship with technology introduces global variations, highly dependent on technological development and its use, influencing legislative priorities. Consequently, legislation is often crafted reactively, primarily focusing on responding to the commission of the act without being accompanied by preventive measures.

Given the elements mentioned above and the diverse legislative approaches applied and currently under development by States, three main challenges in addressing this issue have been identified. These three primary aspects are deemed crucial for understanding and addressing the problem from a legal standpoint. It is essential to note that these challenges are interconnected and merit comprehensive analysis. However, for a detailed examination that incorporates research findings, human rights frameworks, and an analysis of local legislation, they are delineated into separate sections in the subsequent discussions.

## 4A. CONCEPTUALIZATION AND TYPES OF TFGBV

---

One of the main challenges identified for addressing TFGBV is the lack of a consistent standard and shared definition of TFGBV, as well as a lack of a common vocabulary on its forms. Recently,

the agreed conclusions of the CSW67<sup>77</sup> envision the adoption of a comprehensive definition of online and technology-facilitated gender-based violence as a means to combat discrimination against women in digital spaces. This is the first time in this series of analyses that such an approach has been developed to fight against the various manifestations and underlying causes of TFGBV. Furthermore, the report emphasizes the importance of listening to the concerns and perspectives of victims and survivors, ensuring a victim-centered and survivor-centered approach.

DEFINITION OF TFGBV

Regarding the existing definition of TFGBV, there have been advances from international bodies as well as from civil society that sometimes highlight different aspects of the phenomenon. The following table presents conceptualizations of TFGBV as proposed by different stakeholders.

TABLE 4: TFGBV conceptualization

| Body/organization                               | Definition                                                                                                                                                                                                                                                                                              | Year | Source                                                                                                                                                                                                                 |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| UN Special Rapporteur on Violence Against Women | “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”        | 2018 | United Nations Human Rights Council. (2018). <i>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</i> |
| UN Women                                        | “any act that is committed, assisted, aggravated or amplified by the use of information communication technologies or other digital tools which results in or is likely to result in physical, sexual, psychological, social, political or economic harm or other infringements of rights and freedoms” |      | UN Women. FAQs: Trolling, stalking, doxxing and other forms of violence against women in the digital age                                                                                                               |
| UNFPA                                           | “an act of violence perpetrated by one or more individuals that is committed, assisted, aggravated and amplified in part or fully by the use of information and communication technologies or digital media, against a person on the basis of their gender”                                             | 2023 | UNFPA. Brochure: What is Technology-Facilitated Gender-Based Violence?                                                                                                                                                 |

<sup>77</sup> CSW67 Agreed Conclusions. Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls (advance unedited version, 10 March 2023): [https://www.unwomen.org/sites/default/files/2023-03/CSW67\\_Agreed%20Conclusions\\_Advance%20Unedited%20Version\\_20%20March%202023.pdf](https://www.unwomen.org/sites/default/files/2023-03/CSW67_Agreed%20Conclusions_Advance%20Unedited%20Version_20%20March%202023.pdf)

| Body/organization                                                                                                 | Definition                                                                                                                                                                                                                                                                                                                                                                                         | Year | Source                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Association for Progressive Communications – APC                                                                  | “acts of gender-based violence committed, instigated or aggravated, in part or in whole, by the use of Information and Communication Technologies (ICT), social networking platforms and email”                                                                                                                                                                                                    | 2017 | Association for Progressive Communications. APC Submission to the Special Rapporteur on Violence Against Women and Girls on Online and ICT-Facilitated Violence Against Women and Girls |
| Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) of the Council of Europe | “The digital dimension of violence against women encompasses a wide range of acts online or through technology that are part of the continuum of violence that women and girls experience for reasons related to their gender, including in the domestic sphere, in that it is a legitimate and equally harmful manifestation of the gender-based violence experienced by women and girls offline” | 2021 | GREVIO General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021                                                                       |

As can be seen, all the selected definitions allude (in different ways) to the *continuum* of gender-based violence and the role of technology as a facilitator or amplifier of pre-existing violence. The main difference can be identified in the precision of “women” instead of “gender”, the reference to harm and the reference to the multiplicity of perpetrators.

On this point, similar to the lack of consensus on a single definition, there is also no consensus on the need for a single definition. In this regard, UN Women has observed that while a narrow conceptualization of violence against women facilitated by technology may seem more practical from a research perspective, or out of a desire to make global comparisons, such a conceptualization risks overlooking the many ways in which ICTs and other digital tools affect all women. In that sense, it is argued that broader conceptualizations (which also require leveraging more diverse data sources and methodologies) are needed to ensure that TFGBV research and investments meet the Sustainable Development Goals’ (SDG) commitments to leave no one behind<sup>78</sup>.

This is related to several concerns expressed in research regarding the elements a definition should contain. Some of these can be summarized as follows: the need to address the phenomenon from a systemic approach that takes into account discriminatory social systems; the need to expand protection to LGBTQIA+ people; the need to take into account the multiplicity of perpetrators such as the role of States and corporations as potential enablers

78 UN Women. (2023). Technology-facilitated Violence Against Women: Taking Stock of Evidence and Data Collection. <https://www.unwomen.org/sites/default/files/2023-04/Technology-facilitated-violence-against-women-Taking-stock-of-evidence-and-data-collection-en.pdf>

as well as perpetrators of violence; and the need to include intersectionality as a key element to ensure a victim/survivor-centric approach. Additionally, some sectors have raised concern over the universalization of concepts, arguing that it does not take into account diverse geographic, social, and political contexts.

The eight local pieces of legislation that were analyzed to compose this paper (Mexico City’s Olimpia Law, Peru’s Legislative Decree 1410, Canada’s Protecting Canadians from Online Crime Act, Australia’s Online Safety Act, Ethiopia’s Hate Speech and Disinformation Prevention and Suppression Proclamation, Philippines’ Anti-Photo and Video Voyeurism Act, Nepal’s Information Technology Bill, and Bulgaria’s Amend. SG 74/2015 to the Criminal Code) also point to considerations regarding the conceptualization of TFGBV.

In fact, the absence of TFGBV definitions is predominant. In other words, the analyzed legislation does not include a specific concept of TFGBV or equivalent terminology, such as online gender violence or others mentioned above. The exception is the Mexico City case, which includes the following concept of “digital violence” (considered a modality of gender-based violence):

any act performed through the use of printed materials, email, phone messages, social media, internet platforms, email, or any technological means, by which images, audios or real or simulated videos of intimate sexual content of a person are obtained, exposed, distributed, broadcasted, exhibited, reproduced, transmitted, marketed, offered, exchanged and shared, without their consent; that threatens the integrity, dignity, privacy, freedom, and private life of women or causes psychological, economic or sexual harm, in both the private and public spheres, as well as moral damage, both to women and their families<sup>79</sup>.  
(Translated by the authors.)

The Peruvian law does not explicitly define TFGBV, but it does acknowledge in its preamble that the offenses it addresses, which encompass all forms of TFGBV, disproportionately impact women across their lifespan. This recognition is particularly evident in Legislative Decree 1410, which is specifically tailored to address TFGBV issues. The definition provided by the Mexican law can be considered a good practice, as it adds to previously defined modalities of GBV, bringing a gender element to all the practices identified and thus allowing broad protection of victims/survivors. In the Peruvian case, even though there is a lack of conceptualization, the statement that the TFGBV acts covered by the law affect women disproportionately is positive, as it may facilitate the interpretation that they constitute forms of GBV.

79 The original text in Spanish is: “Violencia digital.-Es cualquier acto realizado mediante el uso de materiales impresos, correo electrónico, mensajes telefónicos, redes sociales, plataformas de internet, correo electrónico, o cualquier medio tecnológico, por el que se obtenga, exponga, distribuya, difunda, exhiba, reproduzca, transmita, comercialice, oferte, intercambie y comparta imágenes, audios o videos reales o simulados de contenido sexual íntimo de una persona, sin su consentimiento; que atente contra la integridad, la dignidad, la intimidad, la libertad, la vida privada de las mujeres o cause daño psicológico, económico o sexual tanto en el ámbito privado como en el público, además de daño moral, tanto a ellas como a sus familias.”

In addition to the lack of mention of TFGBV as a concept, the analyzed laws also tend not to explicitly mention the gendered dimension of the conducts they foresee. Apart from the Mexican law, which altered the existing Law on Women's Access to a Life Free of Violence in Mexico City to include considerations on the role of technology in GBV, all the other laws analyzed neither make explicit a gender dimension of online violence nor identify gender as a category of vulnerability. The Peruvian law is the only one that recognizes in its preamble that it affects women on a much larger scale; however, it fails to address impact on other groups such as LGBTQIA+ people.

Furthermore, most laws do not have provisions that consider the specificity of certain groups when it comes to their protection, such as people with disabilities, LGBTQIA+ individuals and the elderly. The Mexican and the Peruvian laws foresee the perpetration of criminal offenses against victims belonging to vulnerable groups as an aggravating factor for their penalization. The Peruvian legislation, for example, does so by aggravating the penalty for the crime of harassment when the victim is a child<sup>80</sup>, elderly, pregnant or person with a disability. While this suggests that these laws acknowledge that TFGBV impacts people from vulnerable groups differently, imposing a harsher penalty on the perpetrator does not necessarily translate to enhancing protection. The limits and challenges of criminal responses to TFGBV will be addressed further in this paper.

The legislative silence regarding the disproportionate impact that some conducts pose to women and LGBTQIA+ people can limit the effectiveness of such legislation for actually addressing discriminatory and violent behavior. That is because by failing to acknowledge inequalities affecting people of different gender, ethnicity, or class, among other factors, it can be used by the most powerful groups to further exclude others. In that sense, a "gender-blind"<sup>81</sup> approach might lead to the favoring of a homogenous cis male approach and the invisibility of women and LGBTQIA+ groups.

Examples of cases mapped in a recent investigation conducted by Derechos Digitales and APC show that while some laws aimed at combating TFGBV are theoretically drafted to protect people, they are ultimately used to censor and criminalize. An example of this is a victim of sextortion and threats who, in 2021, filed a report with the specialized unit in charge of such matters in his country. Instead of receiving assistance and support, he was not only ignored but ultimately accused and sentenced for "online prostitution." This case highlights the alarming reality where victims are penalized under the same laws they invoke to seek protection from the violence they endure. Cases also include the use of cyber-related laws to prosecute activists who express critical opinions towards the government, as in the case of Stella Nyanzi, a well-known feminist activist for gender equality and LGBTQIA+ rights who was accused of cyberbullying for posting criticism against the president of Uganda. She was arrested

80 As highlighted in the presentation section of the paper, children (regardless of their gender) fall beyond the scope of this study, as an acknowledgment that they have distinct needs and vulnerabilities.

81 Millar, Katharine. What Does it Mean to Gender Mainstream the Proposed Cyber-crime Convention? Contribution to the AHC. <https://www.chathamhouse.org/sites/default/files/2022-12/2022-12-21-Gender-mainstreaming-and-the-proposed-cybercrime-convention.pdf>

and convicted. In 2020, her conviction was overturned on appeal and she was later exiled to Germany.<sup>82</sup>

### Expert consultation

Experts consulted for this paper expressed different opinions regarding the concept of TFGBV. Some argued that having a clear and unique definition is key to advance in protection, highlighting that in some countries the lack of a definition is a significant obstacle for women seeking justice. Others argued that considering that TFGBV is contextual, the definition should also be contextual. In that vein, the need to address religious and cultural contexts was raised as part of the needed intersectional approach (for instance, to include other protected categories as well as gender). Another prevailing opinion was that, understanding the continuum with GBV, there is no need for a specific definition, but rather a focus on ensuring that existing legal instruments apply equally to violence committed online or assisted by technology. The variation in the stages of legislation within different countries was also raised as a relevant issue. In view of this, it was proposed that instead of advancing towards a common conceptualization, consensus could be reached on the elements that each concept should include, allowing different States to evaluate and contextualize it according to their needs.

### OTHER DEFINITIONS

Nevertheless, in general, the laws do foresee definitions of specific terms that relate to their thematic scope. For example, the Nepali Information Technology Bill (which is not specific to TFGBV but does address it) defines terms such as “electronic record”, “cybersecurity” and “sensitive information”; the Bulgarian Amend. SG No. 74/2015 (also not specific to TFGBV) to the Criminal Code conceptualizes “pornographic material” and “pornographic performance”; and the Ethiopian Hate Speech and Disinformation Prevention and Suppression Proclamation (again, not specific to TFGBV) gathers definitions as “hate speech”, “disinformation” and “social media”. Such definitions, however, in general do not include mentions of gender. The term “intimate image” is the only one defined in more than one piece of legislation (Australia’s and Canada’s) and the content of the two definitions is similar.

The Australian Online Safety Act’s definition of intimate image<sup>83</sup>, in particular, can be considered an example of good practice, especially

82 APC; Derechos Digitales. (2023). When Protection Becomes an Excuse for Criminalisation: Gender considerations on cybercrime frameworks. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

83 Definitions set forth in Section 15(2) and (4) of the Australian Online Safety Act: “(2) Material is an intimate image of a person if: (a) the material consists of a still visual image or moving visual images; and (b) the material depicts, or appears to depict: (i) the person’s genital area or anal area (whether bare or covered by underwear); or (ii) if the person is a female person or a transgender or intersex person — either or both of the person’s breasts; in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy. [...] (4) Material is an intimate image of a person if: (a) the material consists of a still visual image or moving visual images; and (b) because of the person’s religious or cultural background, the person consistently wears particular attire of religious or cultural significance whenever the person is in public; and (c) the material depicts, or appears to depict, the person: (i) without that attire; and (ii) in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy.”

given intersectionality, as it includes nuances depending on religious beliefs and gender identities. Those elements are key to facilitate interpretation of specific cases, while their absence may result in the lack of an intersectional approach by competent authorities. The adoption of language that directly or indirectly restricts the law's application to certain groups, such as the Philippines' Anti-Photo and Video Voyeurism Act, which defines "female breast" as "any portion of female breast"; or that explicitly criminalizes certain gender expressions, goes against international human rights standards, as it may result in a disproportionate restriction of freedom of expression.

### ACTS THAT CONSTITUTE TFGBV

Regarding the acts that may constitute TFGBV, it is important to emphasize the sociotechnical interactions implied, meaning not only that technology evolves, but that the forms in which it is used also change<sup>84</sup>, in a constant interaction. This in turn can vary according to different contexts in terms of different rates of growth in the use of technology.

The dynamic nature of TFGBV has been reflected in a conceptual and legal evolution. This can be seen very clearly in the different international pronouncements issued in recent years, which have defined different, non-exhaustive forms of violence against women in the online space and/or facilitated by tech, and in the evolution of terminology and definitions, as well as the acts recognized as TFGBV.

For instance, regarding typologies, the pioneering 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 from June 2018 initially embraced a definition of doxxing as "the publication of private information, such as contact details, on the internet with malicious intent, usually with the insinuation that the victim is soliciting sex," a description that is no longer endorsed by other international entities<sup>85</sup>.

Some of these other references do not include the "insinuation that the victim is soliciting sex" in their definition of doxxing. In fact, as stated by the Organization of American States, doxxing is a form of online violence that involves obtaining personal information about someone and posting it online without the person's consent<sup>86</sup>. Therefore, the element insinuating the victim/survivor's intent to solicit sex is no longer viewed as a prerequisite for considering doxxing a form of online gender-based violence; rather, it is now sufficient that the victim/survivor's information is published online.

84 Suzie Dunn. (2021). "Technology-facilitated Gender-Based Violence—An Overview." CIGI Supporting a Safer Internet Paper No. 1. <https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/>

85 United Nations Human Rights Council. (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/G18/184/58/PDF/G1818458.pdf?OpenElement>

86 General Secretariat of the Organization of American States. (2022). Online gender-based violence against women and girls: Practical self-protection handbook: digital security tools and response strategies. <https://www.oas.org/en/sms/cicte/docs/Practical-self-protection-handbook-Online-gender-based-violence-against-women-and-girls.pdf>

Also regarding terminology, the term “revenge-porn” was used during the past decade to refer to the non-consensual online dissemination of intimate images, obtained with or without consent, with the purpose of shaming, stigmatizing, or harming the victim<sup>87</sup>. The term has been deemed inappropriate by various feminist organizations given that it perpetuates gender stereotypes, in addition to possibly forcing a need to identify intent to cause harm for the commission of the offense, as well as to divert authorities’ attention from guaranteeing the exercise of women’s autonomy, which should be their focus<sup>88</sup>. Nowadays, it is no longer used in international pronouncements, which have instead adopted the term non-consensual dissemination of intimate images (NCDII)<sup>89</sup>. Image-based sexual abuse is another term used to identify this type of violence in some contexts.

In general, the local laws analyzed name the types of violence they foresee. The analyzed frameworks from Ethiopia, Nepal, Peru, Canada and Australia identify precise types of conduct they criminalize or consider to be civil offenses. Some examples are “hate speech” (Ethiopia), “sexual harassment” (Nepal), “sexual blackmail” (Peru), “non-consensual distribution<sup>90</sup> of intimate image” (Canada) and “cyberbullying” (Australia). The Mexico City law does not name the conducts in its text, but by adding them to the Criminal Code in specific sections, does facilitate their acknowledgment. The Bulgarian and Philippine laws do not give specific names to the criminal conducts, instead describing what constitutes them. From a criminal justice perspective, the precise identification of offenses can be considered good practice, as it resonates with the guarantee of legality. At the same time, naming TFGBV conducts may facilitate their recognition and constitute a symbolic and educational measure of good practice. The absence of a precise typology of conducts allows for arbitrary interpretation from courts; in addition to facilitating the denial of rights, it can facilitate abuse when it comes to tension among fundamental rights, going against the recommendations of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression<sup>91</sup>.

Finally, the types of behavior considered part of TFGBV have also evolved. Initially, the idea of an online reproduction of GBV was mostly associated with sexual harassment, which could take the form of NCDII. More recently the conception of TFGBV has expanded to include other acts, such as unlawful surveillance and censorship,

87 United Nations Human Rights Council. (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. Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/58/PDF/G1818458.pdf?OpenElement>

88 TEDIC. (2021). Difusión de imagen no consentida en Paraguay. <https://www.tedic.org/wp-content/uploads/2021/09/Imagen-no-consentida-Tedic-web.pdf>

89 See: UN WOMEN. (2022). Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls. <https://www.unwomen.org/sites/default/files/2023-02/CSW67-Expert-Group-Meeting-report-en.pdf>

90 Even though the term “dissemination” is used more often in “non-consensual dissemination of intimate images,” the Canadian legislation uses “distribution”. For this reason, when referring to the Protecting Canadians from Online Crime Act, we used the term “distribution”.

91 Khan, I. (2021). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/76/258. <https://undocs.org/A/76/258>

as forms of violence<sup>92</sup>. This constitutes an enormous advance in the protection of rights, considering that the contemporary digital context is “marked by a new point of departure for gendered surveillance.”<sup>93</sup>

It is crucial to note that the increased prevalence of targeted surveillance has been identified by civil society organizations as especially harmful to women and LGBTQIA+ individuals. This is due to the increased vulnerability it introduces, with the potential for perpetrators to expose private images, videos, and/or conversations for harassment and abuse<sup>94</sup>. This situation is aggravated by easy access to spyware and the lack of public oversight, transparency and accountability of their production and distribution. When it comes to State surveillance measures, these can also have a differential impact on certain groups since images from surveillance cameras can be selectively or accidentally leaked and weaponized against victims/survivors<sup>95</sup>. Surveillance technologies can also be misused in cases of intimate partner abuse, when perpetrators have positions, for instance, within law enforcement institutions.

This conceptual and legal evolution may be attributed to the growing body of information on the subject, coupled with an enhanced understanding of the intersection between GBV and technology. In fact, all of the analyzed pieces of legislation foresee more than one type of violence that falls under TFGBV. That is, none of them were drafted to cover only one specific TFGBV conduct, as Table 2 (shown in the Methodology section) reveals.

The offenses the analyzed laws foresee can be divided into two main categories, equally noted in the analysis: (1) new criminal offenses, which were not considered crimes before the legislation, and (2) pre-existing offenses updated to include ICTs as a possible means for action. For the second group, in some cases technology is added to the legislation as an aggravating factor of the criminal offense.

The laws analyzed indicate that TFGBV tends to be primarily associated with the non-consensual dissemination of intimate images (NCDII). The two pieces of legislation that are specifically on TFGBV (Mexico and Peru) address this topic, alongside the Australian, Canadian and Philippine laws. Consent is a key term in the definition of NCDII in all these cases, even though the Australian Online Safety Act is the only one to define it:

■ (a) express; and (b) voluntary; and (c) informed; but does not include: (d) consent given by a child; or (e) consent given by an adult who is in a mental or physical condition (whether temporary or permanent) that: (i) makes the adult incapable of giving consent; or (ii) substantially impairs the capacity of the adult to give consent.

92 UN General Assembly, A/RES/77/193.

93 IT for Change. (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

94 See for example: <https://www.accessnow.org/women-human-rights-defenders-pegasus-attacks-bahrain-jordan/>

95 TEDIC. (2021). Violencia Digital. <https://www.tedic.org/wp-content/uploads/2021/08/Violencia-Digital-TEDIC-WRO-2021-ES-v01.pdf>

The Australian definition of consent also depicts an important consideration of intersectionality, especially under dimensions of age and capacity, as it not only adds “consent” to the definition of NCDII but conceptualizes it to cover different contexts. In doing so, the law recognizes power relations that may affect what is or is not considered valid consent, thus providing increased protection to victims/survivors and reinforcing the intersectional approach already present in the definition of intimate image, mentioned above.

Online sexual harassment is another theme primarily covered by the laws. Nepal’s, Mexico’s and Peru’s laws address it, even though the definition of what constitutes online sexual harassment varies among them. The Nepali bill, in fact, does not conceptualize what constitutes online sexual harassment, but just forbids it. The Mexican law creates a criminal offense specific for it, and defines it as:

■ ■ ■ *contacting, requiring or sharing images, audio, or video of explicit sexual activity, acts of sexual connotation or requesting a sexual encounter of someone who is under eighteen years old, someone who does not have the capacity to understand the meaning of the act or a person who does not have the capacity to resist it, via radio broadcasting, telecommunications, computer or any other means of data transmission. (Translated by the authors.)<sup>94</sup>*

The Peruvian law, in turn, criminalizes sexual harassment, defining it as “in any way, watching, persecuting, harassing, besieging or seeking to establish contact or closeness with a person, without their consent, to carry out acts of sexual connotation” (translated by the authors)<sup>97</sup> and states that when it is committed through ICTs, it is an equally punishable offense.

Pornography is a third topic that appears as a trend in the laws that were analyzed. Covered by the Australian, Bulgarian, Nepali and Philippine laws, in the last three cases the production and consumption (with or without intent to profit) is fully prohibited. The Australian law refers to pornography using the terms “X 18+ material” and “class 2 material,” which are defined as a “special and legally-restricted to adults category due to sexually explicit content including actual sexual intercourse or other sexual activity between consenting adults,” controlling its distribution and access, rather

96 The original text in Spanish is: “Artículo 179 BIS.-[...] haciendo uso de medios de radiodifusión, telecomunicaciones, informáticos o cualquier otro medio de transmisión de datos, contacte a una persona menor de dieciocho años de edad, a quien no tenga capacidad de comprender el significado del hecho a persona que no tenga capacidad para resistirlo y le requiera o comparta imágenes, audio o video de actividades sexuales explícitas, actos de connotación sexual o le solicite un encuentro sexual.”

97 The original text in Spanish is: “Artículo 176-B.-Acoso sexual El que, de cualquier forma, vigila, persigue, hostiga, asedia o busca establecer contacto o cercanía con una persona, sin el consentimiento de esta, para llevar a cabo actos de connotación sexual [...]”

than banning it<sup>98</sup>. For the Bulgarian law, pornography is “material, produced in any way, which is indecent, unacceptable or incompatible with public morals, with content that expresses real or simulated molestation, copulation, sexual intercourse, including sodomy, masturbation, sexual sadism or masochism, or lascivious exhibition of the sexual organs of a person.” The Nepali bill refers to pornography as “obscene material,” but does not define it. As for the Philippine legislation, the prohibited material is video or photos “of a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment-clad genitals, pubic area, buttocks or female breast.” This majority repressive approach to pornography suggests an approximation of the legislation with morality standards, which in turn has been deemed problematic by some research and by UN bodies, as will be further explained in the next section.

Online criminal offenses that have children as their victims/survivors are also noted as a trend in the legislative analysis in terms of typology, even though they are not necessarily covered by definitions of TFGBV. That is the case, for example, for the Bulgarian law, which criminalizes child sexual abuse among TFGBV offenses. It establishes that specific conducts targeted at people under 18 or under 14 years old constitute crimes, such as persuading them to participate in an actual, virtual or simulated sexual act and disclosing or collecting information about a child for the purpose of establishing contact with them to perform sexual acts.

This is also the case for the Australian law, which foresees specific measures for cyberbullying, defined to be the targeting of material “intended to have an effect on a particular Australian child” or “likely to have the effect on the Australian child of seriously threatening, seriously intimidating, seriously harassing or seriously humiliating the Australian child.”

On one hand, it is positive that legislation acknowledges children as people undergoing a physically, mentally and socially developmental stage, and thus a vulnerable group that should be protected accordingly. Also, many of the child-victim offenses embodied by the analyzed pieces of legislation tend to disproportionately affect girls. Nevertheless, it is neither positive nor beneficial that TFGBV legislation encompasses all forms of digital violence under its umbrella. Like women and other gendered groups, children also have specific needs that should be addressed by protection policies. Their demands in terms of protection will not necessarily be the same,

---

98 This classification is derived from Australia’s National Classification Scheme, a cooperative arrangement between the Australian Government and state and territory governments for the classification of films, computer games and certain publications. Class 1 includes material that: “depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; describes or depicts in a way that is likely to cause offense to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not), or promotes, incites or instructs in matters of crime or violence.” Class 2 is considered inappropriate for general public access and/or for children and young people under 18 years of age.

and for this reason it could be necessary to have separate, specific frameworks to deal with the particularities of each group<sup>99</sup>.

Given the rapid evolution of technology and corresponding shifts in its use, new manifestations continue to emerge while others may shift or adapt to new technologies. This constitutes an additional challenge not only to advancing a universal concept and typology, but also to developing legislation that encompasses all potential types of TFGBV. On one hand, having precise legal definitions is essential for prevention and to provide victims/survivors with necessary legal remedies. Such typologies are also useful to facilitate measurement, including by statistical institutions, allowing a better understanding of the dimensions of this phenomenon and its relationship with traditional forms of gender-based violence<sup>100</sup>. On the other hand, some argue that attempts in this direction may result in legislation quickly becoming outdated<sup>101</sup>. Additionally, the reality in several countries is that conceptual discussions on issues that are subject to constant change may generate confusion and delay concrete commitments towards the elimination of all expressions of violence.

In that sense, research points out that while technology can facilitate violence in a variety of ways, there have been some clear trends in its problematic use<sup>102</sup>. Understanding them can facilitate legislative responses that are more flexible and adaptable, without requiring an extensive list of all possible acts in order to grant protection.

### Expert consultation

During the expert consultation for this paper, participants agreed that having a list of typologies is important, but that the main problem lies in the application of the law. Given that most courts do not follow a gender approach in their decisions, having a formal recognition of a certain manifestation of TFGBV does not automatically translate into more protection for affected people. It was suggested that developing a framework based on harm instead of seeking a comprehensive typology could be more effective when drafting legislation to combat TFGBV and would allow for an appropriate response regardless of the technology in question.

In this regard, however, a distinction must be made with respect to criminalized conducts from the standpoint of legality. It is important that criminalized conducts are defined clearly in the legislation in order to avoid abuses in its application, as will be discussed later on in the paper.

<sup>99</sup> It is important to stress that children (regardless of their gender) fall beyond the scope of this study, as an acknowledgment that they have distinct needs and vulnerabilities.

<sup>100</sup> Ibid.

<sup>101</sup> Holt, S. (2020). 'I feel like we're really behind the game'-perspectives of the United Kingdom's intimate partner violence support sector on the rise of technology-facilitated abuse. <https://discovery.ucl.ac.uk/id/eprint/10135012/1/%E2%80%98I%20feel%20like%20we%E2%80%99re%20really%20behind%20the%20game%E2%80%99%20-%20perspectives%20of%20the%20United%20Kingdom%E2%80%99s%20intimate%20partner%20violence%20support%20sector%20on%20the%20rise%20of%20technology-facilitated%20abuse.pdf>

<sup>102</sup> Suzie Dunn. (2021) "Technology-facilitated Gender-Based Violence—An Overview." CIGI Supporting a Safer Internet Paper No. 1. <https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/>

## SUMMARY

This analysis lays out the intricate challenges in combating TFGBV, with a key emphasis on the lack of agreement on a singular definition. The discussion delves into international and local legislation, revealing variations in approaches and highlighting the evolving nature of TFGBV. Notably, it uncovers legislative gaps and the absence of a gendered perspective in addressing TFGBV. The expert consultations underscore the ongoing debate regarding the need for a universal definition, favoring a nuanced and harm-based legislative framework. The section concludes by shedding light on the complexities of criminalized conducts and the potential challenges in their application.

The analysis of local legislation that supports the findings mentioned above is summarized in the following table.

**TABLE 5: LEGISLATIVE POLICY ANALYSIS FINDINGS ON CONCEPTUALIZATION AND TYPES OF TFGBV**

| Legislative trait          | Trend observed in the legislative analysis                                                                                              | Example / counter-example                                                                                                                                                                                                                                                                                                                                              |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Definition of TFGBV        | Absence of TFGBV conceptualization                                                                                                      | The exception is the Mexico City Olimpia Law case, which includes the concept of “digital violence”, considered a modality of gender-based violence                                                                                                                                                                                                                    |
| Definition of TFGBV        | Absence of explicit consideration of the gender dimension in conducts foreseen in the legislation                                       | The exception is Peruvian Decree 1410, which states in its preamble that the offenses it covers, which are all considered TFGBV, mainly affect women throughout their lives                                                                                                                                                                                            |
| Definition of TFGBV        | Absence of specific provisions for vulnerable groups, with the exception of children, who in some laws receive differentiated treatment | The Bulgarian Amend. To the Criminal Code establishes that specific conducts targeted at people under 18 or under 14 years old constitute crimes, such as persuading them to participate in an actual, virtual or simulated sexual act and disclosing or collecting information about a child for the purpose of establishing contact with them to perform sexual acts |
| Other definitions          | The laws tend to stipulate definitions of specific terms that relate to their thematic scope                                            | The Nepali Information Technology Bill defines terms such as “electronic record”, “cybersecurity” and “sensitive information”                                                                                                                                                                                                                                          |
| Acts that constitute TFGBV | The local laws in general name the types of violence they foresee                                                                       | The Ethiopian Hate Speech and Disinformation Prevention and Suppression Proclamation names and defines what constitutes “hate speech”                                                                                                                                                                                                                                  |

| Legislative trait          | Trend observed in the legislative analysis                                                                                                | Example / counter-example                                                                                                      |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Acts that constitute TFGBV | NCDII, online sexual harassment, pornography and offenses that have children as victims were the most present in the analyzed legislation | Protecting Canadians from Online Crime Act establishes the non-consensual distribution of intimate image as a criminal offense |

## 4B. LEGISLATIVE STRATEGY

TFGBV has the particularity of reproducing and amplifying existing GBV to digital spaces through the use of technology. For this reason, mechanisms to address it are often fragmented among GBV law, criminal codes, cybercrime norms and/or specific thematic legislation such as disinformation, hate speech or others.

At the same time, certain conducts of TFGBV do not align with current legal frameworks, either due to the absence of relevant provisions or a lack of regulatory alignment recognizing digital violence as an extension of physical violence.

### SPECIFIC THEMATIC SCOPE

This gives rise to two primary challenges in terms of effectively addressing this form of violence. On the one hand, regulatory frameworks dedicated to other subjects often fail to address the necessary aspects of the issue. For example, (i) general legislation addressing GBV often does not take into account the particularities of technology in terms of the commission of the act and its impacts<sup>103</sup>; (ii) cybercrime legislation that focuses on technical elements does not take into account human (and gender) impacts; and (iii) the lack of a gender perspective in general criminal legislation creates significant obstacles for access to justice<sup>104</sup>. In turn, fragmentation makes it difficult for victims and survivors to know what legal options are available.

On the other hand, specific TFGBV legislation is often formulated reactively, in response to rights-violation cases that lacked adequate legal frameworks, which brings about its own set of challenges. This trend was noted in the local legal analysis conducted for this work. Examples include Mexico City, which named its law “Olimpia” after a woman who suffered from the non-consensual dissemination of intimate images and subsequently led a movement advocating for the law’s approval. Similar situations were observed in Canada and the Philippines. In the case of the Philippines, however, the situation centered on the publicized release of intimate videos involving a prominent straight, cisgender, male figure in the country. This suggests that it was not initially formulated as a response to a gender-specific incident.

103 Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

104 Derechos Digitales. (2023). Gender Considerations on Cybercrime Laws: When protection becomes an excuse for criminalization. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

Typically crafted with a narrow focus, such legislation falls short of capturing the full range of TFGBV, excluding the unique experiences of victims/survivors from intersecting identities, such as gender non-binary or LGBTQIA+ individuals<sup>105</sup>. Additionally, there is a troubling pattern where this legislation is employed to justify excessive censorship and surveillance measures, and in certain instances, it is even turned against those seeking its protection<sup>106</sup>.

This has raised the issue of whether the best strategy for drafting TFGBV legislation should involve amending existing laws that address GBV and relevant criminal provisions or if a new, standalone law specifically tailored to TFGBV is more appropriate. Considering the eight local pieces of legislation analyzed for this research, four of them (from Ethiopia, Nepal, the Philippines and Australia) create new, independent laws. The other four amend and update preexisting legislation, mostly Criminal Codes. Both options have been argued in several research studies.

Additionally, it is important to note that, in general, the analyzed laws approach TFGBV through the criminalization of the assaulters' behaviors. The Australian Online Safety Act, however, poses an exception, as it is developed with the intention of regulating ICT service providers in relation to content takedown.

Moreover, the majority of the local laws examined for this study do not address TFGBV as their only subject, instead including rules on other issues, which vary widely, as presented in Table 2. In the Nepali case, for example, broader concerns related to ICTs, such as digital signatures, are part of the same legislation, while the Bulgarian case includes topics unrelated to technology, such as tax crimes.

Some researchers perceive the absence of dedicated TFGBV legislation as a failure to acknowledge the crucial need for a decisive response or, more troubling, as an unwillingness to confront the issue. In this context, it is argued that this dilution compromises the potential deterrent effects that criminal laws might exert on offending behavior and diminishes the efficacy of prescribed remedies. Additionally, it implies a subtle form of victim/survivor-blaming by shifting the responsibility for protection from violence onto victims/survivors; not only in finding an appropriate or related remedy but also in the prosecution of legal action. This mirrors the tendency to assign blame to victims/survivors in the physical realm as well, reflecting patriarchal values that hold the victim/survivor responsible for the violence and, consequently, for seeking assistance. Considering these arguments, it is emphasized that TFGBV-specific laws are essential to provide appropriate relief, encompassing measures that genuinely mitigate its impact on the social, economic, political, and emotional well-being of affected individuals<sup>107</sup>.

105 End Cyber Abuse. Advancing Survivor-Centric, Intersectional Policy to Tackle Tech-Facilitated Gender-Based Violence. <https://endcyberabuse.org/advancing-survivor-centric-intersectional-policy-to-tackle-tech-facilitated-gender-based-violence/>

106 Derechos Digitales. (2023). Gender Considerations on Cybercrime Laws: When protection becomes an excuse for criminalization. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

107 Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

The legal analysis indicates that laws that specifically target TFGBV as a gendered issue, such as those in Mexico and Peru, better capture nuances and facilitate more in-depth legislative discussions and outcomes. These two laws, along with the Australian Online Safety Act, are the only ones that in some way seem to embody an intersectional perspective, for example, in explicitly referring to categories such as race and age as aggravating factors for the conducts they foresee. The other pieces of legislation, which simultaneously regulate other topics as well, naturally don't revolve around gender.

Contrarily, some research strongly asserts that enforcing current laws eliminates the need for developing specific legislation. They draw attention to instances where legislation initially designed to tackle offline violence can be effectively applied to address online violence, given the inclusive definitions of violence in these laws<sup>108</sup>. Highlighted in another investigation is an example where, despite the absence of a specific law on NCDII, a court decision in South Africa applied measures to prevent such dissemination, referring to remedies available under the Domestic Violence Act. The court found that posting the victim/survivor's sexual material on her Facebook account amounted to an act of domestic violence and granted a prohibitive order that effectively interdicted the possession and dissemination of the victim/survivor's intimate images and videos on online spaces or to any third party<sup>109</sup>.

### INTEGRATION WITH GBV LEGAL FRAMEWORKS

Nevertheless, a global pattern underscores the challenge of applying current legal frameworks to online activities. This limitation can arise due to various factors. In some cases, privacy legislation may fall short of being comprehensive enough to encompass specific forms of online abuse, such as the malicious doxxing of personal information<sup>110</sup>. The unprecedented scale, pace, and ease of online communication may also require the introduction of novel legal powers to ensure an adequate and timely response<sup>111</sup>. Additionally, criminal defamation and intimidation provisions may focus too narrowly on individual harm, neglecting the collective harm resulting from widespread misogynistic trolling. This is particularly evident in cases where women face harassment not as isolated individuals but as members of a group defined by factors like gender, caste, or sexual orientation<sup>112</sup>.

Independently of being a standalone piece of legislation or integrated with previously existing laws, TFGBV frameworks should acknowledge and somehow be integrated with GBV protective

108 Body and Data. (2021). Mapping Laws Relevant to Online Violence in Nepal. <https://bodyanddata.org/wp-content/uploads/2021/12/OnlineGBVLawsMapping-min.pdf>

109 CIGI. (2021). Supporting a Safer Internet Paper No. 2. [https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_2\\_Coverupdate.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_2_Coverupdate.pdf)

110 UN Women. (2023). Technology Facilitated Violence Against Women: Taking Stock of Evidence and Data Collection. <https://www.unwomen.org/sites/default/files/2023-02/Report.pdf>

111 Ibid.

112 IT for Change. (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

measures. This, however, is not observed in practice, considering the eight legal pieces analyzed for this paper.

With the exception of Mexico, where the Olimpia Law amends the Criminal Code and the Law on Women's Access to a Life Free of Violence in Mexico City, none of the laws explicitly refer to or integrate with existing laws and policies on gender violence, nor do they establish explicit connections to international treaties or instruments.

The feminist legal analysis method underscores the significance of regulatory silences in addressing certain issues. These silences are identified as “neglected areas, regulatory or participatory gaps, areas lacking global oversight, or rules that are overly broad in ways that obscure possible implementation.” They also provide a means to “identify the hidden social assumptions underlying the rules and the narratives that implicitly differentiate between the sexes or exclude women.”<sup>113</sup>

The absence of explicit integration of TFGBV legislation into broader, preexisting gender-based violence frameworks raises uncertainty regarding whether adequate support is available to victims/survivors through these overarching policies. It also contributes to the perception of TFGBV as a less prominent gender-based violence issue. It is particularly concerning because these existing frameworks often provide mechanisms for preventing gender-based violence and serve as the foundation for remedies and redress mechanisms, emphasizing a victim/survivor-centric legal approach.

In this scenario, the Mexican law stands out as a positive example, explicitly referencing the Law on Women's Access to a Life Free of Violence in Mexico City and extending its application to victims/survivors of digital violence. Conversely, cases such as the Peruvian and Bulgarian laws, which do not explicitly refer to other preexisting national legal protection frameworks, can be viewed as less effective practices.

## LINK TO MORALITY STANDARDS

Finally, researchers observe that it is crucial to reevaluate existing laws in the context of the evolving technological landscape to prevent unintentional gender-based harm. For instance, laws prohibiting the creation of any form of pornography may inadvertently hinder victims/survivors' ability to seek assistance if their images are shared without consent. This unintended consequence could potentially lead to the criminalization of those seeking help, as their images could be deemed pornographic under anti-pornography laws<sup>114</sup>.

At the same time, examinations of access to justice for those who have faced TFGBV indicate that existing laws addressing online gender-based violence may prove inadequate or ineffective, particularly when applied and interpreted within the culture of impunity surrounding violence against women<sup>115</sup>.

113 Cochav Elkayam-Levy. (2021). A Path to Transformation: Asking “The Woman Question” in International Law, 42 MICH. J. INT’L L. 429. <https://repository.law.umich.edu/mjil/vol42/iss3/2>.

114 Dunn, S. (2022). Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.15\\_Suzie%20Dunn.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.15_Suzie%20Dunn.pdf)

115 Hiperderecho. (2021). Después de la Ley: Informe Nro 2. [https://hiperderecho.org/wp-content/uploads/2020/12/Informe-2\\_Después-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2020/12/Informe-2_Después-de-la-ley.pdf)

Other studies do not explicitly advocate for a dedicated law but instead highlight the deficiencies in current legislation related to this form of violence. They emphasize that overlooking the harms inflicted by online violence results in the legal system becoming complicit in downplaying their significance. Currently, the trivialization of cyberviolence (by harassers, by law enforcement, and many times, by victims/survivors themselves) stems from the law being unable to fully perceive the mutations of GBV emerging within digital environments. In this context, the existing legal gaps are seen as contributing to the normalization of gender-based cyberviolence, sustaining a culture of silence that dissuades women from seeking justice. It is contended that the absence of legal recognition for TFGBV may marginalize women's experiences, portraying the acts as harmless teasing to be tolerated. This perpetuates linguistic silences that diminish the lived experiences of women, endorsing abuse and violence as socially acceptable in common discourse.<sup>116</sup>

Along the same lines, further research indicates that although the digital realm is an extension of the physical world where the same prohibitions should apply, the failure to adapt existing laws to new circumstances poses a significant obstacle<sup>117</sup>. In this context, it is suggested that where there are gaps in the legal system, new laws need to be developed to protect women and LGBTQIA+ people from forms of TFGBV that do not fit within existing laws. An illustrative example is the non-consensual dissemination of intimate images, which initially became a serious issue without specific laws in place in many countries<sup>118</sup>. This urgency is amplified by the realities of a new generation of young adults with increased access to smart mobile devices who routinely share intimate images<sup>119</sup>.

An important point emphasized in various research studies is that laws addressing gender-based violence, whether general or specifically targeting TFGBV, often adopt a protectionist perspective rooted in patriarchal moral values. This dynamic is evident in cases of non-consensual image dissemination where the focus on punishing perpetrators for attacking the “honor,” “dignity,” and “reputation” of women reflects a moral standpoint, rather than addressing the violation of privacy and the right to a dignified life as individuals, as granted by local constitutions and human rights frameworks<sup>120</sup>. Regulation based on morality not only has the potential to reinforce gender stereotypes but also establishes State protection as contingent on citizens adhering to “good” behavior. Individuals who transgress these moral boundaries may find themselves deemed unworthy of State protection<sup>121</sup>.

116 IT for Change. (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

117 CIGI. (2021). Supporting a Safer Internet Paper No. 2. [https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_2\\_Coverupdate.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_2_Coverupdate.pdf)

118 Dunn, S. (2022). Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.15\\_Suzie%20Dunn.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.15_Suzie%20Dunn.pdf)

119 CIGI. (2021). Supporting a Safer Internet Paper No. 2. [https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_2\\_Coverupdate.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_2_Coverupdate.pdf)

120 Body and Data. (2021). Mapping Laws Relevant to Online Violence in Nepal. <https://bodyanddata.org/wp-content/uploads/2021/12/OnlineGBVLawsMapping-min.pdf>

121 Digital Rights Foundation. (2021). Moral Policing. <https://digitalrightsfoundation.pk/wp-content/uploads/2021/05/Moral-Policy.pdf>

As has been noted by the UN Special Rapporteur on Freedom of Expression, in several countries, laws that refer to the protection of public morals as a reason for criminalizing content that is considered inappropriate, obscene or indecent have been used to control women's online behavior<sup>122</sup>. In this sense, morality and obscenity as a rationale for protecting women and other communities affected by injustice must not be the basis for any legislative reform or new law in matters of gender-based violence<sup>123</sup>.

This close relationship between TFGBV laws and morality standards, however, was observed in the local legislative analysis. Legislation inherently reflects the cultural context in which it is formulated, addressing the needs of society to a certain extent. However, this consideration should not be taken to justify the exclusion of certain marginalized groups and communities to protect or to jeopardize their rights.

Two key factors support this observation. The first is the use of generic terms, such as “ordinary Australian” (Australia) and “reasonable person” (Philippines) to define whether specific content infringes the law. The use of these definitions points to an approach that is likely to isolate cultural nuances and disfavor minorities.

The second is the fact that some legislation addresses pornography alongside the non-consensual dissemination of intimate images and does so from a repressive perspective. That is, these laws do not take into account the consent component for women and LGBTQIA+ people involved in the production of pornography.

The Bulgarian, Nepali and Philippine laws fully ban and criminalize the circulation and consumption of pornographic content, even in situations where its production is consensual. They favor a standard of morality that is anti-pornography, not necessarily balancing it with individuals' freedom of expression and enjoyment of sexuality.

The linking of TFGBV legislation to morality standards can be classified as a bad practice, especially due to the fact it is usually patriarchal patterns that permeate such standards, as they represent “the rule” and women and LGBTQIA+ peoples' views are minoritized. In this sense, when the Australian legislation foresees that cyber-abuse material is material that “an ordinary reasonable person would conclude that it is likely [...] to have an effect of causing serious [direct or indirect] harm to a particular Australian adult,” for example, it most likely promotes a patriarchal standard, disfavoring minority groups, their views and demands.

Furthermore, the fully repressive approach that the Bulgarian, Nepali and Philippine legislation offer to sexual online content, equally criminalizing the exhibition and the sale of “obscene material,” for example, can criminalize the enjoyment of sexual and reproductive rights. While the intent of these laws may be to protect victims from TFGBV, they could lead to an online environment in which no one is

122 OHCHR. (2023, 24 March). Op. cit.

123 Derechos Digitales. (2023). Gender Considerations on Cybercrime Laws: When protection becomes an excuse for criminalization. [https://www.derechosdigitales.org/wp-content/uploads/gender\\_considerations\\_on\\_cybercrime.pdf](https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf)

allowed to sexually express themselves<sup>124</sup>. Furthermore, these laws' ban on the consumption and circulation of pornography regardless of the consensual nature of the material's production points to individuals' agency regarding their sexuality being undermined by homogeneous standards, which can be considered a bad practice.

**All of the above underscores the importance of stressing that legal reform, whether introducing new laws or amending existing ones, will only be meaningful if undertaken as an initiative to address the law's inadequacy in recognizing gender differences.** Moreover, the reform's effectiveness lies not only in prohibiting certain acts but in altering the social meaning associated with those acts. Within this framework, it is asserted that overcoming the androcentrism inherent in the law would empower women with a fresh vocabulary to articulate the distinct nature of their pursuit of justice, considering the unique challenges they encounter within a patriarchal order<sup>125</sup>. **Thus, the concern should extend beyond deciding whether to regulate the violence and focus more on determining how to regulate it.** This involves approaching the issue comprehensively, starting with the generation of statistical evidence, guaranteeing access to justice, offering training for law enforcement and judicial authorities, supporting women to articulate their experiences as GBV and fostering cultural changes that challenge the existing paradigm<sup>126</sup>.

### Expert consultation

Acknowledging the critical role of the gender perspective in shaping effective legal frameworks was underscored as essential during the conversations with experts consulted for this work, stressing the vital need for judicial operators to be well-versed in this perspective. It was emphasized that even well-crafted laws might fall short if legal professionals lack the knowledge to collect digital evidence and a nuanced understanding of evolving technologies, impacting overall efficacy. This deficiency can contribute to victims/survivors refraining from reporting TFGBV, leading to potential re-victimization and unintended consequences, including criminalization, when they do come forward.

In this sense, there is a pressing call for the authorities involved to undergo gender-sensitization training and steer clear of ingrained gender stereotypes in their professional duties. The Supreme Court of India was pointed out as a good example of practice in this regard, having released a handbook aimed at combating gender stereotypes. This handbook not only offers alternative, gender-just language but also dissects prevalent stereotypes, demonstrating their inaccuracy and their potential to distort legal applications.

Initiatives like the aforementioned Indian Supreme Court handbook highlight the need to enhance the capacity and sensitivity of law enforcement agencies and members of the judiciary. Recommendations

124 Body and Data, 2021. Mapping laws relevant to online violence in Nepal. <https://bodyanddata.org/mapping-laws-relevant-to-online-violence-in-nepal/>

125 IT for Change (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

126 TEDIC (2021). Difusión de imagen no consentida en Paraguay. <https://www.tedic.org/wp-content/uploads/2021/09/Imagen-no-consentida-Tedic-web.pdf>

issued to States under human rights law<sup>127</sup> corroborate that it is crucial to equip them with insights into the diverse forms of TFGBV, the continuum of violence spanning offline and online realms, the dynamics of the online public sphere, and the distinct challenges faced by individuals experiencing online violence within the intersections of gender, race, religion, caste, ethnicity, and more.

SUMMARY

In conclusion, addressing TFGBV poses significant challenges, characterized by the reproduction and amplification of existing gender-based violence in digital spaces. Legislative strategies are often fragmented across various legal frameworks, including general GBV laws, criminal codes, and specific thematic legislation. This fragmentation leads to challenges in effectively addressing TFGBV, with laws either failing to encompass the digital aspects of the issue or being reactive and narrowly focused. The choice between standalone TFGBV legislation and amending existing laws is a subject of debate, with arguments on both sides. Integration with existing gender-based violence frameworks is crucial, yet often overlooked in practice.

Moreover, the link between TFGBV legislation and morality standards raises concerns, as it potentially reinforces gender stereotypes and undermines the rights of marginalized groups. Legal reform should prioritize recognizing gender differences, offering comprehensive solutions, and empowering victims/survivors. Gender-sensitization training for authorities is essential to ensure effective implementation and address the unique challenges posed by TFGBV within the evolving technological landscape.

Highlights from the legislative analysis that support these conclusions are summarized below.

TABLE 6: LEGISLATIVE POLICY ANALYSIS FINDINGS ON LEGISLATIVE STRATEGY

| Legislative trait       | Trend observed in the legislative analysis                                                                                             | Example / counter-example                                                                                                                                                                 |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Specific thematic scope | Specific TFGBV legislation is often formulated reactively, in response to rights-violation cases that lacked adequate legal frameworks | Mexico City named its law “Olimpia” after a woman who suffered from the non-consensual dissemination of intimate images and subsequently led a movement advocating for the law’s approval |
| Specific thematic scope | Half of the analyzed pieces create new, independent laws, while the other half amend and update preexisting legislation                | The Philippine Anti-Photo and Video Voyeurism Act is an independent, standalone law                                                                                                       |

127 See: 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 (2018). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/58/PDF/G1818458.pdf?OpenElement>; and Accelerating efforts to eliminate violence against women: preventing and responding to violence against women and girls, with a particular focus on domestic violence (2018). <https://digitallibrary.un.org/record/845742>.

| Legislative trait                     | Trend observed in the legislative analysis                                                                                                                                                                    | Example / counter-example                                                                                                                                        |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Specific thematic scope               | The majority of the local laws examined don't address TFGBV as their only subject, instead regulating other issues, which widely vary                                                                         | The Nepali Information Technology Bill regulates various subjects related to ICTs, such as digital signatures, besides acts of TFGBV as online sexual harassment |
| Integration with GBV legal frameworks | The laws don't explicitly refer to or integrate with existing laws and policies on GBV, nor do they establish explicit connections to international treaties or instruments                                   | The exception is Mexico City's Olimpia Law, which amends the Criminal Code and the Law on Women's Access to a Life Free of Violence in Mexico City               |
| Link to morality standards            | Use of generic terms to define whether specific content infringes the law, which could isolate cultural nuances and disadvantage minorities                                                                   | The Australian Online Safety Act uses the expression "ordinary Australian" to define what constitutes cyber-abuse material                                       |
| Link to morality standards            | Some legislation addresses pornography alongside NCDII, and does so from a repressive perspective, without taking into account the consent component of individuals involved in the production of pornography | Philippine law fully bans and criminalizes the circulation and consumption of pornography, even when its production is consensual                                |

#### 4C. LEGISLATIVE APPROACH: PREDOMINANCE OF THE CRIMINAL SYSTEM AND THE NEED FOR ALTERNATIVE AVENUES

Directly linked to the previous section, this section explores the legislative approaches used to regulate TFGBV.

As per international law, States are obligated to protect, promote, fulfill and respect all the rights of all persons. This means they have a responsibility to prevent and effectively respond to all forms of violence and therefore to take positive measures aimed at protecting people's rights in digital spaces. These obligations require not only that States effectively protect women and LGBTQIA+ individuals from acts of GBV, which may include criminal provisions, but also that they guarantee an environment where people are able to exercise their rights<sup>128</sup>.

This means that while there is a need to prohibit, investigate and prosecute TFGBV, as has been stated by different international

128 Mantilla, K., Henry, N., & Flynn, A. (2019). Human Rights Responsibilities of Platforms for Addressing Gender-based Violence Online. <https://eprints.qut.edu.au/121223/2/Human%20Rights%20Responsibilities%20of%20Platforms%20for%20Addressing%20Gender-based%20Violence%20Online%20-%20final%20pre-peer%20review.pdf>

bodies<sup>129</sup>, there is a pressing need to consider a balance of rights in order to avoid weakening other fundamental rights, as also recognized by human rights experts<sup>130</sup>. Legal frameworks must adequately protect all human rights online, including the right to a life free from violence, to freedom of expression, access to information and the right to privacy and data protection from a gender perspective.

## CRIMINAL AND REPRESSIVE APPROACH

State efforts to tackle the challenges of the online environment have primarily focused on the criminal arena, with the enactment of legislation claiming to enhance online protection and safety. However, the implementation of these laws often yields unintended consequences, potentially exacerbating the very issues they seek to address. Additionally, legislation that has an essentially repressive approach rarely includes prevention policies, remedies and redress.

The analysis of the local pieces of legislation sustains this argument. The approach these laws offer to TFGBV is essentially criminal, i.e., they classify conducts of TFGBV as criminal offenses. There are two exceptions to this approach: the Australian law, which foresees civil measures from an ICT providers' regulatory approach (therefore not focused specifically on assaulters), and the Mexican law, which offers a mix of criminal and civil approaches, since it amends the Criminal Code and the civil law against gender-based violence.

At the same time, the approach the laws offer is essentially repressive. This means they focus on measures located in time as subsequent to the commission of the crimes, rather than creating prevention policies and strategies, with the exception of Ethiopia and Mexico. Even within the exceptions, however, the Ethiopian prevention mechanisms are not specific.

The importance of preventive measures for facing TFGBV is emphasized in international human rights law recommendations issued to States such as the Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women from a human rights perspective and the Report of the Working Group on the issue of discrimination against women in law and in practice, both from 2018, which urge the prioritization of education and awareness campaigns that aim to challenge gender stereotypes, promote gender equality, and mitigate discrimination, as well as the promotion of economic empowerment, access to healthcare, and social support systems to address structural inequalities in the fight against TFGBV.

Moreover, adopting a critical perspective, the undeniable role of criminal policy and criminal law as instruments of control or social

---

129 See: 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 (2018): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/58/PDF/G1818458.pdf?OpenElement>; and UN Human Rights Council, Accelerating efforts to eliminate violence against women: preventing and responding to violence against women and girls, with a particular focus on domestic violence (2018): <https://digitallibrary.un.org/record/845742>

130 Khan, I. (2021). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/76/258. <https://undocs.org/A/76/258>

domination, oriented more towards punishment than conflict resolution or restitution, comes to light. One significant objection to the punitive power of the State is the way it cuts the victim/survivor out of the decision-making process: the penal model excludes them as the State assumes representation of their interests through its *de facto* power<sup>131</sup>. This issue is particularly evident in cases of GBV, where research underscores a gap between what the criminal justice system offers to those who have experienced TFGBV and what they perceive and require in their pursuit of justice<sup>132</sup>.

## BALANCE OF RIGHTS

The use of TFGBV as a justification for introducing laws that jeopardize fundamental human rights, including the right to privacy and freedom of expression, in the criminal sphere is of increasing concern for civil society and experts in the field. Examples include excessively broad text introduced into legislation to enable the removal of legitimate content from the Internet or to restrict the use of encryption and other privacy-enhancing safeguards that individuals depend on for their safety and due process<sup>133</sup>.

Investigation conducted by Derechos Digitales and APC shows, through 11 case studies, that laws created with the aim of combating TFGBV, such as cybercrime laws, have led to the criminalization of legitimate expression and are used to legitimize disproportionate censorship and surveillance measures. In some cases, they are even used against those who invoke them for their own protection<sup>134</sup>.

In this context, it is crucial to emphasize that often, these legal initiatives are founded on a presumed conflict between freedom of expression and addressing abuses, a “misleading dichotomy that has long been addressed in international law.”<sup>135</sup> The UN Special Rapporteurs on the Promotion and Protection of the Right to Freedom of Opinion and Expression have a history of consistently highlighting the human rights implications of discrimination, freedom of expression, and privacy for women, particularly in the context of gender-based violence<sup>136</sup>. While freedom of opinion is absolute, international human rights law recognizes that freedom of expression may be restricted to pursue legitimate objectives, provided that such restriction is lawful, necessary and proportionate<sup>137</sup>.

131 Hiperderecho. (2021). Después de la Ley: Informe Nro 3. [https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3\\_Después-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3_Después-de-la-ley.pdf)

132 Ibid.

133 Dunn, S. (2022). Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.15\\_Suzie%20Dunn.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.15_Suzie%20Dunn.pdf)

134 Ibid

135 Dunn, S. (2022). Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.15\\_Suzie%20Dunn.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.15_Suzie%20Dunn.pdf)

136 Mantilla, K., Henry, N., & Flynn, A. (2019). Human Rights Responsibilities of Platforms for Addressing Gender-based Violence Online. <https://eprints.qut.edu.au/121223/2/Human%20Rights%20Responsibilities%20of%20Platforms%20for%20Addressing%20Gender-based%20Violence%20Online%20-%20final%20pre-peer%20review.pdf>

137 Inter-American Court of Human Rights. Compulsory Membership in an Association of Journalists (Art. 13 and 29, American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, para. 36–39.

As stated by the UN’s Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan:

*Freedom of expression may be restricted only in accordance with article 19(3) of the International Covenant on Civil and Political Rights, which requires all restrictions to be provided by law and to be necessary for the legitimate aim of respecting the rights and reputations of others [...].*

*The principle of legality requires the scope, meaning and effect of the law to be sufficiently clear, precise and public. Vague laws that confer excessive discretion can lead to arbitrary decision-making [...].*

*The principle of necessity requires the restriction to be appropriate and proportionate to achieve the legitimate aim, using the least restrictive means to protect it.* <sup>138</sup>

This mentioned balance was not necessarily observed in the legislative analysis carried out for this work. In the instances of the Nepali and Ethiopian laws, both were approved<sup>139</sup> despite facing criticism from local and global civil society for their content, which was perceived as imposing censorship and risks to freedom of expression, the press, and association in the respective countries.

The focus of the critiques for both was on risks to freedom of expression and the press. The concerns arising from the Nepali bill are that “it includes provisions to impose fines of up to Rs 1.5 million (over 10.000 €) or jail terms up to five years for posting content on social media that in the eyes of government may pose a threat to the ‘country’s sovereignty, security, unity or harmony’.”<sup>140</sup> And on the Ethiopian piece, the concern is that it “failed to comply with international human rights standards as it imposed criminal sanctions on anyone that published, disseminated, or even possessed content falling under extremely broad definitions of ‘hate speech’ and ‘disinformation’.”<sup>141</sup>

It is important to highlight that when balancing the right to freedom of expression against the right to equality and dignity in criminal cases, the consideration extends beyond substantive speech offenses. Online anonymity and pseudo-anonymity are also integral aspects of the right to freedom of expression and privacy and must be ensured

<sup>138</sup> Khan (2021). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. [https://eos.cartercenter.org/uploads/document\\_file/path/985/Report\\_of\\_the\\_Special\\_Rapporteur\\_on\\_Disinformation\\_and\\_Freedom\\_of\\_Opinion\\_and\\_Expression\\_E.pdf](https://eos.cartercenter.org/uploads/document_file/path/985/Report_of_the_Special_Rapporteur_on_Disinformation_and_Freedom_of_Opinion_and_Expression_E.pdf)

<sup>139</sup> At the time of the legislative analysis conducted for this paper (September 2023), the bill had been approved by the Development and Technology Committee of the House of Representatives. In August 2025, the law was enacted as the Information Technology and Cyber Security Act, with some amendments.

<sup>140</sup> INTERNATIONAL FEDERATION OF JOURNALISTS. (2020). Nepal: Parliamentary committee passes controversial IT Bill. <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/nepal-parliamentary-committee-passes-controversial-it-bill>

<sup>141</sup> ARTICLE19. (2021). Ethiopia: Hate speech and disinformation law must not be used to suppress the criticism of the Government. <https://www.article19.org/resources/ethiopia-hate-speech-and-disinformation-law-must-not-be-used-to-supress-the-criticism-of-the-government/>

to prevent excessive, disproportionate surveillance by governments and private actors.<sup>142,143</sup>

The analyzed laws do not specifically include safeguards regarding fundamental rights that could be affected while attempting to protect victims/survivors against TFGBV, even when some of them impose obligations related to content takedown (especially in the aforementioned cases of Ethiopia and Nepal) and include mechanisms to facilitate access to electronic evidence and communications (especially in Canada and Nepal). The trend reveals a worrisome scenario, as preventing and acting upon TFGBV must not lead to other types of harm and rights violations.

The Nepali bill grants the federal government's Department of Information and Technology the authority to unilaterally remove any content on social networks deemed illegal. The prediction of administrative takedown contradicts existing recommendations and good practices when it comes to the regulation of online content, such as the Manila Principles, which establish that "content must not be required to be restricted without an order by a judicial authority."<sup>144</sup> The absence of a judicial order can facilitate abuses and online censorship, as highlighted by civil society organizations such as the International Federation of Journalists<sup>145</sup>.

On the other hand, the Ethiopian law features a broad definition of disinformation and hate speech, which should be removed by digital platforms within 24 hours, even though no specific penalty is established in case such provision is not respected. Moreover, it lacks provisions for due process and opposition mechanisms for content owners affected by takedowns, and it does not specify the stakeholders responsible for deciding what constitutes offensive content, passing that responsibility to the Council of Ministers, who "may issue a Regulation to provide for the detail responsibilities of service providers and relevant Governmental Institutions."<sup>146</sup>

**States' obligation to ensure the protection of rights implies a balanced approach, which is a fundamental element for the rule of law. In this regard, establishing criteria such as legality, necessity, and proportionality is necessary to delineate the boundaries of this balance among equally fundamental rights.**

## OBSTACLES AND LIMITATIONS OF LEGAL ACTIONS

Beyond the risks associated with criminalization, various investigations offer evidence that impunity rates are a widespread concern, highlighting the ineffectiveness of these laws in holding

142 ARTICLE19. (2020). Investigating online harassment and abuse of women journalists.

143 Kaye, D. (2015). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/095/85/PDF/G1509585.pdf?OpenElement>

144 See: <https://manilaprinciples.org/principles.html>.

145 INTERNATIONAL FEDERATION OF JOURNALISTS. (2020). Nepal: Parliamentary committee passes controversial IT Bill. <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/nepal-parliamentary-committee-passes-controversial-it-bill>

146 See: <https://www.accessnow.org/wp-content/uploads/2020/05/Hate-Speech-and-Disinformation-Prevention-and-Suppression-Proclamation.pdf>

perpetrators accountable. Studies dedicated to examining whether the criminalization of TFGBV and the facilitation of criminal prosecutions to punish perpetrators enhance the likelihood of justice for women and LGBTQIA+ people found that none of the victims/survivors interviewed for the study could effectively and promptly access the legal system<sup>147</sup>.

Systemic discrimination within the legal system and its failure to adequately enforce laws meant to protect people from GBV create significant barriers for individuals with intersecting identities in their attempt to access justice<sup>148</sup>. Biases and power dynamics not only pose a risk of impeding the filing of a complaint but also jeopardize its progression through the care pathway once filed. This includes challenges during the development of investigative actions, decision-making processes regarding the punishment of aggressors, and determining how to address the violence<sup>149</sup>.

In instances of GBV, numerous victims/survivors recount finding themselves discredited when reporting to the police; enduring inappropriate discriminatory stereotyping during trials; and, in several situations, women and girls have had to resort to reporting to the media or initiating their own public campaigns to elicit a proper response from law enforcement<sup>150</sup>. Beyond systemic obstacles, they face information barriers concerning the types of crimes applicable in TFGBV cases and reporting procedures. Economic barriers are also present, particularly as related to mandatory court fees, along with legal barriers involving unnecessary and unjustified formalities for accessing jurisdiction<sup>151</sup>.

Regarding procedural mechanisms for filing complaints, the legal analysis showed that not all laws explicitly outline rules pertaining to the prosecution of criminal offenses, meaning they do not explicitly specify procedural details within their scope. For instance, Mexico and Nepal include procedural measures, but the Nepali bill only refers to the possibility of judicial appeal. In the case of Mexico City, the law stipulates that victims/survivors must press charges for the investigation to be conducted by public bodies. None of the legislation establishes that TFGBV-related offenses will be prosecuted *ex officio*.

The Peruvian law does not specifically address procedural mechanisms related to the prosecution of offenses but does place the offense of NCDII in a chapter of the Criminal Code where offenses are prosecuted through private criminal proceedings. This implies that the victim/survivor has to take responsibility for investigating, collecting evidence, and presenting their theory of the case before the Judiciary, rather than relying on the Public Prosecution Office. This measure would appear to impose a great burden to victims/

147 Hiperderecho. (2021). Después de la Ley: Informe Nro 2. [https://hiperderecho.org/wp-content/uploads/2020/12/Informe-2\\_Después-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2020/12/Informe-2_Después-de-la-ley.pdf)

148 Dunn, S. (2022). Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.15\\_Suzie%20Dunn.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.15_Suzie%20Dunn.pdf)

149 Hiperderecho. (2021). Después de la Ley: Informe Nro 3. [https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3\\_Después-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3_Después-de-la-ley.pdf)

150 Ibid

151 Ibid

survivors, possibly contributing to their being blamed, and creates a potential barrier to the persecution of perpetrators as well as to the effectiveness of the protection provisions. It is true that some States might have overburdened and under-funded justice systems; however, that should not lead to classifying TFGBV as a “second class” offense for which they lack the authority to act.

The trivialization of TFGBV is a widespread issue observed in criminal justice systems globally, reflecting a broader tendency to downplay non-physical forms of harm<sup>152</sup>. Research in Nepal points out that alongside a lack of sensitivity among justice operators when handling complaints, there is a frequent tendency to soft-pedal such cases rather than advocate for prosecution<sup>153</sup>.

When opting for prosecution, it is observed that authorities prefer to utilize criminal offenses linked to morality rather than provisions aimed at safeguarding the protected legal right. This tendency is particularly evident in instances of online sexual harassment, where research in India reveals that prosecutors often invoke anti-obscenity sections instead of provisions grounded in privacy and consent<sup>154</sup>. In the Global South, this challenge is exacerbated by insufficient budget allocation and over-burdened criminal justice systems, allowing the police to prioritize the prosecution of other crimes based on self-defined notions of urgency<sup>155</sup>.

Closely connected to the above, it is noted that individuals experiencing TFGBV often opt not to directly approach the justice system or engage with officials<sup>156</sup>. Consequently, cases of TFGBV rarely make it to courtrooms<sup>157</sup>. The longstanding general distrust of criminal justice systems documented among women and minorities, noted by UN and regional bodies as well as civil society, predates TFGBV<sup>158</sup>. This distrust discourages individuals from coming forward, primarily due to the perpetuation of patriarchal values and the risk of revictimization.

An alternative response to this issue could be the creation and establishment of specific public bodies to administratively adjudicate cases of TFGBV and other technology-facilitated offenses, as found in the Nepali Information Technology Bill and the Australian Online Safety Act. This can be viewed as a protective measure, ensuring that cases are handled by individuals within a structure better equipped to understand their nuances. However, in the broader context, it is important to acknowledge that administrative bodies often operate with limited resources, in terms of both budget and human capacity.

152 Body and Data. (2021). Mapping Laws Relevant to Online Violence in Nepal. <https://bodyanddata.org/wp-content/uploads/2021/12/OnlineGBVLawsMapping-min.pdf>

153 Ibid

154 IT for Change. (2019). Born Digital and Born Free? [https://itforchange.net/sites/default/files/1662/Born-Digital\\_Born-Free\\_SynthesisReport.pdf](https://itforchange.net/sites/default/files/1662/Born-Digital_Born-Free_SynthesisReport.pdf)

155 Ibid.

156 Hiperderecho. (2021). Después de la Ley: Informe Nro 3. [https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3\\_Después-de-la-ley.pdf](https://hiperderecho.org/wp-content/uploads/2021/08/Informe-3_Después-de-la-ley.pdf)

157 Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

158 UN Women. (2023). [Findings and recommendations from the Expert Group Meeting on the priority theme (10-13 October 2022)]. <https://www.unwomen.org/sites/default/files/2023-02/Report.pdf>

Consequently, there is a risk that they may lack the capability to effectively address the volume of reports.

In cases of TFGBV, this issue is compounded by a lack of technical training that hinders assessment of the commission of the crime and its impacts, as well as the collection and comprehension of evidence related to offenses involving technology<sup>159</sup>. Similarly, the absence of privacy guarantees for evidence collected from victims/survivors, as identified in research undertaken in Nepal<sup>160</sup>, may not only pose a barrier but could also serve as an enabler for a new act of violence.

## REMEDIES AND REDRESS MECHANISMS

Considering these issues, civil remedies are identified as an important complement, and in some cases as an alternative to criminal prosecutions to avoid some of the previously mentioned risks. Successful instances of civil remedies demonstrate the potential for considering human rights, including privacy, when evaluating similar cases in different jurisdictions<sup>161</sup>. The imposition of economic consequences on perpetrators can also contribute to addressing and rectifying the economic impact of TFGBV. Legal action could also be taken against Internet platforms that refuse to remove non-consensual images<sup>162</sup>.

Recommendations issued to States under human rights law buttress this approach, highlighting the importance of providing protective measures, support services, and specialized helplines for victims/survivors, ensuring accessible legal aid and timely orders to remove harmful content, with protection orders available in civil courts. In this sense, it is recommended to create mechanisms of cooperation with Internet intermediaries, human rights institutions, and civil society organizations to address TFGBV comprehensively<sup>163</sup>.

In general, the analyzed pieces of legislation lacked provisions for remedy and redress, indicating that these regulations are primarily designed as repressive and punitive mechanisms rather than being victim/survivor-centric.

However, the absence of provisions in TFGBV laws doesn't mean such measures don't exist. They are often outlined in other gender-

159 Dunn, S. (2022). Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.15\\_Suzie%20Dunn.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.15_Suzie%20Dunn.pdf)

160 Body and Data. (2021). Mapping Laws Relevant to Online Violence in Nepal. <https://bodyanddata.org/wp-content/uploads/2021/12/OnlineGBVLawsMapping-min.pdf>

161 CIGI. (2021). Supporting a Safer Internet Paper No. 2. [https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_2\\_Coverupdate.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_2_Coverupdate.pdf)

162 Human Rights Watch. (2021). My Life Is Not Your Porn: Digital Sex Crimes in South Korea. [https://www.hrw.org/report/2021/06/16/my-life-not-your-porn/digital-sex-crimes-south-korea#\\_ftn190](https://www.hrw.org/report/2021/06/16/my-life-not-your-porn/digital-sex-crimes-south-korea#_ftn190)

163 Commission on the Status of Women. Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls. (2022). [https://www.unwomen.org/sites/default/files/2022-10/\\_Background%20Paper\\_Londa%20Schiebinger\\_Technology%20and%20Innovation.pdf](https://www.unwomen.org/sites/default/files/2022-10/_Background%20Paper_Londa%20Schiebinger_Technology%20and%20Innovation.pdf); and 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. A/HRC/38/47. <https://undocs.org/A/HRC/38/47>

based violence legislation. Still, with the exception of Mexico, the lack of integration with these pre-existing laws results in uncertainty about whether protective and compensatory measures effectively support victims/survivors of TFGBV. The Mexican law grants the right to interrupt, block, destroy, or eliminate images, audios, or videos of intimate sexual content of a person distributed without their consent. It also offers psychological, medical, and social services and legal support to the victims/survivors. Similarly, the Canadian and Australian laws establish the right to the removal from the computer system of intimate content non-consensually disseminated by the custodian.

In addition to the insufficiency of civil remedies in specific countries, their potential inadequacy in effectively dealing with TFGBV must also be considered<sup>164</sup>. There are additional hurdles to the effective implementation of civil measures. In some jurisdictions, it is a common practice to defer a civil claim based on facts also under criminal prosecution until the conclusion of the criminal case. This practice prevents victims/survivors from seeking injunctive relief or financial compensation when it is most crucial. Often, by the end of a criminal trial, victims/survivors are too fatigued and traumatized, particularly after enduring multiple appeals over several years, to initiate a new civil proceeding, even if the criminal case establishes facts supporting such a claim.

Civil remedies, such as damages from the perpetrator or injunctive relief, are also not readily accessible to victims/survivors because filing a complaint in civil court would require them to disclose their name and address, exposing this information to the public, including the perpetrator. This is a step few victims/survivors are comfortable taking<sup>165</sup>. Additionally, financial constraints pose a significant limitation for victims/survivors who may lack the means to pursue this option.<sup>166</sup>

A third option, as additional research highlights, is the use of constitutional actions to address this form of violence, particularly in cases of non-consensual dissemination of intimate images<sup>167</sup>. This approach has resulted in positive outcomes, not only in acknowledging the violence but also in responding promptly to the specific demands of such actions. However, as demonstrated by documented cases, there is no guarantee that an effective gender perspective will be applied.<sup>168</sup>

Given the numerous challenges associated with both criminal and civil legal systems, including their prolonged timelines and costs, resorting to legal action should not always be the immediate and exclusive option. Victims/survivors should, therefore, have access to alternative legal pathways that do not require interaction with

164 Pollicy. (2020). Fighting Violence Against Women Online: A comparative analysis on legal frameworks in Ethiopia, Kenya, Senegal, South Africa and Uganda. [https://ogbv.pollicy.org/legal\\_analysis.pdf](https://ogbv.pollicy.org/legal_analysis.pdf)

165 Human Rights Watch. (2021). My Life Is Not Your Porn: Digital Sex Crimes in South Korea. [https://www.hrw.org/report/2021/06/16/my-life-not-your-porn/digital-sex-crimes-south-korea#\\_ftn190](https://www.hrw.org/report/2021/06/16/my-life-not-your-porn/digital-sex-crimes-south-korea#_ftn190)

166 CIGI. (2021). Supporting a Safer Internet Paper No. 2. [https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_2\\_Coverupdate.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_2_Coverupdate.pdf)

167 TEDIC. (2021). Difusión de imagen no consentida en Paraguay. <https://www.tedic.org/wp-content/uploads/2021/09/Imagen-no-consentida-Tedic-web.pdf>

168 Ibid.

judicial authorities, and which provide expedited resolution, such as administrative bodies.<sup>169</sup>

### Expert consultation

The expert consultation for this paper highlighted the paramount importance of exploring diverse legal alternatives to ensure a victim/survivor-centric approach in addressing gender-based violence. Recognizing and valuing the preferences of victims/survivors became a focal point, with an understanding that different victim/survivor groups may hold diverse perspectives. While civil remedies were acknowledged as effective for individual cases, it was emphasized that challenges posed by institutional or systemic violence call for a criminal approach.

Within the context of civil measures, a noteworthy observation was made regarding the insufficient integration of mental health and legal aid into technology-related offenses, despite their critical importance as key civil approach measures.

## THE LIABILITY OF DIGITAL BUSINESS

### Expert consultation

Similarly, the articulation of civil measures, including fines and warning orders, was underscored, particularly with regard to digital companies. The role of national regulators in overseeing tech companies engaged in self-regulation, exemplified by Meta's Oversight Board, was raised as a pertinent question. The discussion highlighted that regulatory oversight of digital platforms should extend beyond decisions related to content takedown or reinstatement, to encompass design choices and algorithmic processes influencing content amplification. Suggestions were made for an independent regulatory authority to investigate practices like shadowbanning and the use of dark patterns by platforms while ensuring that trending pages on platforms do not facilitate the viral spread of hateful content.

The meeting also delved into the establishment of dedicated bodies for gender policies, especially in countries with room for feminist policies. However, concerns were expressed regarding potential capture by conservative governments, citing trends observed in the rise of conservative leaders in Latin America.

The legislative analysis conducted for this paper pointed out that most of the examined laws do not address the liability of digital businesses, leaving repressive or reparatory measures to the assaulters.

Australia's Online Safety Act serves as a counter yet good example of such a trend, as it establishes obligations for technology companies that provide platforms for online communications. The Act mandates

169 Ibid

that Internet service providers<sup>170</sup> must take proactive measures to prevent online harms and encourages them to create industry codes. However, it does not explicitly outline the nature of these proactive measures or provide guidelines for the codes, raising the risk of granting providers excessive power and the potential for establishing disproportionate practices.<sup>171</sup>

One alternative for legal frameworks in establishing such unspecific measures for Internet service providers could be to refer to principles such as the UN's Guiding Principles on Business and Human Rights.<sup>172</sup>

## SUMMARY

This section explores the legislative approaches to regulating TFGBV and the associated challenges. It emphasizes the need for a balanced approach that protects rights in digital spaces while avoiding undue restrictions. The focus is on the criminal and repressive nature of many laws, the imbalance in addressing freedom of expression, and the potential risks of legal actions. The discussion also highlights obstacles for the effectiveness of such legal frameworks, including systemic discrimination, distrust in legal systems, and the limitations of legal actions.

The importance of remedies and redress mechanisms is underscored, pointing out the lack of integration in legislative pieces and the need for a victim/survivor-centric approach that considers civil remedies, constitutional actions, and alternative legal pathways. The expert consultation emphasizes the importance of diverse legal alternatives, recognizing the preferences of victims/survivors and the need to address institutional and systemic violence. Highlights from the legislative examination that backup the analysis are summarized in the table below. Finally, the section advocates for an inclusive and comprehensive legal framework that goes beyond punitive measures to effectively combat TFGBV.

170 The Australian Online Safety Act defines Internet service providers as: “(1) For the purposes of this Act, if a person supplies, or proposes to supply, an internet carriage service to the public, the person is an internet service provider.[...]”

(2) (a) an internet carriage service is used for the carriage of material between 2 end-users; and (b) each end-user is outside the immediate circle of the supplier of the service; the service is supplied to the public.

Note: If a company makes internet material available for access on the Internet, and an individual obtains access to the material using an internet carriage service, the company and the individual are end-users in relation to the carriage of the material by the internet carriage service.

(3) (a) an internet carriage service is used to supply point-to-multipoint services to end-users; and (b) at least one end-user is outside the immediate circle of the supplier of the service; the service is supplied to the public.”

171 Recently, the protection of vulnerable subjects online such as children has led to a series of legislative initiatives worldwide that harm privacy by creating barriers to end-to-end encryption, for example. The UK's Online Safety Act, approved in 2023, is one example of these initiatives. See: <https://www.eff.org/pt-br/deeplinks/2023/09/uk-government-knows-how-extreme-online-safety-bill>

172 OHCHR. (2011). Guiding Principles on Business and Human rights. [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

**TABLE 7: LEGISLATIVE POLICY ANALYSIS FINDINGS ON LEGISLATIVE APPROACH**

| <b>Legislative trait</b>                   | <b>Trend observed in the legislative analysis</b>                                                                                                                                                                                                                            | <b>Example / counter-example</b>                                                                                                                                                                                                                                                                                              |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Criminal and repressive approach           | The approach to TFGBV offered by the laws is essentially criminal, i.e., they classify conducts of TFGBV as criminal offenses                                                                                                                                                | The Australian Online Safety Act is an exception, stipulating civil measures for civil unlawful acts such as NCDII and cyberbullying                                                                                                                                                                                          |
| Criminal and repressive approach           | The approach the laws offer is essentially repressive: they focus on measures located in time as subsequent to the commission of the crimes, rather than creating prevention policies and strategies                                                                         | Olimpia Law from Mexico City is an exception, as it also foresees prevention mechanisms                                                                                                                                                                                                                                       |
| Balance of rights                          | The analyzed laws do not specifically include safeguards regarding fundamental rights that could be affected while attempting to protect victims/survivors against TFGBV                                                                                                     | The Ethiopian Hate Speech and Disinformation Prevention and Suppression Proclamation imposes obligations related to content takedown, but doesn't foresee measures for due process or opposition to such takedown                                                                                                             |
| Obstacles and limitations of legal actions | Not all laws explicitly outline rules pertaining to the prosecution of criminal offenses, meaning they do not specify procedural details within their scope. Some stipulate that victims/survivors must press charges for the investigation to be conducted by public bodies | Peru's Legislative Decree 1410 is a counter-example: it does not specifically address procedural mechanisms related to the prosecution of offenses, but does place the offense of NCDII in a chapter of the Criminal Code where offenses are prosecuted through private criminal proceedings                                  |
| Obstacles and limitations of legal actions | Most laws don't establish specific public bodies to adjudicate cases of TFGBV                                                                                                                                                                                                | The Nepali Information Technology Bill is an exception, as it establishes a specific body to deal with the technology-related offenses (which involve but are not limited to TFGBV) it foresees                                                                                                                               |
| Remedies and redress mechanisms            | In general, the analyzed legislative pieces lacked provisions for remedy and redress                                                                                                                                                                                         | Mexico City's Olimpia Law is an exception and grants TFGBV victims and survivors the right to interrupt, block, destroy, or eliminate images, audios, or videos of intimate sexual content of a person distributed without their consent, as well as psychological, medical, social services and legal support to the victims |
| The liability of digital business          | The laws in general don't address the liability of digital businesses                                                                                                                                                                                                        | Australia's Online Safety Act is a counter-example, as it mandates that internet service providers must take proactive measures to prevent online harms and encourages them to create industry codes                                                                                                                          |

#### 4D. OTHER CHALLENGES RELATED TO TFGBV LEGISLATION

---

Drafting legislation to face TFGBV is a necessary yet challenging task. This paper intended to examine existing research on legal and policy frameworks and conduct a trend analysis of local legislation addressing the issue to identify best practices and challenges that can inform the formulation of guidelines for the advance of victim/survivor-centric, human rights-based TFGBV legislation.

Considering the intricate and dynamic nature of TFGBV, it is advisable to undertake additional research to tackle specific and emerging challenges not covered in this paper. Four specific topics are underscored in this regard.

The liability of digital businesses is among them, as they are part of the landscape in which TFGBV is carried out. The discussion and drafting of legal frameworks that establish duties for Internet service providers, digital platforms and other types of digital enterprise has been advancing worldwide, and there are no one-size-fits-all measures that will assure the establishment of a safe, human rights-respecting digital environment. Carrying out specific research to evaluate the most adequate legal measures aimed at digital businesses to combat TFGBV is therefore indicated. The Australian Online Safety Act examined for this work, which foresees duties for Internet service providers, could be a starting point, along with recent regulatory approaches undertaken in the United Kingdom and European Union member States.

The same principle applies to the intersection of TFGBV with Artificial Intelligence (AI) and other emerging technologies. Recognized as crucial aspects of new and advancing technologies, AI and its applications across various domains, societies, and individual lives have garnered significant attention. In recent years, diverse stakeholders have come together (and continue to do so) to deliberate on the specific risks posed by AI to human well-being and the most effective strategies to mitigate them. Gendered risks include online censorship and hate speech linked to the use of profiling in campaigns targeting female activists and journalists, as well as discrimination resulting from biases ingrained in data modeling for social interventions<sup>173</sup>. Another gendered risk associated with AI is the creation and dissemination of manipulated non-consensual sexual images, known as deep fakes. Various discussions on AI regulation highlight concerns, emphasizing the need to address this gap more comprehensively and specifically.

Moreover, how to legally address the collective harm dimension of TFGBV offenses is another challenge that warrants continued research. Often TFGBV conducts are seen as an individual problem despite the presence of a collective dimension, as they may diffusively harm the rights of women or LGBTQIA+ people. Hate speech is an example that illustrates this well. Nevertheless, at the same time,

---

173 Special Rapporteur on the Right to Privacy. (2019). Report of the Special Rapporteur on the right to privacy. A/HRC/40/63. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/307/40/PDF/G1930740.pdf?OpenElement>

gender is not recognized by international law as a category for hate speech<sup>174</sup>. In such cases, what is the best legal approach to establish remedial and redress measures? To answer this question, the study of legal systems that establish measures to protect against collective harms, such as Brazil's, could be an interesting step.

Lastly, the relationship between frameworks designed to protect children from technology-facilitated violence and those designed for TFGBV is one topic that requires further interrogation. The work conducted for this paper found that often measures to address these two types of violence are frequently consolidated within the same legal framework. It is important to note that despite children, women and LGBTQIA+ people being vulnerable groups recognized by international law as such, each of them has specific characteristics and needs, which could suggest the need for differentiated legal approaches. Moreover, concerning the relationship between frameworks designed to protect children from technology-facilitated violence and those designed for adults, a deeper approach and methodology aligned with international law is necessary. This should exclusively view this phenomenon through the lens of a child rights and child-sensitive approach, separate from any analysis conducted on adults (women or men).

---

174 Moolman, J. (2022). Freedom of Expression and Participation in Digital Spaces. UN Women. [https://www.unwomen.org/sites/default/files/2022-12/EP.14\\_Jan%20Moolman.pdf](https://www.unwomen.org/sites/default/files/2022-12/EP.14_Jan%20Moolman.pdf)

## 5. Concluding remarks

As mentioned in the introduction, this discussion paper aims to contribute to the formulation of guidance on rights-based law reform to address TFGBV. In this section, the main insights from previous research and analysis are summarized as an initial attempt to identify main recommendations to States committed to fighting TFGBV.

**Human Rights:** TFGBV should be acknowledged as a human rights violation rooted in gender, necessitating comprehensive protection of all rights within a legal framework. It is essential that States ratify international treaties against discrimination and gender-based violence. Any legislative response to technology-facilitated rights violations should recognize the dual nature of the Internet and technologies, and adopt balanced approaches grounded in the principles of legality, necessity, and proportionality. Failure to do so could pose a significant risk of undermining the potential for free and safe expression by the very groups the legislation aims to protect. TFGBV legislative initiatives should be integrated with established frameworks and policies on gender-based violence. This ensures coherence and synergy in addressing various forms of gender-based violence.

States should also consider applying the UN Principles on Business and Human Rights to address other actors potentially involved in TFGBV from a systemic perspective. Such an approach should align with smart regulation, concentrating on ensuring the transparency and accountability of tech companies.

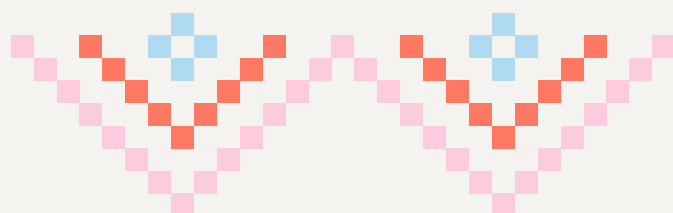
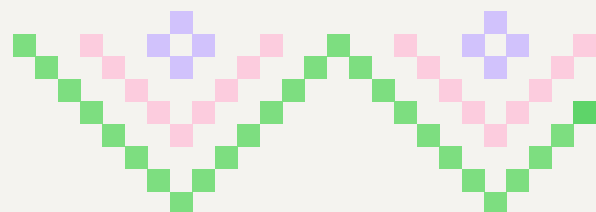
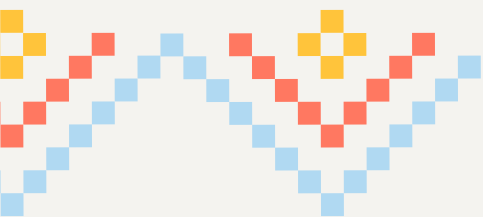
**Gender Justice:** Adopting a gender justice approach is a key condition to effectively address TFGBV in a way that both prioritizes specific needs and perspectives of women and LGBTQIA+ people and escapes purportedly gender-blind approaches that can reproduce unequal power dynamics. This calls for an intersectional, victim/survivor-centric approach, acknowledging the diverse nature of victims/survivors and requiring varied measures and approaches. Creating meaningfully participatory mechanisms throughout the lawmaking process is key. Morality and obscenity as rationales for protecting women and LGBTQIA+ people affected by injustice must not be the basis for any legislative reform or new law in matters of gender-based violence.

**Systemic Approach:** It is imperative to understand law as a sociocultural construct beyond mere rules. Understanding how a country's culture shapes the existence of rules and their interpretation by institutional operators is crucial, as is recognizing and acknowledging the plurality of experiences faced by victims/survivors of TFGBV, thus moving away from one-size-fits-all solutions. Recognizing TFGBV as a manifestation of underlying structural issues means that legal frameworks addressing this issue need to be part of a

broad, multifaceted strategy that involves non-legal measures aimed at removing systemic and structural barriers to gender equality.

**Diverse Legal Responses:** Recognizing the variety of potential legal responses to TFGBV is crucial, as is avoiding a solely criminal and repressive approach. For more serious forms of TFGBV, a criminal response might be appropriate, while other cases may warrant civil torts, privacy/data protection laws, human-rights law, or administrative bodies that address digital harms. Governments should offer a range of legal avenues, ensuring a balanced rights approach for comprehensive, gender-sensitive protection. Moreover, it is essential for States to refrain from implementing measures that compromise individuals' security or create openings for arbitrary censorship. Striking a balance between regulation and safeguarding fundamental rights is crucial in addressing TFGBV.

**Capacity Building:** Formulating legislation is insufficient on its own to ensure justice for victims/survivors of TFGBV. Judicial and law enforcement authorities need technological and gender sensitization training to effectively comprehend and investigate complaints. Adequate financial and human resources should also be provided to support law enforcement. This includes addressing gaps and limitations and building capacities at judicial and enforcement institutions for a victim/survivor-centric intersectional approach. Responses should extend beyond criminalization to meet the diverse needs of victims/survivors.



derechosdigitales.org

