

## **Gender-Based Hate Speech: Contributions to the Global Policy Debate From Latin America**

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Against the background of a global, yet unsettled, debate about what hate speech is and whether and how to regulate it, driven predominantly by European governance actors, this article provides a closer examination of the experiences of Latin America in pursuing policy, regulatory, and legislative answers. The study focuses on gender-based hate speech because this intersects with global questions of human rights, as well as local historical and legal contexts. The article demonstrates the reluctant approach to the regulation of hate speech through the study of policy initiatives by the state and policy considerations by civil society (CS) actors in Colombia and Guatemala, through semistructured interviews with CS organizations and the analysis of 19 policy milestones. Partly in contrast to the European approach, *prejudice speech* is considered a term that better reflects sociocultural contexts and responsibility vis-à-vis a narrow focus on individual “bad behavior.”

*Keywords: hate speech, media governance, Latin America, gender*

A recurrent challenge for democracies is the definition of boundaries between freedom of expression and hate speech. Although the debate on hate speech is not new, it took center stage with the emergence of anonymous and widespread “bad” behavior on social media in the 2000s (Anti-Defamation League, 2016; Citron, 2014; Taylor, Peignon, & Chen, 2017), as many people face vitriolic comments against their expressed views and their person. Gender-based hate speech is the focus of this article, as we seek to identify and understand its multilevel function as violence against women on the basis of intersectionality; this angle allows us to frame and analyze various forms of dominance and power that influence gender exclusion (Guzmán Ordaz & Jiménez Rodrigo, 2015).

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Several approaches attempt to conceptually and regulatorily comprehend and address hate speech (Díaz Hernández, 2020; Gagliardone, Gal, Alves, & Martinez, 2015; Stakic, 2011) as dangerous speech (Benesch, 2014), fear speech (Buyse, 2014), or extreme speech (Pohjonen & Udupa, 2017). Hate speech is directed at certain individuals or groups of people considered to be inferior based on core identity features or demographic markers (Hernández, 2011; Townsend, 2014; Traum, 2014), encouraging stigmatization of a person or group (Benesch, 2014; Maussen & Grillo, 2014). It carries the offense against human dignity and legitimizes violence against targeted individuals or groups of people (Jubany & Roiha, 2018; Parekh, 2006).

Hate speech can lead to silencing and intimidation (Fladmoe & Nadim, 2017; Sarikakis et al., 2021) and reinforce discrimination and marginalization. However, to *regulate* against hate speech is argued to encourage censorship of inconvenient speech to powerful actors (Strossen, 2018). It expresses the superiority of a dominant group and hence reinforces an unequal treatment of minorities that consequently impacts the relations of minority or minoritized members with the rest of the population (Calvert, 1997; Pérez, 2019). It discourages their expression of opinion (Alakali, Faga, & Mbursa, 2017; Torres & Taricco, 2019) and jeopardizes their rights to equally participate in democracy (George, 2016; Sarikakis & Seoane-Pérez, 2019). Marginalized groups, therefore, are hindered from occupying an equal position as citizens, something that for some scholars and legal experts becomes the imperative for regulating against hate speech (Waldron, 2009, 2012).

Prejudice, negative attitudes toward a certain social group and its members (Augoustinos & Reynolds, 2001; Correll, Judd, Park, & Wittenbrink, 2011), is a core element of hate speech (Tsesis, 2002). This negative orientation comprises stereotypes, hostile feelings, and discriminatory behavioral tendencies (Allport, Clark, & Pettigrew, 1954; Correll, Judd, Park, & Wittenbrink, 2011). Prejudice can be sustained by shared values and common expressions and can lead to normalization of hate speech.

Sexist and homophobic discourses, within a patriarchal and androcentric structure, legitimize and normalize patriarchal stereotypes (Jubany & Roiha 2018). Frequently, sexist discourse is unnoticed due to the pervasiveness of gendered hate speech within society (Weston-Scheuber, 2012, p. 143) and the intrinsic invisibility of sexism (Lillian, 2007, p. 736). The normalization of violence is more harmful when it is unnoticed and when it is only perceptible as a threat by the threatened minorities (Sarikakis & Seoane-Pérez, 2019).

The controversy on the philosophical and normative basis of policies countering hate speech characterizes a debate dominated by Europe and the United States. We hence seek to explore in which ways the experience of parts of the Latin America context may further the debate, because the contextual and policy dimensions of the region remain under-researched. Because of recent attempts to regulate hate speech in Latin America, it is important to investigate the experiences of the region and the contestations involved in attempting, questioning, or resisting hate speech policy. Colombia and Guatemala are two countries that experienced long-standing civil wars and are at two different stages of democracy and development of gender equality.

Based on these concerns, we explore the ways in which hate speech as a regulatory object emerges in regulatory initiatives in the region by exploring the national legislative framework and perceptions of civil society organizations. After mapping hate speech in the global context of international instruments, we contextualize the study within the legislative efforts of Latin American countries; then we zoom in on the progress and obstacles in national legislatures. This contribution sets the background against which hate speech in regulatory and political debate in Colombia and Guatemala is discussed, as well as policy considerations of civil society actors in both countries.

### **Hate Speech and International Instruments**

Hate speech as a specific concept is largely absent from international human rights treaties. Rather, it is referenced or subsumed under the idea of other concepts, such as incitement to hatred, genocide, war propaganda, and discrimination. Owing to its complexity and broadness, international law instruments have been less concrete in giving a definition of hate speech (Soto, 2015).

One of the first official and most comprehensive adopted definitions, found within international instruments, is the definition of hate speech given by the Council of Europe (COE; Council of Europe, 1997), one of the leading international organizations addressing this issue.

Hate speech, refers to all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. (p. 2)

The COE (1997) connects the concept of hate speech with expressions of racial and national hatred but allows for the role of contextual and cultural changes to determine "other forms of hatred" (p. 2). In relation to the spread of hate speech on the Internet, the United Nations Educational, Scientific, and Cultural Organization (UNESCO; Gagliardone et al., 2015) expanded the definition of hate speech to include prejudicial expressions that create a climate of exclusion.

It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility, and violent attacks. (p. 11)

Hate speech is identified, at first, as a kind of expression "designed to promote hatred on basis of race, religion, ethnicity or national origin" (Rosenfeld, 2003, p. 1524). In 1965, the International Convention on the Elimination of Racial Discrimination (CERD), motivated by the issue of religious intolerance and racial prejudice, condemned war propaganda based on theories of superiority that attempt to justify or promote racial hatred and discrimination. In the same vein, in 1966, the International Covenant on Civil and Political Rights (ICCPR) established with Article 20(1) the prohibition of propaganda of war and advocacy of national, racial, or religious hatred. The ICCPR's Article 20 is commonly used by "the advocates of hate speech restrictions worldwide" (Belavusau, 2017, p. 3), and it is a prevalent legal instrument in court cases of

incitement to hatred and hate speech. In the Americas, following the same principles, in 1969 the American Convention on Human Rights established the Right of Freedom of Conscience and Religion (Art. 12) and the Freedom of Thought and Expression (Art. 13), as well as the prohibition and punishment of propaganda of war or any advocacy of hatred that incites to violence. Gender was recognized by international institutions as a factor of discrimination and motivation for hate speech on account of the first feminist movements. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also known as the International Bill of Rights for Women, was adopted in 1979.

In 2012, the Rabat Plan of Action developed guidance to counteract incitement to discrimination, hostility, or violence with a six-part threshold test to ensure the adequate application of Article 20 of the ICCPR, which set the limits to freedom of expression. The Rabat Plan pinpointed the lack of prohibition of incitement to hatred in the domestic legal framework of many countries around the world and provided suggestions of policies, regulations, and jurisprudence.

The United Nations (UN) launched a Strategy and Plan of Action on Hate Speech in 2019. In this plan, the UN recognized countering hate speech as a major global challenge, acknowledging that hate speech has been a precursor to atrocities, such as the genocides of Rwanda, Bosnia, and Cambodia, among others. Therefore, as the UN Secretary General António Guterres stated, "Addressing hate speech does not mean limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous" (United Nations, 2019, para. 4).

Regulating hate speech is often placed as against protection of freedom of speech. Scholarly literature on court cases and legal discussions between the United States and Europe reflects policy elite debates and tends to be repetitive of pro- and anti-regulation arguments, placing criminalization as the only option or on the grounds of freedom of speech and giving little argument beyond the need for "more speech" (Maussen & Grillo, 2014, pp. 176–177). Hate speech is "often framed by liberal academic, legal and media elites as a 'zero-sum game' in which it is assumed that one must either be 'for' or 'against' freedom of expression" (Bangstad, 2014, pp. 266–267).

Article 19 of the Universal Declaration of Human Rights (UDHR) and the ICCPR provide protection of freedom of speech and established it as a fundamental human right. Historically the international debate has been split into two strongly different legal angles expressed through the United States Supreme Court (SCOTUS) and the European Court of Human Rights (ECtHR). The European Convention of Human Rights (ECHR), the first international instrument addressing the UDHR, included the right to freedom of speech in Article 10, establishing the dimensions of responsibility embedded within this right, and providing for restrictions.

The U.S. Supreme Court decisions in the 1960s and 1970s laid the groundwork for the maximal free speech protections in the United States (Bleich, 2014, p. 288). In contrast, during the same period, many European countries adopted legislation against hate speech, especially in the forms of racist speech. A clearer European position was developed, led by the institutionalization of an anti-racist legal international framework and the creation of the European Commission against Racism and Intolerance (ECRI) in 1993.

General Recommendation No. 25, 2000, by the Committee for the Elimination of Racial Discrimination (CERD) pointed to the distinct effects of discrimination against women and the impact on women's public and private lives. In Europe, the first agreement between governments to combat discrimination on grounds of sexual orientation and gender identity was given by the COE Recommendation CM/ Rec (2010) 5. The COE achieved the first legally binding instrument to combat violence against women and domestic violence with what is widely known as the Istanbul Convention entering into force in 2014. The convention came under attack for providing protections for LGBTQ+ communities: conservative right-wing parties and governments in Bulgaria, Hungary, and Poland expressed their "distancing" intentions, and Turkey withdrew in 2021.

In the Americas, the 2013 Inter-American Convention Against All Forms of Discrimination and Tolerance A-69 is an instrument to promote protection against discrimination and to determine the responsibility of the state when it comes to preventing, eliminating, prohibiting, and punishing all acts and manifestations of discrimination and intolerance. The convention recognizes discrimination based on, *inter alia*, sexual orientation, gender identity, and gender expression. Colombia signed the convention in 2014 alongside with 11 other countries, however Guatemala has not signed it yet.

### **Method**

Investigating the place of hate speech in policy in Latin America opens the possibility to revisit the historical European and U.S. policy models (Hernández, 2011). As a region with its own and specific sociopolitical and historical context Latin America brings additional value to the exploration of the role of inequality, racism, discrimination (Díaz Hernández, 2020; Hernández, 2011; Torres & Taricco, 2019), and colonization. We selected Guatemala and Colombia as two postconflict societies with historical similarities but also social and economic differences. Both countries faced long periods of internal armed conflict, which established a normalization of violence and high levels of social polarization (Muñoz, 2016; Zuluaga Aristizábal, 2012). Further, several persisting social issues, such as inequality, poverty, and corruption, have their roots in the countries' colonial past and a postcolonial system (Zuluaga Aristizábal, 2012). Although both are postconflict societies, democratic governance has developed quite differently. Colombia, for instance, is considered a flawed democracy, and Guatemala is considered a hybrid regime (Economist Intelligence Unit, 2020). In terms of intergenerational social mobility, the World Economic Forum's (2020) Social Mobility Index ranked Guatemala as the last country in Latin America, whereas Colombia scored on the Latin American average. Regarding gender equality, Guatemala was also the lowest-ranked Latin American country (89th) in the 2019 Sustainable Development Goal Gender Index, whereas Colombia performed better than other conflict societies, ranking 57 of 129 countries.

We situate the debate on hate speech within the context of global legal instruments and explore the development of policy countering hate speech in particular in relation to women and sexual minorities through document analysis and in-depth interviews to map the legislative attempts, their character, and the range of understandings of hate speech in these two countries.

To investigate the state of hate speech regulation in Latin America, we applied policy analysis, identifying policy milestones and tracing the outcome of policy initiatives. Drawing on the interpretive

approach, we asked in which ways and for which reasons governments enact certain policies (Browne, Coffey, Cook, Meiklejohn, & Palermo, 2018, p. 2; Fischer, Torgerson, Durnová, & Orsini, 2015; Yanow, 2015) exploring the construction of meaning, in the legislative framing of hate speech and the ways in which policies reflect the social construction of this issue (Browne et al., 2018; Yanow, 2015). For this purpose, first the regional context was investigated, and a comprehensive overview of the legislative progress was identified in seven Latin American countries through the close reading of five draft bills and two laws. In the case of Colombia and Guatemala, 19 policy documents were identified and discussed (draft bills: 5; legal verdict: 1; bills: 9; penal code: 2; constitutional court verdict: 2, 350 pages in total) on hate speech approach, contextual information, and policy timeframe. Where hate speech was not named as such, we sought to identify the constituents of hate speech present in such regulation.

We conducted semistructured interviews with representatives from civil society organizations and nongovernmental organizations working for women and LGBTIQ rights in Colombia and Guatemala to provide "rich, detailed descriptions of human experiences, dialogic encounters between self and other" (Lindlof & Taylor, 2002, p. 28). A total of 15 activists and social leaders were interviewed between the period of November 2018 and January 2019 via Skype. All interviewees had a minimum of two years' experience working in gender issues. In Colombia, nine interviews were conducted with members of Red de Mujeres, Colombia Diversa, Temblores, En Plural, Asociación Nacional de Zonas de Reserva Campesina (ANZORC), Pares en Acción-Reacción Contra la Exclusión Social (PARCES), Liga de Mujeres, Casa de la Mujer, and Asociación Campesina del Catatumbo (ASCAMCAT). In Guatemala, six interviews were conducted with members of Colectivo Trans-formación, Observatorio contra el Acoso Callejero, ONU Mujeres Guatemala, Visibles, Voces de Mujeres, and former deputy Sandra Morán, human rights, LGBTIQ and feminist activist.

The data from the interviews were analyzed thematically (Braun & Clarke, 2006; Braun, Clarke, & Weate, 2016), generating initial codes and themes. The key themes derived from the data were (1) the nature and features of gender-based hate speech, (2) political instrumentalization of gendered-based hate speech, and (3) responses and strategies toward gender-based hate speech.

The thematic analysis started by transcribing the interviews (166 pages) and familiarizing with the text data. Second, through close reading, possible categories were created with an inductive approach. Third, categories were reduced and gathered into the final themes, avoiding redundancy among categories. While conducting the thematic analysis, we applied an inductive approach (Braun & Clarke, 2006; Braun et al., 2016), following the general inductive approach for qualitative data presented by Thomas (2003).

### **Colombian and Guatemalan Approaches to Hate Speech**

In the context of Latin America, the concept of hate speech is gradually entering the policy debate, albeit lacking a clear common approach. Several Latin American countries indirectly cover elements of hate speech in their criminal code or in antidiscrimination laws, but these regulations fail to set the boundaries of legal communication behavior (Díaz Hernández, 2020). Hence, a broad definition of harmful discourse can encompass certain forms of speech that can become an apparatus for political persecution (Díaz Hernández, 2020; Gagliardone et al., 2015).

Legislative debates of hate speech in Latin America began in 2014, when the first attempt at regulation was pursued in Colombia. However, Chile and Venezuela are the only countries in the region that have specific legislations (Table 1). In Chile, hate speech regulations were proposed in 2017, and after three years of parliamentary discussions, social debate, and modifications, the bill was approved in January 2020. The Venezuelan law was criticized as undemocratic because of its vague and discretionary criteria of hate speech, incitement to violence, and discrimination (Balbi, 2017; Díaz Hernández, 2020; Espacio Público, 2017). At the expense of the right of freedom of expression, this law criminalizes opinions published in both traditional and digital media that might be inconvenient for people in power (Balbi, 2017; Espacio Público, 2017).

Online hate speech law proposals in Latin America hold national telecommunications companies responsible for the regulation of content promoting hate and discrimination in the digital space, which is considered a privatization of freedom of speech (Díaz Hernández, 2020), as in Ecuador and Honduras.

**Table 1. Legislative Initiatives Concerning Hate Speech in Latin America.**

Country	Legal Instrument	Description
Brazil	Law Proposal No. 323 (2017)	Hate speech, false information, or insults anonymously posted toward a candidate should be eliminated by social media enterprises until the author is identified. It was withdrawn before entering parliamentary debate.
Colombia	Law Proposal No. 017 (2014)	Prohibited incitement to hatred, hate speech, and other manifestations of intolerance. It was rejected at the first parliamentary debate.
Chile	Bulletin 11.424 (2020)	Criminalizes hate speech and incitement to violence with imprisonment from 61 to 540 days and a fine. The punishment increases if it is conducted by a civil servant.
Ecuador	Law Proposal to Regulate Acts of Hate and Discrimination Online (2017)	To regulate online hate speech, Internet service providers and social media providers internally manage illegal online content and provide a quarterly report to the government. It is still open for debate.
Guatemala	Law Proposal 5229 (2017)	Prohibited incitement to hate and hate crimes and established a hate crimes and social intolerance section in the penal code. It was rejected by the Committee on Legislation and Constitutional Affairs.
Honduras	Law Proposal to Regulate Acts of Hate and Discrimination on the Internet (2018)	To regulate online hate speech, Internet service providers internally manage illegal online content and provide a quarterly report to the government. It is pending approval in a third legislative debate.
Venezuela	Law Against Hate, for Peaceful Coexistence and Tolerance (2017)	Prohibits incitement to hate on social, traditional, and digital media with imprisonment up to 20 years, and the government can revoke operating licenses of radio and television media.

The Colombian House of Representatives discussed a legislative proposal (Law No. 017 2014) to prohibit the advocacy of hatred, hate speech, and other manifestations of intolerance. The bill included penalties up to 24 years in prison and fines of 100 times the legal minimum wage in force. Although this legal initiative was shelved, it showed a clear punitive legal approach to combat hate speech.

In Guatemala, in January 2017, initiative 5229 proposed that incitement to hate and hate crime shall be punishable by imprisonment from two to eight years. Before entering the congressional debate, the Constitutional Affairs Committee gave the proposal an unfavorable judgment, arguing that it would infringe on freedom of expression and that protections against propaganda of war and incitement to hatred (ICCPR Art. 20) are already covered in in the American Convention on Human Rights.

Antidiscrimination laws in both countries partly embed conceptualizations around hate speech. In 2002, the penalization of discrimination as an act of exclusion, restriction, or preference on the basis of gender, race, ethnicity, age, religion, economic situation, illness, disability, civil state, and others became part of the Guatemalan Criminal Code (Article 202 bis). In Colombia, the first comprehensive antidiscrimination law was implemented in 2011 (Law 1482). It establishes penalization for promoting and incurring harassment and criminal acts for discrimination based on race, ethnicity, religion, nationality, political or philosophical ideology, sex or sexual orientation, disability, and other grounds of discrimination.

As for violence and discrimination based on gender, Colombia has developed a set of laws, whereas Guatemala's main provision is the 2008 Law Against Femicide and Other Forms of Violence Against Women. The latter condemns discriminatory practices, physical, psychological, and economic violence toward women, as well as any violation of their human rights in a private or public space.

In 1995, Colombia adopted one of its main regulations for the protection of women, Law 248 1995, deriving from the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, also known as the Belém do Para Convention. With this law, the Colombian government assumed the obligation of implementing actions to reduce and eliminate violence against women. In addition, a progressive set of laws and policies addressing gender was developed (Table 2).

**Table 2. Further Laws Addressing Gender in Colombia.**

Legal Instrument	Description
Law 1257 (2008)	Right of women to have a life free from violence
Law 1542 (2012)	Domestic violence
CONPES 161 (2013)	National public policy for gender equality
Law 1719 (2014)	Sexual violence on the context of the armed conflict
Law 1761 (2015)	Femicide
Presidential Decree 762 (2018)	Public policy for the protection and guarantee of LGBTI rights

The Colombian Constitutional Court has played a major role in gender equality by decriminalizing abortion in the case of rape, mother's life at risk, and fetus malformations (Sentence C-355, 2006), and by legalizing same-sex marriage (Sentence SU-214, 2016).



In contrast, the Protection of the Family Bill presented in 2017 by two Guatemalan congressmen aimed to modify the criminal code to raise abortion prison sentences, criminalize miscarriages, prohibit same-sex marriage, and outlaw educating children about any other sexual behavior that differs from heterosexuality. The law was passed with a large majority on March 8, 2022, International Women's Day, which provoked a strong social reaction against it on a national and international level. Two days later, the president of Guatemala asked Congress to shelve the law because it was unconstitutional. Amnesty International (2018), has condemned the bill because it "puts at risk the lives and the rights of women, girls and LGBTIQ people," as Erika Guevara Rosas, Amnesty International's director for the Americas, expressed (para. 3).

**"Not an Individual Aggressor but a Dehumanizing Society":  
The Features of Hate Speech**

Against this background of policy initiatives and their shortcomings, failures, and challenges, it is crucial to juxtapose the understandings and ways in which stakeholders perceive the concept. Hate speech endangers the effective exercise of human rights by violating the dignity of minorities. As the Guatemalan Deputy Sandra Moran stated, "It is directed at people who are different, and this discourse attacks the dignity of a person, their being, and it is also an expression of power" (personal communication, December 10, 2018). The right of dignity, included in Article 1 of the Universal Declaration of Human Rights, is a fundamental concept in the conceptualization of hate speech.

A person's dignity is not just a matter of her being treated well or poorly; it is a matter of how she is treated in light of the attitudes that prevail in her community, including her own attitudes, about her worth. (Simpson, 2013, p. 708)

Furthermore, hate speech "establishes the definitional parameters within which minorities are dehumanized into throwaway objects, unworthy of respect and compassion" (Tsesis, 2002, p. 55). The damage done to the victims is lasting, making them feel that on account of certain personal characteristics they will be denigrated and insulted for life. "Hate speech are the narratives installed in society, both in the public and private spheres, that despise who is 'different.' This speech not only despise them, but also excludes them," shared Olga Amparo Sanchez from Casa de la Mujer, Colombia (personal communication, December 7, 2018).

There is this presumption that women, indigenous people, LGBT people, and the poor are not equal to those who exercise power. Therefore, they believe they can insult, disqualify, and make us invisible. It is continuous, it has so many forms, some are stronger, but others are unnoticed, and those are the ones that normalize violence and hate. (Ana Silvia Monzón, Voces de Mujeres, Guatemala, personal communication, December 13, 2018)

The acceptance of sexual violence within certain sociocultural contexts can be found in forms of "humor," "through humor the reproduction of hatred against women is taking place," shared an activist. It is relevant to state that hate speech violence is not occasional or appears without any source. Pohjonen and Udupa (2019) noted how violence is constantly prepared by structures of exclusion and the "evidently small things"

or the 'little' realities poignantly stated by civil society: "Not naming you, not recognizing you. Disqualification in subtle forms, even the most visible ones, which is direct aggression. From beatings to murder, murders with such viciousness and brutality which carry a message" (Leidy Romero, ANZORC, Colombia, personal communication, December 3, 2018).

In Latin America, the high rates of hate crimes against people with nonbinary identities reflect this. According to Sin Violencia LGBTI (2019), in the region, each day one LGTBI person is murdered. Brutal cases like the murder of Alexa Negrón Luciano in 2020 in Puerto Rico show how being a subject of mockery on the Internet can lead to the aftermath of being brutally assassinated. Hate speech is "the potential early warning signal for violence since it is often—if not also a prerequisite- for mass violence" (Gagliardone, 2019, p. 3073).

The legal typology of hate crimes is recognized in Colombia under prejudice crimes, *crímenes por prejuicio*. In Guatemala, although three law initiatives have been presented (Proposal 5229, 2017; Proposal 5278, 2017; Proposal 5674, 2019), hate crimes and prejudice crimes are not recognized in the Penal Code.

Considering this, Escobar (2016) argues that prejudice as a law terminology allows a better distinction of the systemic problem, conceiving these crimes as hate crimes implies to demonstrate the hostility of the active subject toward the protected group, and subsequently it denies the transcendence forms of power relations and exclusion. According to Colombia Diversa (2014), the category of prejudice transcends the idea of hate because it does not represent the intentions of a particular aggressor but rather the symptoms of a prejudiced society.

In the same vein, there seems to be a reluctance to employ the term "hate speech" in the Latin American context. Although the interviewed activists recognized the concept and are familiar with its constituted elements and its functions, they prefer naming the issue of hate speech under prejudice, as there is an acknowledgment of what they recognized as a systematic problem. They believe the concept of prejudice responds in a better way to this matter because "the phrase of hate speech comes from the Anglo-Saxon world . . . but it is also the concept that is being included in international instruments, especially those referring to the LGBTI community," stated an activist. Another interviewee said, "If we call it hate speech, it minimizes the structural problems of prejudice rooted in society." Representatives from ONU Mujeres, Guatemala (personal communication, January 11, 2019) stated, "There has been this discussion around hate because it is something that cannot be demonstrated, it is a feeling. Probably my criterion is that it should be addressed as an issue of speech based on prejudice."

### **Political Instrumentalization**

Hate speech is a device of identity politics because it enables to mobilize members of the in-group around a specific political agenda. This type of discourse has become recurrent in mainstream political discourse, which significantly increases its impact (George, 2016; Rosenfeld, 2005).

According to the interviewees, one of the principal functions of hate speech is political instrumentalization, which means that it works as a tool to achieve political aims by elites. The usage of this

speech is mainly recognized to be circumstantial, such as election periods or to obtain support for a specific bill. One interviewee stated:

In the specific case of Guatemala, it has (hate speech) been instrumentalized for political purposes. With a government that is absolutely discredited and seeking popular support, knows that their most faithful sector and greater supporter is the conservative-evangelical sector. (Luis Eduardo Barrueto, *Visibles, Guatemala*, personal communication, November 21, 2018).

An important element of hate speech political instrumentalization is to appeal to emotions and fear (Buyse, 2014). "They [politicians and public figures] try to appeal to the feelings and fear of the people, they use an alarmist tone," expressed one of the activists. Populist discourse tends to instrumentalize minorities to gain support from the population. Concerning this speech, when moral values and social norms are highlighted, the good or bad, the accepted and the prohibited are defined (Bárcenas Barajas, 2018). This creates an enemy which is out of the "social order" (Savarino, 2006, p. 87). Chantal Mouffe (2005) has referred to this issue as "the moralization of politics," where distinctions are given by the idea of what is "good-bad" and "right-wrong," and the political adversary is replaced by a moral enemy (p. 75). One fundamental problem with this speech is:

One politician's speech can cause that a homosexual person gets killed, because of what he is saying. In this sense it can make that people with a violent-homophobic behavior feel that their acts are supported by an instance of power. (Alejandro Lanz, *Temblores, Colombia*, personal communication, January 9, 2019)

Recent decades have seen significant improvements in the recognition of women and LGBTIQ rights in Latin America. However, currently the region has experienced what some scholars have identified as the conservative anti-gender backlash (Biroli & Caminotti, 2020; Corrales, 2020; Corredor, 2019). The backlash comes from disputes about the so-called gender ideology. Evangelical, Pentecostal, and Catholic churches have been leading a movement that promotes the idea that family and its traditional values are at risk. Under the "gender ideology" rhetoric, they claimed gender equality, abortion, and same-sex marriage are threats to society. Corrales (2020) points out the role of Latin American churches in designing political strategies and ties with political parties, especially right-wing parties.

The interviewed activists remarked how "gender ideology" has become a crucial tool to instrumentalize politically sexual minorities and justify sexist and homophobic speeches. "Gender ideology" is perceived as a threat, and it has created a social conception that promotes fear toward sexuality and the gender practices that go against heteronormativity (Bárcenas Barajas, 2018). "I believe that hate speech has obviously been concentrated basically in relation to the issue of 'gender ideology,'" shared an activist. "Of course, these groups are trying to make it a discourse of human rights, when it is the opposite. It is a cultural concept that is being imposed under false premises" (ONU Mujeres, personal communication, January 11, 2019). Also, ONU Mujeres in Guatemala (personal communication, January 11, 2019) shared, "It is [used] to maintain the conservative, controllable status quo, through these discourses of fear and

rupture, creating the fear of family being destroyed . . . it does not allow important political, social or economic changes.”

Similarly, “gender ideology” was identified as a topic that is addressed by political parties with a populist discourse. Moreover, it is recognized as a political strategy to discredit the legislative developments that the feminist and LGBTIQ movements have achieved in the last years (Bermúdez, 2021). Regarding the latter, one activist expressed:

Gender ideology as a tool is giving a way to go back in terms of legislation or to question policies that were already established. It is also affecting what feminism has achieved, like, advances in gender perspective, gender approach, gender policies. (Sandra Morán, Guatemalan deputy, personal communication, December 10, 2018)

### **Responses and Strategies**

In the first place, protecting minorities from hate speech requires a legal foundation that recognizes their human rights. Aspects, such as respect and recognition, are essential for the individual’s personal development and involvement in public debate (Marciani Burgos, 2013). “Personally, I think that we must first aim to guarantee public resources to defend human rights,” shared an interviewee. Therefore, recognition and protection of minorities dignity is a necessary precondition to fight against discrimination and hate speech.

The development of policies can contribute to the transformation of a social and political order, which in this case would be the protection of minorities and marginalized groups (Pecheny & de la Dehesa, 2009). In Colombia, there is a more advanced legal framework, but it still needs to fill empty spaces regarding implementation. Guatemala is still struggling to further develop the legal recognition and protection of women’s and LGBTIQ people’s rights, such as abortion, prejudice crimes, and gender identity. In both countries, there is a need for inclusive and pluralist public policies, which can respond to the needs of all citizens, without regard to gender identity. As one of the interviewees stated, “The promotion of inclusive policymaking is a pillar to combat gender-based hate speech.”

Moreover, to address hate speech, it is crucial to adopt a whole-society approach with a complementary strategy between legal and educational aspects (Gagliardone et al., 2015; Jubany & Roiha, 2018; Torres & Taricco, 2019). Several studies on hate speech in Latin America concluded that it is necessary to find solutions beyond the law (Burgos, 2013; Castelar & Quintero Aguirre, 2012; Hernández, 2011; IACHR, 2015; Roshani, 2016). The interviewees agree that it is essential to address this issue at a social level. It is necessary to look for solutions at grassroots levels (Hernández, 2011).

One strategy that was constantly mentioned was to find creative solutions to the actual situation of gendered hate speech in both countries. For instance, one of the interviewees expressed, “Strengthen a counter-speech that prevents these speeches and narratives of hatred and exclusion from being installed.” In this line of thought, an activist said, “Tell your own story to transform mentalities and open hearts, say

it is me, this person of flesh and bone that is in front of you who is being affected by these processes," shared Luis Eduardo Barrueto, Visibles, Guatemala (personal communication, November 21, 2018).

Another considerable point in countering hate speech is the development and implementation of an education strategy, which represents a more structural response toward this issue (Gagliardone et al., 2015). On the one hand, it can be an instrument to combat negative stereotypes and discriminatory practices and can raise awareness about this type of discourse (IACHR, 2015). On the other hand, through educational strategies, the targeted minorities of hate speech can be aware of the importance of reporting any human rights violations (Jubany & Roiha, 2018).

In this line of argumentation, educational processes were also pointed out as a strategy to implement at a grassroots level to mitigate the situation of hate speech and prejudice crime. These formative programs should be directed toward the prevention of harmful discourse and crime, as well as to promote inclusion, acceptance, and pluralism. One of the activists mentioned that these formative processes should be directed to youth and adolescents: "We believe that there can be a change of understanding and behavior that allows us to impact generations."

Following this, some interviewees stated that criminalization of hate speech is not always the proper solution, because it can represent a threat of persecution against certain social and political movements in Latin America. According to our findings, most of the Colombian interviewees were more eager to reject a punitive solution due to the risk of social persecution. Predominantly, interviewees from both countries agreed that there is a necessity to promote cultural change, for instance, through social and/or moral sanction.

### Conclusion

In international legal instruments and in grassroots debates, hate speech is considered a harmful communicative action that targets minorities and violates their human dignity by promoting and justifying the use of violence against them. According to this study, in Latin America there is an agreement with this global definition, although civic society organizations highlighted shades of this phenomenon in the region. One of the most important differentiations presenting themselves in this work is the emphasis placed on the side of the "perpetrator" in hate speech: The overall sentiment in the context of interviewees was that hate speech as a concept does not place adequate attention to *the societal responsibility* for speech and acts of exclusion and marginalization but rather implies an *individual perpetrator*. In addition, regulatory proposals countering hate speech have not always been received positively because their vagueness and other characteristics create new vulnerabilities for free speech.

Hate speech is recognized as an issue that is grounded on the bases of discrimination and prejudice that conveys and provokes different types of harms, such as symbolic, physical, or even structural violence. In that vein, civil society organizations in Colombia and Guatemala identified prejudice as a more concrete term to acknowledge the phenomenon of hate speech by linking it to the systemic problem of discrimination. In contrast, hatred, as a terminology, was seen as minimizing the sociocultural, political, and historical complexities of the region to individual-only feelings. Also, the political instrumentalization of gendered hate

speech has had a significant impact in Latin America and consequently, hidden under a “gender ideology” rhetoric, jeopardizes women and LGBTIQ rights (Bárcenas Barajas, 2018). Furthermore, based on traditional moral values and social norms, this speech aims to discredit legislative developments concerning gender.

Regarding the legal framework to combat hate speech, the topic appears to be slowly entering the policy debate in Latin America. Currently, there is not a common definition or approach in terms of regulation; therefore, there is a need to develop a Latin American approach that considers the specific sociocultural characteristics and intricacies of the region (Torres & Taricco, 2019). In Latin America attention must be given to the potential abuse of hate speech regulation by the state, which aims to undermine freedom of expression and silence civil expressions, perhaps precisely because the broader framework of cultural and civil rights is fragile. It is important to emphasize that international treaties, conventions, and international human rights instruments are the basis to ensure the fulfillment of women’s and sexually diverse people’s rights.

This article aims at expanding the debate around hate speech in Latin America by providing a deeper view of conceptual and policy problematizations of this issue given by two countries, which shared a similar historical background but had completely different legal settings. We analyzed the features, effects, and characteristics of gendered hate speech from a policy debate comprehension and a qualitative conceptualization. Because of the lack of studies regarding this topic in Latin America, the objective of this study is to encourage further academic development of a conceptualization and comprehension of hate speech adjusted to the contextual characteristics of the region. Critique regarding the terminology does not interfere with the issue itself and its manifestation within the culture practices and policies.

Further research should study gender-based hate speech and the role of the state, considering public officers, political parties, legislative power, and judicial power. Moreover, it would be relevant to analyze the impact media outlets have on the current situation of gender-based hate speech in Latin America in terms of discursive reproduction, cultural change, and policy development. It would be also important to document and analyze this regulatory issue vis-à-vis the perspective and experiences of women and LGBTIQ people, to understand the direct and indirect damages of gendered hate speech.

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