



Freedom of Expression in Mexico: Back and forth

March 2018

Facultad de Derecho

Centro de Estudios en Libertad
de Expresión y Acceso a la Información

UP
**Universidad
de Palermo**

Freedom of Expression in Mexico: Back and forth

Juan Carlos Arjona Estévez¹

I. Introducción

The right to freedom of expression went through great many changes in the Americas in the last twenty years. In 1998, the Office of the Special Rapporteur for Freedom of Expression attached to the Inter-American Commission on Human Rights started publishing reports on this issue that have served as a guide for the entire region, setting standards in the area. As of 2001, the Inter-American Court of Human Rights ruled on the first cases related to the right to freedom of expression and currently has 21 rulings that analyze some aspect of this right, plus two advisory opinions and various decisions of provisional measures in relation to ten specific cases. Furthermore, there are a number of admissibility reports, friendly settlement agreements and merits reports in the Inter-American Commission on Human Rights, and the Office of the Special Rapporteur has prepared a number of thematic reports on the right to freedom of expression and its various aspects.

The work carried out by the Inter-American Human Rights System in relation to the right to freedom of expression allowed considerable progress in the consolidation of this right in various countries in America. In addition, it offered a series of tools to assess the situation of each country in this area, allowing the identification of the challenges and setbacks that they face.

The aim of this paper is to show the legislative development regarding the criminalization or decriminalization of freedom of expression in Mexico in the last 20 years. Additionally, it intends to review the development of various bills that can expand or limit the exercise of freedom of expression, particularly in the face of the rise of new technologies and the more widespread use of the Internet and social networks. In other words, there is an analysis on how the right to freedom of expression is regulated in the Internet age.

The paper is based on a broad legislative revision that includes areas like criminal, electoral and civil law, telecommunications, radio and television, freedom of press, protection of children and protection of women so that they live a life free of violence, among many other laws. However, due to space constraints, the focus is set basically on criminal regulation.

It is important to explain that part of Mexican regulation is exclusively federal, but there are issues that are of concurrent legislative competence of the federation and the 32 states that make up the country. This first analysis focuses exclusively on federal regulation. Therefore, the diagnosis does not reflect the reality of Mexico as a whole.

It should also be noted that there are several legislative bodies and that each of these is formed by many mem-

¹ Human Rights Specialist and professor at Universidad Iberoamericana (Mexico), jcae77@hotmail.com and [@jcae77](https://twitter.com/jcae77)

Thanks to Brisa Maya Solís and Iván Báez for their support in the research for the preparation of this article.

The full document was translated by María Soledad Vázquez.

bers. Only at the federal level, the two houses of Congress of the Union have 628 popular representatives, 500 representatives and 128 senators. And there are at least five political parties in each session but in some cases there can be up to ten political forces. This means that there may be various bills regarding the right to freedom of expression, without this implying that there is a verifiable legislative trend in the matter.

The paper is divided into four chapters. The first breaks down the regulation of this right in the Mexican constitution. The second explains the relationship between constitutional and international human rights law. The third chapter briefly explains the federal structure and the federal exclusive jurisdiction and that which is concurrent with state authorities. The fourth - and last chapter - develops regulation and regulatory proposals that may interfere with the exercise of freedom of expression and the use of new technologies.

II. Constitutional framework for the right to freedom of expression in Mexico

In 1917, the Political Constitution of the United Mexican States recognized the right to freedom of expression and freedom of the press (sections 6 and 7). In general terms, the right to freedom of expression does not prohibit prior censorship, but it does limit judicial or administrative inspections to four cases: attacks on morals, on the rights of third parties, provoking an offense or disturbing public order.² The freedom of the press, on the other hand, explicitly prohibits direct or indirect prior censorship for this means of communication. However, it recognizes the possibility of restricting the exercise of this freedom if it affects private life, morals or public peace.³

There was a specific regulation for the exercise of these rights when dealing with religious ministers and foreign nationals in Mexican territory. Section 130 of the Constitution forbade cult ministers from criticizing the fundamental laws of Mexico, whether in public demonstrations, acts of worship or religious propaganda.⁴ In the case of foreigners, section 33 forbade them to interfere in political matters and granted an extraordinary power to the Executive Branch of the Federal Government to expel them immediately and without trial, which may affect the exercise of their freedom of expression.⁵

The sections that recognize freedom of expression and of the press have undergone amendments, six in the case of the former and one for the latter. In 1977, section 6 underwent its first reform, in a broader context of political reforms that sought to open spaces for political diversity in the country and put an end to the period known as Mexico's *dirty*

² Art. 6 *Constitución Política de los Estados Unidos Mexicanos* [Political Constitution of the United Mexican States], Diario Oficial de la Federación, February 5, 1917, retrieved from: <http://bit.ly/1fNXIRC>

"Free speech shall be restricted neither judicially nor administratively, but when it represents an attack to public morals or individual rights as well as when it causes a criminal offense or disturbs the public order."

³ *Ibid.*, Section 7 "The freedom to write and publish writings on any subjects is inviolable. Neither laws, nor authorities shall execute any kind of previous censorship. They shall not demand a bail from authors and publishers, nor put a limit in the freedom of press, which shall have no more limits than those imposed upon it by private life, morals and public order. Printers shall never be seized as instruments of crime. The organic laws shall dictate as many provisions as necessary to avoid that under the pretext of the denunciations of crime of press, publication sellers, paper providers, workers and other employees of the establishment where the denounced writing has come out, are imprisoned unless their responsibility is previously demonstrated."

⁴ *Ibid.*, Section 130 "...Religious ministers can never, in public or private collective meeting, or in acts of worship or religious propaganda, make criticism of the fundamental laws of the country, of the authorities in particular, or in general of the Government; they will not have active or passive vote, nor right to associate with political ends..."

⁵ *Ibid.*, Section 33 "... Foreign nationals may not in any way interfere in the political affairs of the country."

war. The amendment to section 6 was to incorporate the right to information, but in section 70 it was mentioned that Congress should pass a law to guarantee the freedom of expression of various ideological currents.⁶ On July 20, 2007, the second amendment was made to Section 6, which regulated the principles of the right to information.⁷

The third reform to section 6 of the Constitution was made in November of that same year, along with another political reform. It incorporated the right of reply and it was established that political parties have the right to use radio and television in official times of the state, but subject to the times determined by the Electoral Institute. This reform prohibited political parties from purchasing time on radio or television directly or through third parties, regardless if they were services contracted in Mexico or abroad. It also limited the possibility for individuals to purchase propaganda to influence electoral preferences. However, something that was questioned among various political actors was the mention that Political Parties had to “refrain from expressions that denigrate institutions and political parties, or that slander people”. The authority responsible for enforcing the law is the Electoral Institute, which may request the immediate cancellation of radio and television transmissions, even those of concessionaires and permit holders of these services.⁸

On June 11, 2013, in a package of constitutional reforms, the fourth amendment to section 6 and the only reform to section 7 took place. Changes in section 6 added new technologies as a means to exercise the rights to freedom of expression and right to information and established the need for plurality of information. It is also established

⁶ Sections 6 and 70, Political Constitution of the United Mexican States, reform, Diario Oficial de la Federación, December 6, 1977, retrieved from: <http://bit.ly/2tkuosc>

Section 6 “The expression of ideas will not be the subject of any judicial or administrative inquisition, but in the event that it attacks morals, the rights of a third party, causes an offense, or disturbs public order: the right to information shall be guaranteed by the State.”

Section 70 “The Congress shall pass a Law that will regulate its internal structure and functioning. The law will determine the forms and procedures for the grouping of the representatives, according to their party affiliation, in order to guarantee the free expression of the ideological currents represented in the House of Representatives. This law cannot be vetoed nor will it need to be enacted by the Federal Executive Branch of Government to be valid.”

⁷ Section 6 Political Constitution of the United Mexican States, Diario Oficial de la Federación, July 20, 2007, retrieved from: <http://bit.ly/2EhsM84>

“For the exercise of the right of access to information, the Federation, the States and the Federal District, within the scope of their respective powers, shall be ruled by the following principles: I. All information held by any federal, state and municipal authority, entity, body and agency is public and shall be held secret temporarily for reasons of public interest and according to law. In interpreting this right, a principle of maximum publicity shall prevail. II. Information regarding private life and personal data shall be protected according to law and with the exceptions established therein. III. Every person, without need to prove interest or justification, shall have free access to public information, their personal data or its rectification. IV. Mechanisms of access to information and quick review procedures shall be established. These procedures shall be substantiated before specialized and impartial organs and organisms, autonomous in operation, formalities and decision. V. Subjects bound to this law shall preserve their documents in updated administrative files, and, by electronic means available, they shall publish complete and updated information about their management indicators and the exercise of public resources. VI. The Law shall determine how bound subjects shall publish information concerning public resources delivered to natural or artificial persons. VII. Non-observance of the provisions on access to public information shall be penalized according to Law.”

⁸ Section 6 Political Constitution of the United Mexican States, November 13, 2007, Diario Oficial de la Federación, retrieved from: <http://bit.ly/2BP4eps>

Section 6 “The expression of ideas will not be the subject of any judicial or administrative inquisition, but in the event that it attacks morals, the rights of a third party, causes an offense, or disturbs public order; the right of reply shall be exercised according to law. The right to information shall be guaranteed by the State.”

Section 41 “... Political parties shall at no time be able to hire or acquire, by themselves or through a third party, time in any form of radio and television. ... No corporation or person, directly or through a third party, can hire radio or television propaganda in order to influence on the people’s electoral preferences, nor in favor or against political parties or candidates to popular election office. The transmission in the national territory of this sort of messages hired abroad is forbidden. ... Section C. In the electoral or political propaganda published, political parties shall not use expressions which denigrate the institutions or the parties themselves, or that slander others. ...The violation of these provisions by the parties or any other person or legal entity violates these dispositions; they shall be penalized according to the Law.”

that there would be no arbitrary interference in the telecommunications service, although it later is mentioned that the state shall seek to preserve the veracity in broadcasting conduction. Although this reform is not accompanied by a broader political reform, the opportunity was taken to prohibit the use of the exercise of freedom of expression to transmit advertising or propaganda in radio or television through news reporting or news broadcasting.

The amendment in section 7 updated its language and extended the prohibition of prior censorship - directly or indirectly - to any other means, beyond print media.

This reform finally empowered the Congress of the Union to regulate the subject of telecommunications. In the transitory sections of the reform a period was established to regulate the right of reply, as well as the prohibition of misleading advertising. And there are instructions to give editorial independence to public media and “rules for the expression of ideological, ethnic and cultural diversity”, among other issues.⁹

The 2014 fifth amendment to section 6 did not modify matters related to the subject of this paper, but it did grant, as part of the reform package, the power to the Congress of the Union to regulate on the subject of Protection of Personal Data.¹⁰ The last amendment made to Section 6 of the Constitution, in 2016, grants powers to an autonomous body to protect personal data.¹¹

Section 41, article C was modified in the constitutional reform of February 2014, to express that propaganda speeches of political parties and candidates should only avoid slandering people, eliminating any reference to ins-

⁹ Sections 6 and 7, Political Constitution of the United Mexican States, reform published in Diario Oficial de la Federación, June 11, 2013, retrieved from: <http://bit.ly/1oS5hHz>

Section 6. “The expression of ideas shall not be the subject of any judicial or administrative inquisition, but in the event that it attacks morals, the rights of a third party, causes an offense, or disturbs public order; the right of reply shall be exercised according to law. The right to information shall be guaranteed by the State. Every person has the right to free access to plural and timely information, as well as to seek, receive and disseminate information and ideas of all kinds by any means of expression. The State will guarantee the right of access to information and communication technologies, as well as to broadcasting and telecommunications services, including broadband and the Internet. For such purposes, The State will establish conditions of effective competition in the provision of said services. For the purposes of the provisions of this section, the following shall be observed: A. “For the exercise of the right of access to information, the Federation, the States and the Federal District, within the scope of their respective powers, shall be ruled by the following principles: I. to VII. ...B. Regarding broadcasting and telecommunications: I. The State shall guarantee the population’s integration into the information and knowledge society, through a universal digital inclusion policy with annual and six-year goals. ... IV. The broadcasting of advertising or propaganda presented as journalistic pieces or news information is prohibited; the conditions that should govern the contents and the contracting of services for their public transmission shall be established, including those related to the responsibility of the concessionaires regarding the information transmitted on behalf of third parties, without affecting the freedom of expression and broadcasting.

Section 7. There shall be, by no means, any infringements upon freedom to disseminate opinions, information and ideas. This right cannot be restricted by indirect means, such as the abuse of official or private controls, restrictions on paper for newspapers, radio frequencies or equipment used in the broadcasting of information or by any other means and technologies of the information and communication aimed at preventing the transmission and circulation of ideas and opinions. ... No law or authority can establish prior censorship, or restrict freedom of broadcasting, which has no limits other than those provided for in the first paragraph of Section 6 of this Constitution. In no case may assets used for the dissemination of information, opinions and ideas be confiscated as an instrument of crime.”

¹⁰ Section 6 Political Constitution of the United Mexican States, Diario Oficial de la Federación, February 7, 2014, retrieved from: <http://bit.ly/1nh31EU>

Section 6 “A. “For the exercise of the right of access to information, the Federation, the States and the Federal District, within the scope of their respective powers, shall be ruled by the following principles: I. All information held by any authority, entity, body and agency of the Executive, Legislative and Judicial Powers, any autonomous bodies, political parties, trusts and public funds, as well as of any individual, company or union that receives and uses public resources or performs acts of authority in the federal, State and municipal sphere, shall be public and may only be temporarily reserved for reasons of public interest and national security, in the terms established by law. In interpreting this right, the principle of maximum publicity shall prevail. The bound parties must document any act that derives from the exercise of their authority, powers or functions, the law will determine the specific cases under which it rules the non-existence of the information.”

¹¹ Section 6 Political Constitution of the United Mexican States, Diario Oficial de la Federación, January 29, 2016, retrieved from: <http://bit.ly/1WSokXa>

stitutions or other political parties. Article D was also made more cautious, establishing that the Electoral Institute can impose precautionary measures to suspend or cancel radio and television transmissions pending the resolution of the Electoral Tribunal.¹²

Finally, in relation to religious ministers, the 1992 reform established that they cannot canvass for or against any candidate, either in public meetings or religious publications.¹³

III. Constitutional law and how it relates to international law on the subject of human rights in Mexico

On June 10, 2011, the Constitutional Reform on Human Rights was passed in Mexico, which added the figure known as the *Bloque de Constitucionalidad* [The body of Constitutional law] into Mexican law.¹⁴ The reform includes the various ways in which the books of authority identify the creation of a body of constitutional law. In the first place, because it seeks to solve a problem of hierarchies between human rights provisions enshrined in the Constitution and those established in the international treaties to which Mexico is a party, as is clear from the first paragraph of Section 1 of the Mexican Constitution.¹⁵ That paragraph has an open clause that allows human rights recognized in international treaties to be included in the Mexican Constitution.¹⁶ Thirdly, because the second paragraph of section 1 establishes a mandate of interpretation on the subject of human rights in accordance to international treaties, from which it must be inferred that the same parallel must also be true for the subject itself.¹⁷ Finally,

¹² Section 41 Political Constitution of the United Mexican States, Diario Oficial de la Federación, February 10, 2014, retrieved from: <http://bit.ly/1bEADYa>

Section 41 ... "Article C. Any political or electoral propaganda disseminated by parties and candidates should refrain from slanderous expressions."

¹³ Section 130 Political Constitution of the United Mexican States, Diario Oficial de la Federación, January 28, 1992, retrieved from: <http://bit.ly/2aTRAsY>

Section 130 "... e) Religious ministers may not associate for political purposes or canvass for or against a candidate, party or political association. Neither shall they in any public meetings, acts of worship or religious propaganda, or religious publications oppose the laws of the country or its institutions, or harm, in any way, the national symbols. ... The creation of any political groups whose title has any word or indication that relates to any religious confession is strictly prohibited. No meetings of a political nature shall be held in temples."

¹⁴ The Supreme Court of Justice of Mexico named this figure Parameter of Control of Constitutional Regularity. Thesis: Judiciary 20/2014 (10a.). Human rights in the Constitution and International Treaties. They are the control parameter of constitutional regularity, but if there is an express restriction to their exercise in the Constitution, the constitutional text shall be observed. Gaceta del Semanario Judicial de la Federación. Tenth Term, Plenary Session, Book 5, April 2014, Volume I, Page 202. Judiciary 20/2014 (10a.). Record No. 2 006 224

¹⁵ Section 1 Political Constitution of the United Mexican States, Diario Oficial de la Federación, June 10, 2011, retrieved from: <http://bit.ly/1q84GFF>

"In the United Mexican States, every person shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, whose exercise may not be restricted or suspended, except in the cases and under the conditions established by this Constitution. ... The norms related to human rights will be interpreted according to this Constitution and international treaties on the subject matter, favoring at all times the broadest protection.

The Supreme Court of Justice of Mexico in the resolution *Contradicción de Tesis* 293/2011, from which thesis 20/2014 emanates, established that constitutional restrictions prevail in all cases over the human rights dispositions recognized in the international treaties. Thesis: Judiciary 20/2014 (10a.)..., *supra* note 13.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

special mechanisms or procedures are established that include human rights of international treaties, such as sections 15 and 89 for the process of ratification of new international treaties, and sections 103 and 105, which include human rights of international treaties as human rights norms to be protected via constitutional instruments.¹⁸

For the purpose of this document it is important to recognize in which ways Mexico acknowledges the body of Constitutional law, as this allows the interaction between international human rights law and domestic law. For example, Article 13 of the American Convention on Human Rights broadly recognizes any means in which thought or expression may be expressed; it clearly states that the restriction / subsequent responsibilities of the exercise of freedom of expression can only be established by law; it incorporates the possibility of prior censorship with the purpose of regulating access to public events; and prohibits propaganda in favor of war and racial or religious hatred;¹⁹ in addition to the obligation to punish “the direct and public instigation to commit genocide”, established in the Convention for the Prevention and Punishment of the Crime of Genocide.²⁰

¹⁸ Section 103 Political Constitution of the United Mexican States, Diario Oficial de la Federación, June 6, 2011, retrieved from: <http://bit.ly/2H37uNI>

Sections 15, 89 and 105, Political Constitution of the United Mexican States, reform published in Diario Oficial de la Federación, June 10, 2011, retrieved from: <http://bit.ly/1q84GFF>

Section 15 “The celebration of treaties to extradite political convicts, or ordinary criminals considered slaves in the country where they committed the crime, or the agreements or treaties altering the rights established by this Constitution and in the international treaties where Mexican State is a party shall not be authorized.”

Section 89. “(...) I to IX. (...) X. To direct foreign policy and to celebrate International treaties, as well as to terminate, denounce, suspend, modify, amend, withdraw reservations and make interpretative statements about them, subject to approval by the Senate. In the conduct of such policy, the President of the Republic shall abide by the following guiding principles: self-determination of peoples; non-intervention; the peaceful settlement of disputes; the proscription of the threat or use of force in international relations; the legal equality of States; international cooperation for the development, respect, protection and promotion of human rights and to maintain international peace and security.”

Section 103 “The Courts of the Federation shall decide all disputes concerning... I. Laws or acts of authorities that infringe human rights and the guarantees granted for their protection by this Constitution, as well as by international treaties of which the Mexican State is a party;”

Section 105 ... “II. a) ... g) The National Commission of Human Rights, against federal and local laws and those of the Federal District, as well as international treaties signed by the President of the Republic with approval of the Senate, which violate human rights set forth by this Constitution and in the international treaties to which Mexico is a party. Likewise, the equivalent agencies for the protection of human rights in the states, against laws issued by the local legislatures and the Human Rights Commission of the Federal District, against laws issued by the Legislative Assembly of the Federal District.”

¹⁹ American Convention on Human Rights, Art. 13, adopted on November 22, 1969, Series on treaties, OAS No. 36, UN registry on August 27, 1979, No. 17955, retrieved from: <http://bit.ly/1g6YYsT>

²⁰ Section 13. Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of frontiers, either orally, in writing or in printed or artistic form, or by any other procedure of their choice. 2. The exercise of the right provided in the preceding paragraph may not be subject to prior censorship but to subsequent liabilities, which must be expressly established by law and be necessary to ensure: a) respect for the rights or reputation of others, or b) the protection of national security, public order or public health or morals. 3. This right cannot be restricted by indirect means, such as the abuse of official or private controls, restrictions on paper for newspapers, radio frequencies or equipment used in the broadcasting of information or by any other means aimed at preventing the transmission and circulation of ideas and opinions. 4. Public shows may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence, without prejudice to the provisions of subsection 2. 5. Any propaganda in favor of war and any defense of national, racial or religious hatred that constitutes incitement to violence or any other similar illegal action against any person or group of persons, for any reason, including those of race, color, religion, language or national origin are prohibited.”

Convention for the Prevention and Punishment of the Crime of Genocide, Art. 3, adopted on December 9, 1948, retrieved from: <http://bit.ly/2ETn7pZ>. Art 3. “The following acts will be punished: c) The direct and public instigation to commit genocide;”

IV. Federal structure of Mexico and powers to regulate freedom of expression

Mexico is a federated state since the approval of the Political Constitution of the United Mexican States to date²¹ and regulates the jurisdiction in legislative matters in sections 73 (The Powers of Congress) and 124 (open clause in favor of the states).²² Under these provisions, there are issues that can be regulated exclusively by the federation and others in which there are concurrent powers between the federal and state legislatures.

Section 73 of the Mexican Constitution establishes the regulatory powers of the Congress of the Union (House of Representatives and Senate). For the purposes of this document, it is worth noting that the Congress has the exclusive power to regulate in the field of film industry (article X), information and communication technologies (article XVII), broadcasting (article XVII), telecommunications (article XVII), protection of personal data held by individuals (XXIX-O), access to public governmental information and personal data held by the authorities (XXIX-S) and political-electoral regulation. Furthermore, there is a residual clause that enables the Congress of the Union to legislate on the regulatory powers explicit in this section, as well as those granted in other sections of the Political Constitution of the United Mexican States.²³

The federal and state matters concerning this document are in criminal and civil law and some aspects of electoral law.

It is important to consider this when analyzing public policies in this matter because there is no one-to-one correspondence between the federal level and the level of the states. For example, the decriminalization of crimes against freedom of expression at the federal level or in a considerable number of states does not imply that the existing legislation in that area has been repealed throughout the country.

V. Progress and challenges in terms of (de)criminalization of freedom of expression

1. Defamation, slander, insults

One of the great developments in decriminalization of the right to freedom of expression occurred in 2007, when the Congress of the Union decided to repeal the offenses of actionable words, defamation and slander. These crimes were classified in articles 348 to 363 of the Federal Criminal Code. The offenses were repealed in two

²¹ Section 40 Political Constitution of the United Mexican States, retrieved from: <http://bit.ly/2fJtrol>

Section 40 “It is the will of the Mexican people to constitute a representative, democratic, secular and federal Republic, composed by States, free and sovereign in all matters concerning their internal affairs, and by Mexico City, united in a federation established according to the principles of this fundamental law.

²² *Ibid*, Sections 73 and 124.

Section 73. The Congress shall have the power: ...

Section 124. “All powers not expressly vested by this Constitution on federal authorities, are reserved to the States or to Mexico City, in their respective competencies.”

²³ *Ibid*.

stages, on December 23, 1985 (articles 348 and 349) and on April 13, 2007 (articles 350 to 363).²⁴ With the reforms of 2007, article 1,916 was also modified to include cases of subsequent civil liability for reparation of damages and to include the right of rectification. This comprehensive reform is a breakthrough because it decriminalizes the exercise of the right to freedom of expression and only imposes pecuniary sanctions, related to the damage caused. Although the impact of this derogation is limited in most of the states, which maintain these crimes in force, reforms at the federal level transform the regulation at the state level.²⁵

2. Crimes against Security

The breakthroughs mentioned contrast with the reforms made in the section Crimes against the National Security.

On June 28, 2007, Article 139ter was included in the chapter Crime of Terrorism, imposing a penalty on anyone who “threatens to commit the crime of terrorism described in Article 139, paragraph one.”

Although the crime of terrorism has some elements of the principle of criminal legality, the language of article 139ter does not comply with the precision that is required for people to know when they may be committing a crime. In this section there is no definition of threat and - reviewing the crime of threats - there is also no typical definition of the unlawful act, but only the description of the commission elements.²⁶ This reform on the matter of te-

²⁴ Arts. 348-363 Código Penal Federal [Federal Criminal Code], Diario Oficial de la Federación, August 14, 1931, reformed December 23, 1985 and April 13, 2007, retrieved from: <http://bit.ly/2nWw2Px> and <http://bit.ly/2EwRF6>. Federal Criminal Code, Diario Oficial, August 14, 1931. In force as of September 17, 1931. Chapter II Injuries and Defamation Article 348. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on December 23, 1985); Article 349. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on December 23, 1985); Article 350. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 351. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 352. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 353. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 354. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 355. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Chapter III Slander, Article 356. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 357. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 358. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 359. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Chapter IV Common Provisions for Previous Chapters, Article 360. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 361. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 362. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on April 13, 2007); Article 363. Repealed. (Repealed by Decree published in Diario Oficial de la Federación on Friday, April 13, 2007); (Reform of denomination by Decree published in the Official Registry of the Federation on July 29, 1970).

²⁵ Arts. 1916 and 1916bis Código Civil Federal [Federal Civil Code], retrieved from: <http://bit.ly/2EwRF6>

“Art 1916. ... The following shall be subject to remedy of moral damages according to this legal system and, therefore, the behaviors described will be considered unlawful acts: I. Any person who makes public any facts, true or false, determined or indeterminate, that could cause dishonor, discredit, prejudice, or expose any individual or legal entity to someone’s contempt; II Any person that accuses someone of a crime, if this fact is false, or the accused person is innocent; III. Any person who files slanderous suits or complaints, meaning those in which the person accuses a specific person of an offense, knowing that they are innocent or that the offense has not been committed, and IV. Any person who offends the honor, attacks the private life or the reputation of another person. The remedy of the moral damage in relation to the previous paragraph and subsection must contain the obligation of rectification or response of the information disseminated in the same medium where it was published and with the same space and the same circulation or audience the original information had, without prejudice to what is established in the fifth paragraph of this article. The faithful reproduction of information does not give rise to moral damage, even in cases in which the information reproduced is not correct and could damage someone’s honor, as it does not entail liability for the person who disseminates said information, as long as the source of where it was obtained is cited.”

²⁶ Art. 139Ter Federal Criminal Code reformed on June 28, 2007, retrieved from: <http://bit.ly/2BOJDSq> (the bold type belongs to me)

Art 139 Ter “A penalty of five to fifteen years of imprisonment and a fine of two hundred to six hundred days shall apply to anyone who threatens to commit the crime of terrorism referred to in the first paragraph of Article 139.”

rorism was extended on March 14, 2014, when the crime of financing terrorism was included, which is defined as:

... any means that either directly or indirectly contributes or collects economic funds or resources of any nature, with the knowledge that they will be used to finance or support activities of terrorist individuals or organizations, or to be used, or intended to be used, directly or indirectly, totally or partially, for the commission, in national territory or abroad, of any of the crimes provided for in the following legal systems:

I. Federal Criminal Code:

1) Terrorism, provided for in articles 139, 139 Bis and 139 Ter²⁷

The reference to the criminal conduct regulated in article 139ter opens the door to interpretations that could affect even the media. For example, the prosecuting authority for crimes could name a media outlet as an active subject of the offense of financing the crime of terrorism if a presenter working there is accused of the crime of article 139ter.

On June 28, 2007, article 142 of the Federal Criminal Code was reformed to add an aggravating circumstance to the crime of inciting crimes against security (conspiracy, sabotage, terrorism, rebellion, mutiny, espionage and treason). The reform increases the penalty if the person or persons who are incited to commit these crimes are in the military.

This reform is a setback because there is no definition of what it is to incite, instigate or provoke the commission of crimes against security, violating the principle of legality and leaving those who use freedom of expression with no defense against the scope of their speech.²⁸ Many of the crimes in this title (Crimes against Security) approach with this same difficulty the crimes of conspiracy, sabotage, terrorism, rebellion, mutiny, espionage and

²⁷ Art. 139quater Federal Criminal Code reformed on March 14, 2014, retrieved from: <http://bit.ly/1m3DqTN>

Art 139 Quater.- "The same penalty as indicated in article 139 of this Code, without prejudice to the penalties that correspond for other crimes, shall be applied to the person who by any means whatsoever either directly or indirectly, contributes or collects economic funds or resources of any nature, with knowledge that they will be used to finance or support activities of terrorist individuals or organizations, or to be used, or intended to be used, directly or indirectly, entirely or in part, for the commission, in national territory or abroad, of any of the offenses provided for in the following legal systems: I. Of the Federal Criminal Code: 1) Terrorism, provided for in articles 139, 139 Bis and 139 Ter; 2) Sabotage, provided for in article 140; 3) International Terrorism, provided for in articles 148 Bis, 148 Ter and 148 Quater; 4) Attacks on the means of communication, provided for in articles 167, section IX, and 170, first, second and third paragraphs, and 5) Theft, provided for in article 368 Quinquies. II. Pertaining to the Law that Declares Mining Reserves the deposits of Uranium, Thorium and other Substances from which fissionable Isotopes can be obtained to produce Nuclear Energy, those foreseen in articles 10 and 13."

²⁸ Art. 142 Federal Criminal Code reformed on June 28, 2007, retrieved from: <http://bit.ly/2BOJDSq>

Art 142. - "... Whoever instigates, incites or provokes active military officers in the execution of the crimes referred to in this title shall be subject to a penalty of five to forty years in prison, with the exception of the crime of terrorism, whose penalty shall be eight to forty years in prison and a fine of five hundred to one hundred and fifty thousand days. "

treason. In other words, “provoking, incitement, or instigation” are penalized without defining these actions.²⁹

²⁹ Cf. Arts. 123 -141 Código Civil Federal [Federal Civil Code], retrieved from: <http://bit.ly/2vcaOQd>

Chapter I. Treason against the State “Art. 123.- A prison sentence of five to forty years and a fine of up to fifty thousand pesos shall be imposed on the Mexican national who commits treason in any of the following ways: I.- Acts against independence, sovereignty or integrity of the Mexican Nation with the purpose of submitting it to a person, group or foreign government; II.- Taking part in acts of hostility against the Nation, by means of military actions under the orders of a foreign State or cooperation with such State in any way that could harm Mexico. When they serve in the military, a prison sentence of one to nine years and a fine of up to ten thousand pesos shall be imposed; including the person who illegally deprives a person in the national territory of their freedom to deliver them to the authorities of another country or transfers them outside of Mexico for that purpose. III.- Being part of armed groups led or advised by foreigners; organized inside or outside the country, when they intend to threaten the independence of the Republic, its sovereignty, its freedom or its territorial integrity or to invade the national territory, even when there is no declaration of war; IV.- Destroying or fraudulently removing the signals that mark the limits of the national territory, or cause them to be confused, whenever this causes conflict to the Republic, or it is in a state of war; V.- Recruiting people to make war on Mexico, with the help or under the protection of a foreign government; VI.- In times of peace or war, having relationship or intelligence with a foreign person, group or government or giving instructions, information or advice, in order to guide a possible invasion of the national territory or to alter the internal peace; VII.- Intentionally providing and without authorization, in times of peace or war, a foreign person, group or government, with documents, instructions or military data of facilities or possible activities; VIII. Concealing or assisting anyone who commits acts of espionage, knowing that about them; IX.- Providing a foreign State or armed groups led by foreigners, the human or material elements to invade the national territory, or facilitating their entry into military facilities or delivering combat units or military food supply units or preventing that the Mexican troops receive these aids; X.- Requesting the intervention or establishment of a protectorate of a foreign State or requesting that the latter make war on Mexico; if the request is not carried out, the prison sentence will be from four to eight years and a fine of up to ten thousand pesos; XI. Inviting individuals from another State to take weapons against Mexico or invade the national territory, whatever the reason may be; if any of these acts is not carried out, the penalty is four to eight years of imprisonment and a fine of up to ten thousand pesos; XII.- Trying to alienate or tax the national territory or contributing to its dismemberment; XIII.- Receiving any benefit, or accepting a promise to receive it, in order to perform any of the acts indicated in this article; XIV.- Accepting from the invader a job, position or commission and dictating, agreeing or voting on measures aimed at affirming the intruding government and weakening the national government; and XV.- Committing, during war or after hostilities begin, sedition, mutiny, rebellion, terrorism, sabotage or conspiracy.”

Art 124.- “The penalty of imprisonment of five to twenty years and a fine of up to twenty-five thousand pesos will be applied to any Mexican who: I.- Without complying with the constitutional provisions, entering into or executes treaties or pacts of offensive alliance with any State, that produce or may produce the war between Mexico and another State, or admits foreign troops or war units in the country; II.- In the case of a foreign invasion, assisting in the establishment of a *de facto* government that in the places occupied by the enemy, whether by giving their vote, attending meetings, signing minutes or representations or by any other means; III.- Accepting an occupation, position or commission from the invader, or the one who, in the occupied place, having obtained the position in a legitimate manner, serves the invader; and IV.- With acts not authorized or approved by the government, provoking a foreign war with Mexico, or exposing Mexicans to suffer humiliation or reprisals.”

Art. 125.- “The penalty of two to twelve years of imprisonment and a fine of one thousand to twenty thousand pesos will be applied to the person that incites the people to recognize the government imposed by the invader or to accept a foreign invasion or protectorate.”

Art 126.- “The same penalty shall be applied to foreigners who intervene in the commission of the crimes referred to in this Chapter, with the exception of those provided for in sections VI and VII of Article 123.”

Chapter II Espionage Art 127. - The penalty of imprisonment from five to twenty years and a fine of up to fifty thousand pesos shall be applied to the foreigner who in peacetime, in order to guide a possible invasion of the national territory or to disturb the domestic peace, establishes a relationship with a foreign person, group or government or gives instructions, information or advice. The same penalty shall be imposed on any foreigner who, in times of peace, provides, without authorization a foreign person, group or government, documents, instructions, or any data of facilities or of possible military activities. The penalty of prison from five to forty years and a fine of up to fifty thousand pesos shall be applied to the foreigner who, during war or once hostilities start against Mexico, has a relationship or intelligence with the enemy or provides them with information, instructions or documents or any help that in any way harms or may harm the Mexican Nation.”

Art 128.- “The penalty of five to twenty years of prison and a fine of up to fifty thousand pesos shall be applied to any Mexican who, having in their possession documents or confidential information of a foreign government, discloses them to another government, if doing so harms the Mexican Nation.”

Art 129. - “Not informing the authorities of the activities of a spy and their identity, is punished by six months to five years of imprisonment and a fine of up to five thousand pesos”.

Chapter III Sedition. Art 130.- “Resisting or attacking authorities to prevent the free exercise of their functions, with any of the purposes referred to in Article 132, in a tumultuous manner without the use of weapons, is punished by six months to eight years of prison and a fine of up to ten thousand pesos. Directing, organizing, inciting, compelling or financially sponsoring others to commit the crime of sedition, is punished by five to fifteen years of prison and a fine of up to twenty thousand pesos.”

Chapter IV Riot. Art 131.- “Any assemblage of three or more persons in a turbulent manner, in order to make use of a right or pretexting its exercise or to avoid compliance with a law, disturbing public order using violence on people or things, or threatening authority to intimidate them or force them to make a decision, is punished by six months to seven years of imprisonment and a fine of up to five thousand pesos. Directing, organizing, inciting, compelling or financially sponsoring others to commit the crime of rioting, is punished by two to ten years of prison and a fine of up to fifteen thousand pesos.”

Chapter V Rebellion. Art. 132.- “The penalty of two to twenty years of prison and a fine of five thousand to fifty thousand pesos shall be applied to those who, not being active soldiers, with violence and use of weapons, try to: I.- Abolish or reform the Political Constitution of the United Mexican States; II.- Reform, destroy or prevent the constitutional institutions of the Federation, or their free exercise; and III.- Separate or impede one of the senior officials of the Federation mentioned in article 2 of the Law of Responsibilities of the Officials and Employees of the Federation, of the Federal District and of the Senior Officials of the States to hold their office.”

Art. 133.- “Residents of the territory occupied by the Federal Government who, without physical or moral coercion, provide weapons, ammunition, money, provisions, means of transportation or of communication to rebels or prevent government troops from receiving these aids shall receive the penalties indicated in the previous article. Residents of territory occupied by rebels shall receive a penalty of six months to five years in prison. To the civil servant or public employee of the Federal or State or Municipal Governments, of decentralized public organizations, of companies with participation of the state, or of public services, federal or local, that by reason of their position possess documents or reports of strategic interest, and provide them to rebels, shall receive a penalty of five to forty years of prison and a fine of five thousand to fifty thousand pesos.”

Art. 134.- “Any attempt by civilians to commit attacks against the Government of any of the States of the Federation, against their constitutional institutions or to achieve the separation of their position of one of the high officials of the State, and the noncompliance to lay down arms when Powers of the Union intervene in the manner prescribed by Article 122 of the Political Constitution of the United Mexican States shall be punished with two to twenty years of imprisonment and a fine of five thousand to fifty thousand pesos.”

Art 135.- “The penalty of imprisonment of one to twenty years and a fine of up to fifty thousand pesos shall be applied to any Mexican who: I. In any way or by any means, invites a rebellion; II. Residing in territory occupied by the Government: a) Knowingly hides or assists the spies or explorers of the rebels; b) Maintains relations with the rebels, to provide them with news concerning military operations or others that may be useful to them. III. - Voluntarily serve on a job, position or commission in a place occupied by the rebels, unless acting coerced or for humanitarian reasons.”

Art. 136.- “Any officer or agent of the Government and any rebel who after combat has caused directly or by means of orders, the death to any prisoner is punished by fifteen to thirty years’ imprisonment and a fine of ten thousand to twenty thousand pesos.”

Art 137. - “For any homicide, robbery, kidnapping, dispossession, arson, looting or other crimes committed during a rebellion the rule of sentences applicable to concurrent offenses shall apply. Rebels shall not be held liable for any homicides or injuries inflicted in combat; the person ordering to commit these acts, those who allow them to happen and those who immediately execute them shall be liable for those acts committed out of combat.”

Art 138. - “No penalty shall be applied to those who lay down their arms before being taken prisoner, if they had not committed any of the crimes mentioned in the previous article Chapter VI Terrorism. Art. 139.- A penalty of fifteen to forty years imprisonment and a fine of four hundred to one thousand two hundred days shall be imposed, without prejudice to the corresponding penalties for other crimes: I. To those who use toxic substances, chemical, biological or similar weapons, radioactive material, nuclear material, nuclear fuel, radioactive minerals, radiation source or instruments that emit radiation, explosives, or firearms, or by arson, flood or any other violent means, intentionally perform acts against goods or services, either public or private, or, against the physical or emotional integrity of people, or their lives, those who cause alarm, fear or terror in the population or in a group or sector of it, to threaten national security or to pressure the authority or any person, or to force the latter to make a decision. II. Whoever agrees with or plans a terrorist act, which might be committed, is being committed or has been committed in national territory. The sanctions referred to in the first paragraph of this article shall be increased by one half, when, in addition: I. The offense is committed against immovable property of public access; II. There is any damage to the national economy, or III. In the commission of the crime a person is detained as hostage.”

Art 139 Bis. - “Concealing a terrorist, with knowledge of their activities or of their identity is punished by one to nine years of imprisonment and a fine of one hundred to three hundred days.”

Art 139 Ter .-”A penalty of five to fifteen years of imprisonment and a fine of two hundred to six hundred days shall apply to anyone who threatens to commit the crime of terrorism referred to in the first paragraph of Article 139.”

To conclude this section, it is pertinent to comment on a proposal to reform the Federal Criminal Code, presented on October 5, 2010, to modify article 139 that regulates the crime of terrorism. The proposal can be considered a step backwards in the protection of the right to freedom of expression because it includes communicating activities or ideological positions as specific intent of this crime. This would link the symbolic actions of freedom of expression in the exercise of the right to protest to a terrorist act.³⁰

Crimes and proposals for substantive reform in criminal matters do not clarify the means of commission of these criminal conducts, but it could be interpreted that if they are made over the Internet, behaviors could be sanctioned based on the criminal types that regulate these issues.

3. Human Dignity

On August 14, 2001, the Political Constitution of the United Mexican States was reformed to add the non-discrimination clause in the human rights chapter.³¹ As a result, on June 11, 2003, the *Ley Federal para Prevenir y*

Chapter VI BIS Financing Terrorism Art 139 Quater.- “The same penalty as indicated in article 139 of this Code, without prejudice to the penalties that correspond for other crimes, shall be applied to whom by any means whatsoever either directly or indirectly, contributes or collects economic funds or resources of any nature, with knowledge that they will be used to finance or support activities of terrorist individuals or organizations, or to be used, or intended to be used, directly or indirectly, entirely or in part, for the commission, in national territory or abroad, of any of the offenses provided for in the following legal systems: I. The Federal Criminal Code: 1) Terrorism, provided for in articles 139, 139 Bis and 139 Ter; 2) Sabotage, provided for in article 140; 3) International Terrorism, provided for in articles 148 Bis, 148 Ter and 148 Quater; 4) Attacks on the means of communication, provided for in articles 167, section IX, and 170, first, second and third paragraphs, and 5) Theft, provided for in article 368 Quinquies. II. Pertaining to the Law that declares Mining Reserves the deposits of Uranium, Thorium and other Substances from which the fissionable Isotopes can be obtained to produce Nuclear Energy, those foreseen in articles 10 and 13.”

Art 139 Quinquies.- One to nine years of imprisonment and a fine of one hundred to three hundred days will be applied to anyone who conceals a person who has participated in the offenses set forth in article 139 Quater of this Code.”

Chapter VII. Sabotage Art 140.- “Causing damages, destruction or injuries or unlawfully obstructing communication channels, public services, functions of State dependencies, public agencies, decentralized public entities, state-owned companies, autonomous constitutional bodies or their facilities; iron and steel plants, power plants or other basic industries’ facilities, centers of production or distribution of necessary consumer goods for arms, ammunition or military implements, in order to disrupt the economic life of the country or affect its defense capacity shall be punished by two to twenty years’ imprisonment and a fine of one thousand to fifty thousand pesos. “Not informing the authorities of the activities of a saboteur and their identity is punished by six months to five years of imprisonment and a fine of up to five thousand pesos. The sanctions referred to in the first paragraph of this article will be increased by up to one-half, when acts of sabotage are carried out on the pipelines, equipment, facilities or assets, assignees, contractors, permit holders or distributors referred to in the Federal Law to Prevent and Punish the Offenses Committed in the Matter of Hydrocarbons. “

Chapter VIII. Conspiracy Art 141.- “A penalty of one to nine years of imprisonment and a fine of up to ten thousand pesos will be imposed on those who decide in concert to commit one or more of the crimes of this title and agree on the means to carry out this decision.”

³⁰ Proposed reform to Article 139 of the Federal Criminal Code by Representative Arturo Zamora Jiménez, from the Partido Revolucionario Institucional, retrieved from: <http://bit.ly/2BTalJw>

Art 139. “A prison term of ten **to fifty years and a fine of two thousand days** shall apply, without prejudice to the corresponding penalties for the resulting offenses, to the person who using toxic substances, chemical, biological or similar weapons, radioactive material or instruments that emit radiation, explosives or firearms, or by arson, flood or any other violent means, performs acts against people, things or public services, causing alarm, fear or terror in the population or in part of it, to threaten national security, **to intimidate society, as well as to spread their activities or ideological beliefs**, or to pressure the authority to make a decision.” (the bold type belongs to me)

³¹ Section. 1 Political Constitution of the United Mexican States Tuesday, August 14, 2001, retrieved from: <http://bit.ly/2EtjvNM>

Section 1 “Any discrimination based on ethnic or national origin, gender, age, different abilities, social condition, health conditions, religion, opinions, preferences, marital status or any other condition that threatens human dignity and whose purpose is to annul or diminish the rights and freedoms of people is forbidden.”

Eliminar la Discriminación [Federal Law to Prevent and Eliminate Discrimination] was passed and the National Council for the Prevention of Discrimination was created, which incorporated among its functions the promotion of legislative amendments, including criminal matters, to protect people from acts of discrimination.³²

Thus, on March 20, 2007, on April 19, 2009 and February 9, 2010, proposals were submitted to include discrimination as a crime. The typical definition of the unlawful act included in the Federal Criminal Code in its article 149ter does not threaten the exercise of the right to freedom of expression,³³ but the legislative reform proposals could have certain questions about compliance with the principle of legality. An example of this is the 2007 proposal that established as criminal behaviors “to incite hatred or violence ...”; “To harass (...) any person or group of people”; “to publicly express opinions or comments in which people are denigrated.”

In the three cases mentioned above, words out of context and without precision could allow the authority to criminalize freedom of expression. In the first case, for example, even when the speech is not protected by international human rights law, it must be adapted to what international standards establish. In other words, hate speech must constitute instigation to violence and the behavior described in the proposal criminalizes the act of inciting hatred.³⁴

The 2009 proposal faces the same problem as in 2007 because it describes “provoking or inciting hatred or violence” as a prohibited conduct. In addition, it includes as a forbidden conduct to abuse a person, which among other meanings consists of offending, which has exogenous and endogenous elements. The latter would leave in a

³² Law to Prevent and Eliminate Discrimination, retrieved from: <http://bit.ly/2nWmDr2>

³³ Art. 149 Ter Federal Civil Code, retrieved from: <http://bit.ly/2vWxaFK>

Art 149 Ter. “A penalty of one to three years of imprisonment or one hundred fifty to three hundred days of community work and a fine of up to two hundred days will be applied to the person who, for reasons of origin or ethnicity or nationality, race, skin color, language, gender, sex, sexual preference, age, marital status, national or social origin, social or economic condition, health condition, pregnancy, political opinions or of any other nature, violates human dignity or annuls or diminishes the rights and freedoms of people by any of the following acts: I. Denying a person a service or benefit to which he or she is entitled; II Denying or restricting labor rights, mainly due to gender or pregnancy; or limiting a health service, mainly to women in relation to pregnancy; or III. Denying or restricting educational rights. The penalty for any public servant who, for the reasons provided in the first paragraph of this article, denies or delays a procedure, service or benefit to anyone who is entitled to them will be increased by one half, and in addition they shall be dismissed and disqualified for the performance of any office, employment or public commission, for the same period they are deprived of liberty. All measures aimed at the protection of socially disadvantaged groups will not be considered discriminatory. When the behaviors referred to in this article are committed by a person with whom the victim has a relationship of labor subordination, the penalty will be increased by one half. Likewise, the penalty will be increased when discriminatory acts limit access to the legal guarantees essential for the protection of all human rights. This crime will be prosecuted by a criminal accusation brought by the injured party.

³⁴ Proposed reform to Article 149 Ter of the Federal Criminal Code by Representative Faustino Javier Estrada González, from the Partido Verde, retrieved from: <http://bit.ly/2Eh5Gms>

Art 149 Ter. “A person commits the crime of discrimination when for reasons of race or ethnic origin, nationality, religion, sex, physical or psychological conditions, age, pregnancy, marital status, origin or social position, color of skin, ideology, sexual orientation, work or profession, physical characteristics, disability or state of health behaves in the following manner: I. Instigating hatred or violence in one or more persons due to any of the characteristics indicated in the previous paragraph; **II. Abusing or excluding any person or group of people;** **III. Publicly expressing opinions or comments in which people are denigrated;** IV. Preventing access to cultural, sports, recreational or entertainment centers; as well as educational centers, whether public or private; V. Restricting or modifying rights acquired for contractual reasons derived from the conducts provided in this article; VI. Denying, restricting or violating labor rights. Any person who commits one or more of the conducts described in this article shall be subject to a penalty of 4 to 12 years in prison and a fine of one thousand to three thousand five hundred days. In addition, the remedy of the damage caused to the victim of the crime in the terms indicated in this code is applicable.” (bold type was added)

state of defenselessness any person who exercises their freedom of expression and “abuses” another.³⁵

Another bill, presented on February 9, 2010, also included a penalty for anyone who “provokes or incites hatred or violence” and established as prohibited conduct “harassing (...) a person or group of persons when said conducts result in material or moral damage”. In the first case, the disputed argument is the same as in the 2007 and 2009 reform bills. In the second case, even when the harassment is linked to a material or moral result, it is the moral result that puts in a state of defenselessness anyone who wants to exercise their right to freedom of expression because moral damage is linked to an endogenous analysis.³⁶

Some proposals were presented after the enactment of the classification of the type of criminal offense, but these are more focused on the increase in penalties. Additionally, there are other bills of law and laws in force that establish administrative procedures for cases in which stereotypes are generated or acts of discrimination are promoted through discourse. One of the laws is the *Ley Federal para Prevenir la Discriminación* [Federal Law to Prevent Discrimination], which establishes sanctioning procedures of an administrative nature to those who discriminate, including banning conducts such as “establishing contents, methods or pedagogical instruments in which roles are assigned contrary to equality or that disseminate a condition of subordination”, “inciting hatred, violence, rejection, mockery, insult, persecution or exclusion”, “carrying out or promoting psychological (...) violence, based on age, gender, disability, physical appearance, way of dressing, speaking, gesturing or sexual preference, or for any other reason of discrimination”, the stigmatization “of people with addictions; who have been or are in detention centers, or in institutions that care for people with mental or psychosocial disabilities”, or the stigmatization of people with

³⁵ Proposed reform to Article 366 of the Federal Criminal Code by Representative Neftalí Garzón Contreras, from the Partido de la Revolución Democrática, retrieved from: <http://bit.ly/2C99no7>

Art 366 Quinquies. “A penalty of one to five years’ imprisonment and a fine of two hundred to six hundred days shall be applied to any person who, by reason of age, sex, pregnancy, marital status, race, ethnic precedence, language, religion, ideology, sexual orientation, skin color, nationality, origin or social position, work or profession, economic position, physical characteristics, disability or state of health or any other that threatens human dignity and with the purpose of nullifying or diminishing the rights and freedoms of people: I. Provokes or incites hatred or violence; II. I. Denies a person a service or benefit to which he or she is entitled. For the purposes of this section, it is considered that every person has the right to the services or benefits offered to the general public; III. Abusing or excluding any person or group of people; or IV. Denying or restricting labor rights. The penalty for any public servant who denies or delays a procedure, service or benefit to anyone who is entitled to them will be increased by one half, and in addition they shall be dismissed and disqualified for the performance of any office, employment or public commission, for the same period they are deprived of liberty. All measures aimed at the protection of socially disadvantaged groups will not be considered discriminatory. This crime will be prosecuted by a criminal accusation brought by the injured party.”

³⁶ Proposed reform to articles 149 Ter and 149 Quater from the Federal Criminal Code presented by Representative Adriana De Lourdes Hinojosa Céspedes from the Acción Nacional Party, retrieved from: <http://bit.ly/2ERsHJp>

Art 149 Ter. “A penalty of one to three years’ imprisonment and a fine of one hundred to two hundred fifty days will be imposed on anyone who for reasons of ethnic or national origin, gender, age, disability, social condition, health conditions, religion, opinions, preferences, civil status or any other that threatens human dignity and with the purpose of nullifying or impairing the rights and freedoms of people carries out any of the following behaviors: **I. Provokes or incites hatred or violence**; II. In the exercise of their professional, commercial or business activities, denies a person a service or a benefit to which they are entitled. For the purposes of this section, it is considered that every person has the right to the services or benefits offered to the general public; III. Denies or restricts labor rights; **IV. Harasses or excludes any person or group of persons when such conduct results in material or moral damages**; or V. Denies access to compulsory basic education. The sanctions established in this article will be applied in case of ideal or real concurrency of crimes, independently of the penalties that correspond for the commission of crimes of homicide or injuries, as the case may be.”

Art 149 Quater. “A penalty of two to five years in prison and a fine of two hundred to three hundred days will be applied to any public servant who, for any of the hypotheses provided in the first paragraph of the previous article, denies or delays a person a procedure, service or benefit to which they have the right. In addition to the penalties provided, the public servant will be dismissed and disqualified to perform another public job, hold any position or commission for a period equal to the prison term. Any measures aimed at the protection of socially disadvantaged groups will not be considered discriminatory. These crimes will be prosecuted by criminal accusations brought by the injured party or parties.” (bold type was added)

HIV / AIDS.³⁷ Although the sanctioning process is administrative, the language violates the principle of legality.

Similarly, the *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia* [General Law of Access of Women to a Life Free of Violence] is another law that gives powers of supervision to the authority and has administrative sanction. On January 28, 2011, this law was amended in Article 42, section X, generating in the Ministry of the Interior the obligation to “Monitor and promote guidelines for the eradication of all types of violence and to strengthen dignity and respect towards women in the media”.³⁸

On September 8, 2011, another bill was presented to reform various articles of the General Law of Access to Women to a Life Free of Violence. Among other purposes, the reform sought to provide a definition of sexual harassment that included virtual or cybernetic tools as part of the means.³⁹ This reform proposal is included in the article because the authorities responsible for complying with it can apply administrative sanctions and this could even reach the media.

4. Prohibition of slavery or similar legal forms

On November 27, 2007, the *Ley para Prevenir y Sancionar la Trata de Personas* [Law to Prevent and Punish Human Trafficking] was enacted. On freedom of expression, article 5, which establishes the typical definition of the unlawful act, determines that the crime of human trafficking is committed if a person promotes, offers or facilitates the sexual exploitation of another through moral violence. This definition uses two concepts that can be open in an analysis of the principle of legality. The law sparked a debate in Mexico over advertisements for sex work in newspapers, when people who accepted payments to promote these services were accused of human

³⁷ Federal Law to Prevent and Eliminate Discrimination, retrieved from: <http://bit.ly/2l5igZ0>

Art 9.- “Based on what is established in the first constitutional article and article 1, second paragraph, section III of this Law, discrimination is considered: ... II. Establishing contents, methods or pedagogical instruments in which roles are assigned that are contrary to equality or that disseminate a condition of subordination; ... XIII. Applying any type of use or custom that threatens equality, dignity and human integrity; XV. Promoting hatred and violence through messages and images in the media; XVI. Limiting the free expression of ideas, obstructing freedom of thought, conscience or religion, or religious practices or customs, as long as these do not violate public order; ... XIX. Obstructing the minimum conditions necessary for the growth and integral development, especially of girls and boys, based on the best interests of children; XXIII. Exploiting or giving abusive or degrading treatment; XXVII. Inciting hatred, violence, rejection, mockery, insult, persecution or exclusion; XXVIII. Performing or promoting physical, sexual, or psychological, patrimonial, or economic violence because of age, gender, disability, physical appearance, manner of dressing, speaking, gesturing, or publicly expressing sexual preference, or for any other reason for discrimination; XXIX. Stigmatizing or denying rights to people with addictions; who have been or are in detention centers, or in institutions that care for people with mental or psychosocial disabilities; ... XXXII. Stigmatizing and denying rights to people with HIV / AIDS; ... XXXIV. In general, any other discriminatory act or omission in terms of article 1, second paragraph, section III of this Law.

³⁸ Art. 42, section X General Law on Women’s Access to a Life Free of Violence, retrieved from: <http://bit.ly/2BOb5zJ>

Art 42. “The Ministry of the Interior shall: I to IX. ... X. **Monitor and promote guidelines for the eradication of all types of violence and strengthen the dignity and respect for women in the media**”, (bold type was added)

³⁹ Bill to reform Art. 13 of the General Law of Access of Women to a Life Free of Violence by Representative Augusta Valentina Díaz Rivera Hernández, from the parliamentary group of the Acción Nacional Party: <http://bit.ly/2Exdks6>

Art 13. “Sexual harassment is the exercise of power, in a relationship of real subordination of the victim to the aggressor in the workplace or education institution. It is expressed in verbal, physical behaviors or both, committed by any means, **including virtual or cybernetic means** in relation to sexuality with a lascivious connotation.” (bold type was added)

trafficking.^{40 41}

On June 14, 2012, the *Ley General para Prevenir, Sancionar y Erradicar los Delitos en materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos* [General Law to Prevent, Punish and Eradicate Crimes in the Area of Human Trafficking and for the Protection and Assistance to Victims of these Crimes] was enacted. In its article 15, it punishes those who “benefit economically from the exploitation of a person through trade ...” a definition that reaches advertisements for sex workers published mainly in print media. The debate of this type of crime is related to whether the printed or any other type of media should avoid ads for sex work.⁴²

5. *Apología or incitement to commit other crimes*

In the analysis of the section Crimes against Security, I pointed out the use of terms that seek to sanction the invitation / incitement / instigation to commit crimes and the challenges they face in order to comply with the principle of legality. This section covers all those crimes and bills that seek to sanction the crime known as *apología* [the defense or praise of criminal acts].

On February 14, 2008, shortly after the legalization in Mexico City of abortion during the first twelve weeks of gestation of the fetus, the inclusion of an autonomous offense was promoted in the section on the crime of abortion to criminally prosecute any person who promoted, announced or incited that practice. This was aimed at preventing the announcement of private entities that had been authorized to provide services for women’s reproductive health care.⁴³

On January 8, 2009, an offense was sought to punish violence in sporting events. The typical definition of the unlawful act states that this crime is committed by the person who perpetrates it themselves or “incites others” to commit violence. Even if the measure can be considered reasonable and even proportional, language can gene-

⁴⁰ Art. 5 Law to Prevent and Punish Human Trafficking retrieved from: <http://bit.ly/2Bk538O>

Art 5. - “Any person who **promotes**, solicits, **offers**, **facilitates**, obtains, transfers, delivers or receives, for themselves or for a third party, a person, through physical or moral violence, deception or the abuse of power to subject them to sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude, or the removal of an organ, tissue or its components commits the crime of human trafficking. ... When this crime is committed subjecting persons under the age of eighteen, or against someone who does not have the capacity to understand the meaning of the act or ability to resist it, regardless of whether any form of force, fraud, violence, threat, or any form of intimidation or coercion, abuse of authority or a situation of vulnerability, giving or receiving payment was used.” (bold type was added)

⁴¹ <http://www.aztecanoticias.com.mx/notas/seguridad/102104/anuncios-sexuales-y-trata-de-personas>

⁴² Art. 15 General Law to Prevent, Punish and Eradicate Crimes in the Area of Human Trafficking and for the Protection and Assistance to Victims of these Crimes, retrieved from: <http://bit.ly/2BkcCw5>

Art 15 “A penalty of 5 to 15 years in prison and a fine of one thousand to 30 thousand days shall be applied to any person **who profits economically from the exploitation** of another person through trade, distribution, exhibition, circulation or offer of books, magazines, writings, recordings, films, photographs, printed advertisements, images or objects, of a lascivious or sexual nature, real or simulated, either physically or through any means. Perpetrating these behaviors with material with any scientific, artistic or technical purpose, or for sexual or reproductive education shall receive no penalty. In case of doubt about the nature of the material, the judge will request expert opinion to evaluate the conduct in question.” (bold type was added)

⁴³ Bill to reform art 330bis from the Federal Criminal Code presented by Representative Enrique Serrano Escobar, from the parliamentary group of the Revolución Institucional Party, retrieved from: <http://bit.ly/2BPiz5c>

Art 330 Bis. ““One to three years of imprisonment shall be applied to any person, leader, manager or legal representative of a company, association or society that **promotes, advertises or encourages abortion**, as well as when a remuneration is obtained in cash or other kind for performing an abortion in cases other than those provided by articles 333 and 334 of this code.” (bold type was added)

rate a state of defenselessness by not defining with precision what authority interprets by the action of inciting.⁴⁴

On January 20, 2010, a package of reforms in crimes against health sought to increase the penalties of an existing crime that was modified on March 27, 2007 in the title for crimes against the free development of the personality.⁴⁵ This crime seeks to punish anyone who “publicly provokes or commits an offense, or advocates the commission of said crime.”⁴⁶ In addition to the uncertainty for people entitled to rights, this criminal type could be used with the most authoritarian intention to limit the debates that have taken place in the Americas, including Mexico, for a decriminalization of the use and sale of at least some drugs.

On October 13, 2011, a reform was proposed for Article 3 of the *Ley sobre los Delitos de la Imprenta* [Law on the Offenses against Printing] a law that is outdated in relation to the contemporary debates on the right to freedom of expression and that establishes crimes that do not comply with the principle of legality. The reform included among the acts that should be penalized the “*apología* of violence and crime”. To define this behavior more precisely, the actions would be “enunciating, describing and presenting images with an explicit content of admiration

⁴⁴ Proposal to reform articles 322bis and 322ter of the Federal Criminal Code by Representative José Luis Aguilera Rico from the parliamentary group of Convergencia, retrieved from: <http://bit.ly/2nUJLDe>

Art 322 Bis. “Any person who commits, or **incites others to commit** acts that cause injury to third parties or damage to movable or immovable property in a sporting event, inside a stadium or arena used for that purpose or in the parking spaces or surrounding streets immediately adjacent to it commits the crime of violence in sporting events and shall be punished with imprisonment of one to four years and a fine of ten to eighty installments, without prejudice to the sanctions to which they have been liable for the commission of a different offense.” (bold type was added)

Art 322 Ter. “In addition to the sanctions provided for in this chapter, the judge may prohibit the accused from attending stadiums or sport venues for a term of six months to four years, in which case the special notice of the court ruling shall be ordered.”

⁴⁵ Art. 202 Federal Civil Code, retrieved from: <http://bit.ly/2ExXjC0>

Art 202.- “The crime of pornography of persons under eighteen years or of persons who do not have the capacity to understand the meaning of the act or of persons who do not have the capacity to resist it is committed by any person **who** procures, obliges, facilitates or **induces**, by any means, anyone or several of these people to perform sexual acts or body exhibitionism with lascivious or sexual purposes, real or simulated, for the purpose of video recording, photographing, filming, displaying or describing them through printed advertisements, transmission of data files in public or private telecommunications networks, computer systems, electronics or their substitutes. The perpetrator of this crime shall be punished with seven to twelve years imprisonment and a fine of eight hundred to two thousand days. ...Displaying, printing, videotaping, photographing, filming or describing physical or lascivious or sexual acts of exhibitionism, real or simulated, showing one or more persons under eighteen years or one or more persons who do not have the capacity to understand the meaning of the act or one or more persons who do not have the capacity to resist it shall receive a penalty of seven to twelve years of prison and a fine of eight hundred to two thousand days, as well as the confiscation of the objects, instruments and proceeds of the crime. The same penalty shall be imposed on any person who reproduces, stores, distributes, sells, purchases, leases, exhibits, advertises, transmits, imports or exports the material referred to in the preceding paragraphs.” (bold type was added)

⁴⁶ Proposed reform to Article 208 of the Federal Criminal Code by Representative Óscar Martín Arce Paniagua, from the Parliamentary Group of the Acción Nacional Party, retrieved from: <http://bit.ly/2nO9GAq>

Art 208. “Anyone who **publicly provokes the** commission of a crime, **or defends or praises this or other criminal acts** or any vice, shall be subject to one to three years of imprisonment and a fine of up to fifty days, if the offense is not carried out; otherwise, the perpetrator will be subject to the sanction that corresponds for their participation in the crime committed. The public provocation of a crime, or the *apología* of it or any vice, if it is not executed, will be aggravated by one half in the case of the crimes foreseen in the Federal Law of Organized Crime. No action will be taken when the adverse legal consequences arising from said crime are exposed, or for the public servant who, in the exercise of their functions and with the well-founded and motivated authorization of the competent authority, simulates a criminal conduct in order to provide evidence in a preliminary inquiry.” (bold type was added)

for delinquency; for homicides, for mutilated or bloodied victims and for the wealth derived by criminal actions”.⁴⁷ This proposal was presented after the peak in violence registered in 2011 in Mexico derived from a failed policy on security, in the context of the prosecution of crimes against health (drugs). In these circumstances, the press reported the appearance of mutilated bodies on public roads, through which organized crime sought to intimidate individuals and authorities in the region, showing their strength and impunity.

This article already sanctioned terms that are used to prohibit *apología*; in this case, focused on not inviting the armed forces to commit acts of disobedience, rebellion, mutiny or sedition, among other behaviors. Additionally, and although it corresponds to the section on administrative regulation, on September 30, 2011, a reform to the *Ley de Radio y Televisión* [Radio and Television Law] was presented, in order to sanction any type of *apología* of crime and violence, with the same spirit as in the voting of the Law on Publishing Crimes.⁴⁸

On October 4, 2012, a proposal was presented to include two new crimes in the Federal Criminal Code. The first of them had the aim of punishing those who violate human rights, who threaten life, integrity, freedom and property. The second case sanctions a series of conducts that promote the commission of crimes of violation of human rights, including “inciting”.⁴⁹

On December 11, 2014, a little more than two months after the violations of human rights committed in various municipalities of Guerrero, known worldwide as the disappearance of the 43 students of Ayotzinapa, a federal Representative proposed several amendments to the Federal Criminal Code to broaden the regulation on the crime

⁴⁷ Proposed reform to Article 3 of the Law on the Offenses against Printing by Representative Armando Corona Rivera, from the Partido Revolucionario Institucional, retrieved from: <http://bit.ly/2nXb5nA>

Art 3. - An attack on public order or peace is: “II. Any manifestation or expression made publicly by any of the means mentioned in the preceding section, with which the **army is advised, excited or provoked directly or indirectly** to disobey, to rebel, to the dispersion of its members, or to fail to perform any its duties; to advise, provoke or directly excite the public in general to anarchy, to mutiny, sedition or rebellion, or to the disobedience of the laws or the legitimate mandates of the authority; to insult the authorities of the country in order to attract hatred, contempt or ridicule on them; or with the same object to attack the public agencies, the army or national guard or their members, due to their duties; to insult friendly nations, their sovereigns or heads or the legitimate representatives in the country; or to advise, excite or provoke the commission of a specific crime. In addition to defend or praise violence and crime, the following is prohibited: to enunciate, describe and present images with an explicit content of admiration for delinquency; for homicides, for mutilated or bloodied victims and for the wealth derived by criminal actions”.

⁴⁸ Proposed reform to art.63 of the Federal Law on Radio and Television by Representative Armando Corona Rivera, of the parliamentary group of the Partido Revolucionario Institucional, retrieved from: <http://bit.ly/2Eh60la>

Art 63. “All **transmissions that cause the corruption of language and those contrary to good morals** are forbidden, whether through malicious expressions, words or lewd images, phrases and scenes with double meaning, **the *apología* of violence or crime**; it also prohibits **everything that is degrading or offensive to the civic cult of heroes and religious beliefs**, or discriminatory towards races; as well as the use of low comedy resources and offensive sounds. **The *apología* of criminal acts is: To express, describe and present images with an explicit content of admiration for crime; homicides, mutilated or bloodied victims and the material wealth generated by criminal actions.** It is our conviction that by sanctioning this amendment we will help to avoid the unintentional *apología* of violence or crime in the media resulting in the prevention of crime in Mexican youth.” (bold type was added)

⁴⁹ Proposal to reform the Federal Criminal Code presented by Representative María del Carmen Martínez Santillán, from the parliamentary group of the Partido al Trabajo, retrieved from: <http://bit.ly/2EVjSi0>

Art 224 Bis. “The public servant who, in the performance of their employment, office or commission, violates the Human Rights recognized in the Political Constitution of the United Mexican States, the International Treaties and Federal Laws, and that threatens life, liberty, physical integrity or property of persons, will receive a penalty of six to ten years in prison, a fine of three hundred to six hundred days and dismissal and disqualification from six to ten years to perform another job, hold any office or public commission.

Art. 224 Ter. The public servant who organizes, directs, sponsors or **incites other civil servants** to commit the crime of violation of Human Rights or conceals those who committed it, will be sentenced to three to five years in prison, to a fine of one hundred and fifty to three hundred days, and shall be dismissed and disqualified for three to five years to perform another public job, hold any office or commission.” (bold type was added)

of forced disappearance. One of the prohibited conducts in the proposal was to “induce or incite” the commission of any of the forms of liability for the crime of enforced disappearance of persons. Although it would be reasonable and proportional to sanction these actions, in this as in other cases the language can be used by the authorities to inhibit expression.⁵⁰

6. Crimes arising with the use of new technologies

With the wider use of new technologies, particularly the Internet, debates were held on the regulation of content on different fronts: administrative, civil and, of course, in criminal matters. On February 8, 2007, a reform was presented for article 366 of the Federal Criminal Code on the crime of unlawful imprisonment. This reform sought to include the use of cybernetic, electromagnetic or telephone means, in order to obtain an undue advantage from holding a nearby human being deprived of their freedom. In this case, the typical definition of the unlawful act that prevails is that of the main crime and it only specifies that one of the means is the use of these technologies⁵¹

It is included in this article because new technologies and online means are so different and their uses so diverse, that the way in which criminal law is regulated could allow the persecution of those who are not liable for the crimes.

On September 22, 2011 there was a proposal to include the use of “computer systems, electronic or any other means of communication as a means of committing the crime of pornography of persons under 18”.⁵² This addition is intimately linked to a crime whose definition should be perfected, since it uses concepts such as facilitate or induce.

On April 24, 2014, an attempt was made to include in the Federal Criminal Code an autonomous offense that seeks to punish those who advertise, offer, and commercialize children for the purpose of sexual exploitation, using social networks or the Internet. The problem with this type of crime is that it does not clarify who would be

⁵⁰ Proposal for a reform of the Federal Criminal Code by Representative José Luis Esquivel Zalpa, from the parliamentary group of the Revolución Democrática Party, retrieved from: <http://bit.ly/1Bx8Fxi>

Art 149 Bis G. “Whoever induces or incites another or others to commit the offenses contemplated in this chapter shall be sentenced to fifteen to twenty-five years of imprisonment, and a fine equal to the current minimum wage in the Federal District for 15 thousand to 20 thousand days, in addition to the dismissal and definitive disqualification for holding any position, employment or commission in the federal public administration, in any of the states, in the Federal District, the municipalities or administrative territorial demarcations of the Federal District.

⁵¹ Proposed reform to Art. 366 of the Federal Criminal Code presented by Representative Juan Francisco Rivera Bedoya, of the parliamentary group of the Partido Revolucionario Institucional, retrieved from: <http://bit.ly/2Bj5qR8>

⁵² Proposed reform to article 202 of the Federal Criminal Code presented by Representative José Luis Ovando Patrón, of the parliamentary group of the Partido Acción Nacional, retrieved from: <http://bit.ly/2CacQ5Y>

responsible or the scope of persecution in relation to intermediaries.⁵³

On March 24, 2015, it was proposed to include Internet Deception or Grooming as an offense in the Federal Criminal Code (article 209Quater). In this case, the crime is linked to an already existing one: it only adds the means of commission and modalities by indicating that this crime is committed through digital devices, social networks, the Internet, telephones or any technology that allows contact with a child who is less than fifteen years old.

The description of unlawful behavior should be improved to clarify that the active subject is the one who uses these means for physical approach because it could be interpreted that those who are intermediaries or owners of social media platforms would be co-participants in the crime.

This reform proposal incorporates the crime of sexting, which has the same complexities as the previously described criminal type: it is not specified who would be the persons responsible for the crime, and may include intermediaries as participants in the crime.⁵⁴ On July 14, 2015, another political party proposed adding the crime of grooming, which has the same complications.⁵⁵

⁵³ Art 202. "... The same penalties shall apply to those who establish communication through computer systems, electronic or any other means of communication, for the purpose of committing any of the conducts provided in the preceding paragraphs" in relation to the first paragraph that states: "The crime of pornography of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the act or of persons who do not have the capacity to resist it is committed by any person who procures, obliges, facilitates or induces, by any means, anyone or several of these people to perform sexual acts or body exhibitionism with lascivious or sexual purposes, real or simulated, for the purpose of video recording, photographing, filming, displaying or describing them through printed advertisements, transmission of data files in public or private telecommunications networks, computer systems, electronics or their substitutes. The perpetrator of this crime will be punished with seven to twelve years imprisonment and a fine of eight hundred to two thousand days."

Proposed reform to article 209 of the Federal Criminal Code presented by Representative Jorge Antonio Kahwagi Macari, of the parliamentary group of the Nueva Alianza party, retrieved from: <http://bit.ly/2EgAaRc>

Art 209 Quater. "Those who, **using social networks or the Internet, offer, trade or allow advertising** of minors under eighteen years, for the purpose of child exploitation shall be sentenced to four to nine years' imprisonment and a fine of four hundred to nine hundred days." (bold type was added)

⁵⁴ Proposal for a reform of the Federal Criminal Code by Representative Karen Quiroga Anguiano, from the parliamentary group of the Revolución Democrática Party, retrieved from: <http://bit.ly/2ERC2B0>

Chapter II "Sexting" Art 149 Quater. "**Any person who through any digital device, social network, Internet, telephone, computer, electronic device or any other technology of information and communication, trades, distributes, exposes, circulates, offers, manipulates, gives away or publishes** documents, writings, recordings, films, photographs, images, objects or contents of a sexual nature without the consent of the author who originates them or of the person whose image is reproduced and with the purpose of defaming, ridiculing, subduing, subjugating, humiliating, excluding, extorting or assaulting another, shall receive a penalty of three to five years' imprisonment, without prejudice to the penalties corresponding to the crimes that they may have committed." (bold type was added)

Chapter IX Deception on the Internet or "Grooming" Art 209 Quater. "**Whoever, through any digital device, social network, Internet, telephone, computer, electronic device or any other technology of information and communication, contacts a child under fifteen years and proposes to arrange a meeting with him or her,** in order to commit any of the crimes described in articles 259-Bis to 266-Bis of this Code, provided that such proposal is accompanied by material acts aimed at physical approach, shall receive a penalty of three to five years' imprisonment, without prejudice of the penalties corresponding to the crimes if they are committed. When the approach is obtained through coercion, intimidation or deception, the penalty will be increased by up to one-half." (bold type was added)

⁵⁵ Proposed reform to Art. 261 Bis of the Federal Criminal Code by Representative Juan Pablo Adame Alemán, retrieved from: <http://bit.ly/2sgVnJg>

Art 261 Bis. - "Any person who commits the crime of sexual cyber harassing a person under fifteen years or a person who does not have the ability to understand the meaning of the act, even with their consent, or for any reason cannot resist or forces them to perform the act upon themselves or another person, shall receive the penalty of six to thirteen years' imprisonment and a fine up to five hundred day. Sexual cyber harassment is the **act of establishing communication through telephone, Internet, or any other technology of information and communication, in order to obtain sexual or pornographic content of the minor, disseminate it, threaten to do so, and / or arrange a sexual encounter with the minor.**"

On December 9, 2015, the crime of child pornography was reformed to make it the crime of cyber harassment and child pornography, prohibiting the use of the Internet or electronic means to obtain images or sexual content of children fifteen years old or younger, or people with an intellectual or psychosocial disability that affects their physical or psychological integrity. As was already stated, it is still necessary to clearly specify who would be liable as to avoid the persecution, for example, of intermediaries.⁵⁶

On September 8 and 13, 2016, two proposals were presented to regulate the crime of cyber sexual harassment, both with the problems already identified in the previous criminal types.⁵⁷ On December 14, 2016, a proposal was presented to include the crime of sexual harassment in the Federal Criminal Code and the crime of cyber sexual harassment was added as part of the package. In both cases, there should be a definition of harassment soliciting sexual favors. In the case of sexual cyber harassment, it is also necessary to specify who may be liable for the crime; that is to say, to limit the active subject to whoever is doing the harassment and not those who are intermediaries, or even owners of the equipment from where the messages come out.⁵⁸

⁵⁶ Proposed reform to the Federal Criminal Code by Representative Felipe Cervera Hernández, from the Partido Revolucionario Institucional, retrieved from: <http://bit.ly/2ETfYpA>

Art 202 “Any person who through coercion, intimidation or cheating using the Internet, mobile phones, any other technology of information and communication or data transmission, establishes communication with persons under eighteen years or of persons who have no capacity to understand the meaning of the act or of persons who do not have the capacity to resist it, even with their consent, in order to request images and / or videos with sexual content and it sometimes leads to a meeting or approach, in order to commit any act that goes against the physical and sexual integrity of the minor is committing the crime of sexual cyber harassment. The perpetrator of this crime will be punished with seven to twelve years’ imprisonment and a fine of eight hundred to two thousand days.”

⁵⁷ Bill to reform article 209 Quater of the Federal Criminal Code presented by Representatives Mariana Arámbula Meléndez, Marko Antonio Cortés Mendoza, Federico Doring Casar, Juan Pablo Piña Kurczyn and José Antonio Salas Valencia, from the parliamentary group of the Partido Acción Nacional, retrieved from: <http://bit.ly/2EeGt86>

Art 209 Quater. “A penalty of five to ten years’ imprisonment and a fine of 200 to 400 UMA [economic reference unit used in Mexico to calculate the payment of personal obligations and deductions, among other things] shall apply to any person who **using information technology, Internet, mobile phones, electronic communications, telecommunications or any other technology of data transmission**, requests in any way from a minor or a person who does not have the capacity to understand the meaning of the act or from people who do not have the capacity to resist, to perform explicit sexual activities, acts with sexual connotations, to deliver images of themselves with sexual content or solicits a sexual encounter.” (bold type was added)

Proposed reform to the Federal Criminal Code presented by Representatives César Camacho Quiroz and Felipe Cervera Hernández, from the Partido Revolucionario Institucional, retrieved from: <http://bit.ly/2Eehgyl>

Art 202 “Any person who through coercion, **intimidation or cheating using the Internet, mobile phones, any other technology of information and communication or data transmission**, establishes communication with persons under eighteen years or of persons who have no capacity to understand the meaning of the act or of persons who do not have the capacity to resist it, even with their consent, with the purpose of requesting images and / or videos with sexual content of the minor, and where there is any message and / or text or dialogues with sexual content is committing the crime of sexual cyber harassment. The perpetrator of this crime will be punished with 4 to 6 years’ imprisonment and a fine of five hundred to one thousand days. When the conduct derives in an encounter or approach, in order to commit any act that threatens the physical and sexual integrity of the minor, a penalty of seven to twelve years’ imprisonment and a fine of eight hundred to two thousand five hundred days shall apply.” (bold type was added)

⁵⁸ Proposed reform to various articles of the Federal Criminal Code presented by Representative María Eugenia Ocampo Bedolla, retrieved from: <http://bit.ly/2Bj5Yqa>

VI. Conclusions

This article sought to account for the advances, challenges and setbacks in freedom of expression, focusing mainly on (de)criminalization. There was an exhaustive review of regulations pertaining to a period of time and the tools used for the analysis were the criteria emanating from the Inter-American Commission on Human Rights and its Court. Due to space constraints, this information was not included in the article.

At the federal level, crimes commonly identified as those that limit freedom of expression have been eliminated. However, there was an abundance of bills and measures that restrict freedom of expression through terms that are ambiguously criminalized, such as incitement, invitation and instigation to commit a variety of crimes or any form of apología of crime, including those that threaten health and terrorism.

To a large extent, bill proposals for legislative reform that may affect freedom of expression focus on regulation of human trafficking and child pornography, including grooming and sexting. More specifically, there were some proposals to criminalize hate speech and the generation of stereotypes.

The text includes two mentions of non-criminal regulation. One refers to the result of the derogation of the crimes of defamation, slander and insults, which required a strengthening of civil measures to protect honor and dignity, such as compensation for moral damage or recognition of the right of reply. The other has to do with sanctioning administrative regulation on language issues and stereotypes to eradicate violence against women, as well as to eliminate discrimination.

One of the most relevant findings was to identify how different agendas affect -directly or indirectly- regulation of freedom of expression. After the repeal at the federal level of the crimes of insult, slander and defamation, proposals for criminal reform appeared in the context of the “fight against drug trafficking.” This led to modifications in crimes against security, in particular the crime of terrorism. At this time narco messages appeared, through blankets accompanied by bodies of people that had been killed and mutilated. The stories of “narcos” started appearing in artistic works. All this was seen by a sector of society as apología of those behaviors. Although these debates still exist, the period of greatest intensity was from 2006 to 2012.

Another trend that was registered between 2007 and 2012 was the proposal to penalize discrimination. In many areas, the penalty was extended to include discriminatory language, generating many ambiguities in the interaction with the right to freedom of expression. It was said, at that time, that criminal law intended to force people to have a politically correct language.

The persecution of the use of language was also of an administrative nature, through the Consejo Nacional para Prevenir la Discriminación [National Council to Prevent Discrimination]. During this debate there were an increasing number of proposals to eradicate violence against women, in recent times some promote sanctions to political violence against women, including the use of offensive expressions against them.

In addition to these proposals there have been many related to anti human trafficking policies, which have increased worldwide in 2006. Although there were debates in Mexico that year, they intensified between 2010 and 2014, which impacted freedom of expression by regulating various means of commission of the crime of human trafficking.

With the derogation of the crimes of defamation, insults and slander, those crimes with ambiguous classification and contrary to the principle of legality seemed eliminated. However, since then and to date, several crimes have been established to avoid the defense or praise of certain behaviors such as abortion, child pornography, violence in public shows, the commission of forced disappearance and the violation of human rights, among others.

Finally, although there were some early proposals for criminal regulation that included new technologies as a means of commission of a crime, from 2011 to the present, there have been many proposals in which lawmakers seek to limit the use of the Internet, cellular telephones and other methods, without understanding the logic behind the operation of these communication media.

The article left out legislative, but not constitutional, debates on the prohibition of defamation of state institutions and other political parties, an issue that was fundamental in the 2006 elections and that could hardly overcome the barrier set by a democratic state based on the rule of law.

Another important component of regulation, which is not included in the article but is in the reference material, are the proposals for reforms that seek to protect children and that establish various obligations to radio and television broadcasting, and cinematography and which expand to intermediaries in the use of new technologies.