

## STREET HARASSMENT IN CANTON TULCÁN FROM A SOCIO-LEGAL PERSPECTIVE.

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### ABSTRACT

*The Constitution of the Republic of Ecuador and the infra-constitutional regulations establish the equal enjoyment of rights, and the constant struggle to eradicate violence against women, however, in the canton of Tulcán, street harassment has become a common and invisible problem. For this reason, in the present work, the objective was to carry out a socio-legal analysis and diagnosis of street harassment, which determines the current state of the regulations to outline a public policy as a possible solution to the problem for women within the Tulcán canton. For this purpose, the qualitative-quantitative methodology, cross-sectional design and type of mixed legal research were used, resulting in interview and survey instruments, with a descriptive scope and analytical-synthetic theoretical methods and a systemic approach. As results of said research instruments, the existence and frequency of the problem are exhibited, in addition to the insufficient applicability regulations, the same thing happens in comparative legislation, however, there are countries, and in Ecuador cantons that do recognize street harassment as such. In conclusion, it was determined that there is not enough legislation to cover the figure of street harassment in the Tulcán canton, since there are no legal remedies to prevent and eradicate the problem, even more so it is not even formally recognized.*

**KEYWORDS:** *Street harassment, Tulcán canton, socio-legal perspective, violence against women, rights violation.*

### INTRODUCTION

Street harassment is a set of unidirectional practices of sexual connotation exercised by a stranger in a public space, lacks consent of the victim, here are included: lascivious looks, compliments, whistles, kisses, honking, gasping, and other noises, obscene gestures, direct or non-direct sexual comments to the body, non-consensual audiovisual material of sexual connotation -photographs and videos-, touching, persecution, cornering, public masturbation and exhibitionism (Guatemala, 2022). Regarding the importance of the socio-legal study, Bernal *et al.* (2018) points out that law is part of the social organization capable of guiding the actions of individuals, so it is closely linked to all branches of the social sciences, with such an approach the law is to determine the normative qualities of emerging problems, aimed at correcting social risks or for the realization of social ends and interests, Due to this, it has been forced to new forms of regulation as required, focused on women's rights since these have always been in need, so the existing evolution is the recognition and protection that has gradually been implemented, but there are still fields that are not foreseen. The Constitution of the Republic of Ecuador (2008) from here called CRE in its art. 11 mentions that all persons are equal and shall enjoy the same duties and rights, the State shall take affirmative



action measures to promote equality; Also in art. Working paper 66 recognizes the right to mental integrity and a life free of violence in the public and private spheres, adopting the necessary measures to prevent, eliminate and punish all forms of violence, disadvantaged or vulnerable persons, for which art. 70 indicates that the State shall formulate and implement policies to achieve equality between men and women.

The Organic Integral Criminal Code (Code S / N of 2014) hereinafter called COIP in art.157 determines: Crime of psychological violence and in art. 159 establishes violence against women and the family nucleus as a contravention" however, none of them fully covers what the problem entails. In the Comprehensive Organic Law to Prevent and Eradicate Violence against Women (Law S / N of 2018) from here called LOIPEVCM, which should be emphasized is not punitive, you can find a small section that would lead to recognize it within the areas in which violence can develop, which one of them is the public space.

It should be noted that the Decentralized Autonomous Government of the Canton of Tucán, hereby referred to as GAD Tulcán, according to personal verification, through the letter sent to this institution and the refusal certified by it has no regulations related to the control of this phenomenon, allowing the generalization of this to continue and become the pillar of the problem of violence against women.

From the doctrinal perspective of several authors in Ecuador and other countries with their different points of view and conjugation with current legislation regarding street harassment, the importance of this phenomenon can be assessed, in such a way Fierro *et al.* (2020) in their research "Street harassment, a form of violence against women" they recognize street harassment as a social problem that needs to be transformed, with the obstacle that Ecuadorian legislation does not have regulations that regulate this crime, despite the fact that through research and surveys its existence has been demonstrated, this being a cultural problem that violates personal integrity.

For her part in Costa Rica, Solís (2019) developing her research "Perceptions about violence against women in Costa Rica" paraphrases that within art. 1 of the Declaration of Human Rights states that all people are free, however, the naturalization of various forms of violence such as street harassment can limit freedom of movement to women.

In addition, continuing in the framework of human rights in Colombia Astrálaga & Olarte (2020) concluded in their research "Street sexual harassment and human rights" that in public spaces women are vulnerable to the violation of their fundamental rights, due to the lack of guarantees for their fulfillment, and despite the fact that women go to the judicial system and denounce, According to Colombian regulations, actions against street harassment are meagre.

On the other hand, at the international level several countries such as "Belgium, Portugal, France, United Kingdom, Peru, Egypt, Costa Rica, Morocco, Chile and New Zealand; and, large cities that sanction street harassment in their sectional regulations, such as: Amsterdam, Rotterdam, Buenos Aires, Lima, Quezon and Mexico City" (Sastre, 2019), have applied legislation and social campaigns for prevention and eradication.

In agreement, Maella (2018) agrees that public policies and municipal ordinances have positioned themselves as instruments of social transformation, having an aspect of belonging closer than higher norms, giving the opportunity to municipalities to get ahead of the legislative power in the applicability of rights.

This is how, taking into account the legal mandates in Ecuador, public spaces must be enjoyed in an equal way, as well as the respect and dignity that everyone must have, this is not fulfilled by evidencing the problem as daily, generating factors that lead women to self-conscious in several aspects, hence the importance of clarifying in what state the regulations around the problem are.

The objective of the research is to carry out a socio-legal analysis and diagnosis of street harassment, which determines the current state of the regulations to outline a public policy as a possible solution to the problem for women within the Tulcán canton; For this purpose, an effective investigative process was used with quantitative and qualitative paradigm, transversal design, in turn the type of mixed legal research, consequently the survey and interview were applied as a technique, with a



descriptive scope and in parallel the analytical-synthetic and systemic approach were applied as theoretical methods.

### METHODOLOGY

The methodology used was mixed, that is, qualitative-quantitative, where the first constitutes the holistic analysis of the purely theoretical references around street harassment and practical regulations; as for the second, it establishes in a quantifiable way the existence of street harassment within the society of the Tulcán canton.

Cross-sectional design that was used to characterize street harassment today and the observation of applicability of the norm on the subject (Gómez *et al.*, 2017).

Type of mixed legal applied research that allowed analyzing an act of oral or written communication in an objective way, in order to discern its content, to reach the analysis of a set of authors related to the subject from sources such as scientific articles, statistics, reports and books to combine the problem in the Tulcán canton; and at the same time compare several legal objects belonging to the same domain, also using sources of law in nexus of social study as sciences of the same branch with an empirical investigation of the subjects and experts involved in casuistry (Cáceres, 2016).

In this way, the interview technique was used based on what was referred to by Sampieri & Mendoza (2018) having taken into account 4 legal professionals, to whom through a personal interview guide the criteria around street harassment and the regulations applicable to it were determined; also, through the survey technique as there is no updated data on the female population in the Tulcán canton between the ages from 15 to 64 years of age, an infinite population was taken into account according to Gómez *et al.*, (2017) resulting in a sample of 240 elements.

The scope of research used is descriptive, which allowed to identify the recurrence, generalization and components of street harassment, both in the Tulcán canton and in different parts of the world. Finally, analytical-synthetic theoretical methods were applied by the contrast of the norm in social reality and its applicability; and systemic approach for which general work was considered in order to outline a possible solution applied as public policy, which defines the existence of street harassment and the actions to be taken.

### RESULTS

#### Socio-legal analysis

The current Ecuadorian legislation places the CRE at the top, which contains the mandate to promote and protect the rights of all citizens, especially women, due to the historical inequality that has been maintained in order to contrast the realization of rights in observance of the constitutional principle based on Sumak Kawsay; Regarding international treaties of those that recognize women's rights, there is no subscription to a specific one on street harassment of women.

The LOIPEVCM has been implemented, which concerns the types and places where violence takes place, and also covers the subject of study in a general way without recognizing it as a form of punishable violence, and establishes that the different levels of government and public entities must take appropriate action to protect women. without being responsible for the breach of this mandate, which causes the low applicability of this regulation.

Finally, in terms of sectional regulations, some cantons recognize the figure of harassment, as in the Ordinance for the prevention and progressive eradication of discrimination and violence against women of the San Felipe de Oña canton (Ordinance S / N of 2021) in its art. 4 lit. j, and in the Ordinance on prevention, attention and eradication of violence and discrimination against women of the Quevedo canton (Ordinance S/N of 2019) in its art. 6 lit. q; in addition to establishing the application of prevention campaigns, as well as in the ordinances of Riobamba and Montalvo to prevent and eradicate discrimination and violence against women, only harassment is recognized, ergo, in the place where this study is carried out, GAD Tulcán was asked to verify if there are any regulations around street harassment in the Tulcán canton, As mentioned in art. 38 lit. b of the LOIPEVCM, however, the certified refusal has been received because the required document does not exist.

On the other hand, mention has been made of the comparison of street harassment with psychological violence and the contravention of violence against women and members of the family nucleus that may be related to the constituent elements of this problem, of which statistical data has been requested from the State Attorney General's Office since 2018 with a cut to June 2022.

**Table 1. News of the crime - psychological violence in Tulcán canton registered in the Prosecutor's Office (consummated and attempted) - January 2018 to June 2022.**

Procedural status	Total
File accepted	319
File requested	38
Conviction	9
Adversarial opinion	2
Tax instruction	1
Appeal to trial	1

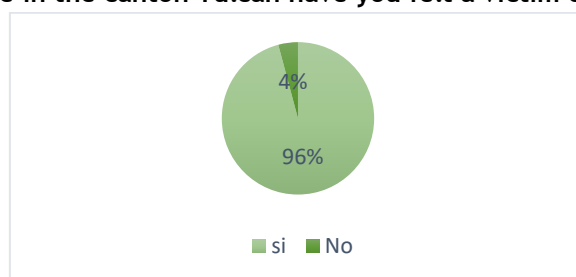
**Source:** Integrated System of Fiscal Actions (SIAF).

With regard to the violation of violence against women and the family, it was not possible to collect the information since it is not an act dealt with by this institution.

### Surveys

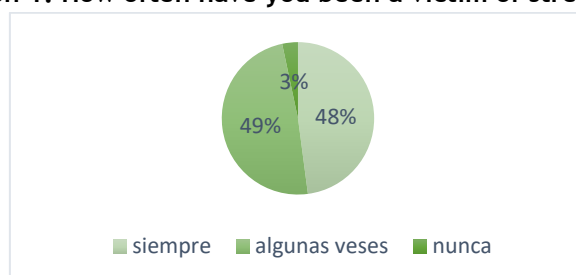
Thus, the following tables show the results obtained from surveys applied to women in the Tulcán canton between 15 and 64 years old, in order to collect data on the diagnosis of street harassment in the Tulcán canton.

**Throughout your life in the canton Tulcán have you felt a victim of street harassment?**



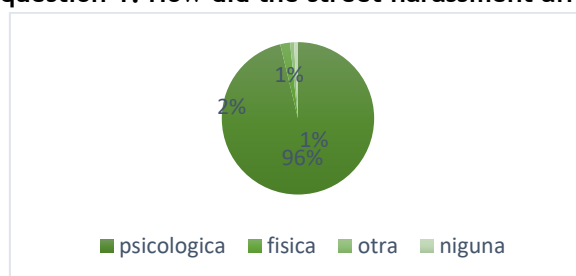
**Figure 1. Victims of street harassment.**

**If yes, question 1: How often have you been a victim of street harassment?**



**Figure 2. Frequency of street harassment.**

**If yes, question 1: How did the street harassment affect you?**



**Figure 3. Effects of street harassment.**

**If question 1 is yes, have you ever reported this event?**

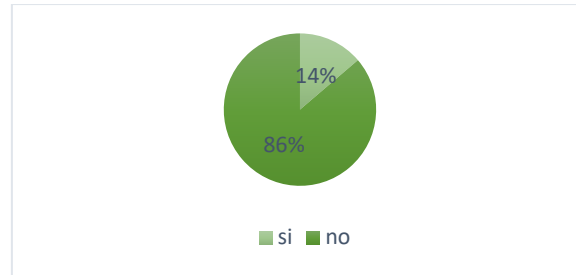


Figure 4. Reports of street harassment.

Have you witnessed another person being harassed?



Figure 5. Witnesses of street harassment.

Are you aware of any regulations on street harassment?

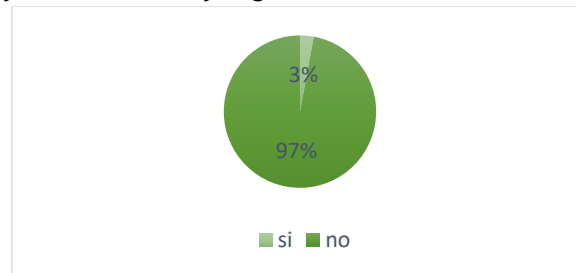


Figure 6. Knowledge of the regulations around street harassment.

### Interviews

Consequently, the results obtained from the interview applied to 4 legal professionals experts in the subject located in the Tulcán canton are presented, with the effect of specifying the knowledge and the possible solution applicable to street harassment.

Table 2. Street harassment concept.

Do you know what street harassment is?		
Interviewee	Answers	
E.S.A.T Provincial Delegate of the Human Rights Commission	Not exactly,	
A.C.P.V Judge Judicial Unit Family Women Children and Adolescents	Actually, no, I have no knowledge.	
M.P.E.J Provincial Court Judge Carchi	In our society we have seen that harassment is unknown and we can fall into crime; without realizing it, and that Podemos is perhaps subject to criminal prosecution. There is this harassment, we have felt it.	
E.P.V Provincial Ombudsman	Legally this type of crime is not specified, we must understand that street harassment is precisely the violation of the privacy rights that we all have in the constitutional framework.	

Table 3. Regulatory body street harassment.

Know the existence of any entity that regulates or sanctions street harassment in the Tulcán canton.
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Interviewee	Answer
E.S.A.T Provincial Delegate of the Human Rights Commission	I have no knowledge.
A.C.P.V Judge Judicial Unit Family Women Children and Adolescents	For the very fact that there is no regulation on street harassment, because there is no sanction for as such, it does not exist.
M.P.E.J Provincial Court Judge Carchi	There is the famous bullying, workplace harassment, sexual harassment that, if they are reportable in the Prosecutor's Office, but for street harassment there has not been, we have not seen a public policy that is responsible for preventing.
E.P.V Provincial Ombudsman	With regard to the Cantonal Board for the Protection of Children of Children and Adolescents, any minor can come to report.

**Table 4. Legal type.**

Do you think this figure fits with some legal type?	
Interviewee	Answer
E.S.A.T Provincial Delegate of the Human Rights Commission	It must be taken within the psychological harassment, in the unit of violence against women or members of the family nucleus.
A.C.P.V Judge Judicial Unit Family Women Children and Adolescents	Not because it would not be typified in some criminal type specifically we could see it from a point of view of sexual abuse or we could also place it as a matter of domestic violence, as long as it is generated within a family, or that there is that link as such otherwise there would not be some legal type
M.P.E.J Provincial Court Judge Carchi	Yes. These figures fit into different legal types, for example, in what we do the harassment of the bullying are part of the hate crimes typified as a crime in the in the Criminal Code we can not touch people, we can commit crimes of sexual abuse, sexual harassment, workplace harassment that can fall into many figures or criminal types.
E.P.V Provincial Ombudsman	It doesn't fit into any existing ones.

**Table 5. Public policy.**

Do you know of any public policy around street harassment?	
Interviewee	Answer
E.S.A.T Provincial Delegate of the Human Rights Commission	I do not know about the existence of a public policy
A.C.P.V Judge Judicial Unit Family Women Children and Adolescents	No.
M.P.E.J Provincial Court Judge Carchi	There are no public policies, we need a public policy to prevent this type of harassment, since they limit coexistence, damage social coexistence and it is good for people to live together in an educated way.
E.P.V Provincial Ombudsman	The truth, I do not know, I understand does not exist.

**Table 6. Regulations.**

Taking, taking into account that the Constitution of the Republic in its articles 11, 66 and 70; the Organic Law for Integral to prevent and eradicate violence against women establishes the types of violence and the areas in which violence takes place, in addition to the criminal types of the COIP included in articles 157 and 159 Do you consider that it is sufficient and efficient regulations to deal with street harassment in the Tulcán canton?

Interviewee	Answer
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<b>E.S.A.T Provincial Delegate of the Human Rights Commission</b>	Logically, that becomes a social problem, therefore, being a social problem and being within the norm not established, it must generate a problem that must be treated by the authorities, in this case a public policy should already be taken into account to avoid this type of harassment, which, although it is true or we do not have much knowledge, Not even lawyers, because the victims still do not dare to denounce, however, it cannot be ignored that this exists.
<b>A.C.P.V Judge Judicial Unit Family Women Children and Adolescents</b>	There was a case of a man who masturbated in the vehicle parked in a public area in view of everyone, then this person could not be sanctioned because he would be told about one of a subject of public scandal, but legally he could not be located in that issue, However, talking about street harassment would be exactly the criminal type, for which this person could have been sanctioned.
<b>M.P.E.J Provincial Court Judge Carchi</b>	The Constitution as general norms give us the paths, so that our legislators give the specific norms to combat this type of problems. If rules already exist, we must put them into practice. Our regulations are too broad, what is missing is to make known what to do in this type of harassment, we can fall into a crime, we do harm to people. We need one or another additional standard, but above all dissemination.
<b>E.P.V Provincial Ombudsman</b>	We do not have something specific in which it punishes precisely street harassment most of this species is for violation of rights in family or work environments, but more not in public roads, so, in that particular, it should be specified within that crime what street harassment has to do precisely to avoid and stop, Because we see daily that it exists, because precisely a woman cannot move freely without being able to receive any kind of grievance.

**Table 7. Solution.**

<b>What solution do you consider applicable to the problem of street harassment?</b>	
<b>Interviewee</b>	<b>Answer</b>
<b>E.S.A.T Provincial Delegate of the Human Rights Commission</b>	The authorities have to take into account that this has become a social issue, even more so today without detracting from or making any migration of foreigners, but even with the number of people that exist in the parks. Today women feel insecure. Therefore, there must be that support of a public policy both internally and from the highest novices of the State to deal with this type of situation. And do not affect the woman physically or mentally.
<b>A.C.P.V Judge Judicial Unit Family Women Children and Adolescents</b>	Obviously, there should be a typification of this harassment, analyze it to see if it can be identified and thus be able to be sanctioned it is necessary to demonstrate some responsibility against the person who performs this act, but it is important to educate the population about these issues and that is achieved through public policies.
<b>M.P.E.J Provincial Court Judge Carchi</b>	We need to disseminate if we need public policies that are born public policies to combat this problem if it is real, street harassment is not true, but we see it normal and it is not so because of the affectations that this brings, what we are manifesting psychological affectations in people limit the coexistence of people, Therefore, if we need public policies, we need prevention, we need dissemination.
<b>E.P.V Provincial Ombudsman</b>	Precisely what I have just said, which must be pointed out within what is the law that as a specific crime street harassment.



## DISCUSSION

Although the law focuses on protecting social risks, the opposition of the norm and social reality is a factor that fixes the neglect that has occurred when identifying a so-called social problem, which nevertheless transgresses rights for a group that has historically been violated, such as women.

This is how, Arndt (2018) proposes the classification of the ways in which street harassment can occur explicitly or implicitly to address in a legal way, organizing them by form or severity as follows: catcalling.- words or actions carried out in public spaces that are annoying to the person to whom they are addressed are considered, This includes verbal and non-verbal harassment without sexual content; Public sexual harassment.- are actions with an implicit or explicit sexual nature directed at a person in the public space that generate feelings of anger, discomfort, or humiliation without the victim fearing for their safety, here are included sexual or sexist propositions and comments and physical harassment with touching; and Public Sexual Assault.- Explicit or implicit sexual conduct directed at a person in public space that causes fear for their safety.

In an effort to demonstrate the existence of street harassment, analyzing Figure 1 shows the affirmative and negative responses of the women surveyed who have suffered street harassment in the Tulcán canton, to which, based on the figures, the size of the problem is deduced, where most women have been victims of these events. However, in practical life they can exist, even more, taking into account the ignorance or shame that comes with accepting the existence of the problem. Consequently, figure 2 shows the frequency with which women have gone through street harassment, in which most agree, that this happens to them sometimes, however, the figure is on par with what always happens to other women in the population, reinforcing the previous idea in which the seriousness of the problem is evidenced by being present in daily life and with great frequency in most cases; in this relationship, Llerena (2016, cited in Juchnowicz, *et al.*, 2018) after having conducted several surveys and research on street harassment came to consider that this is one of the most common forms of gender violence in view of its anonymity, impunity and short duration.

Thus, figure 3 is focused on determining the affectations left in women by street harassment, in which most agree that it has affected their psyche, hence the approach of fitting street harassment within the criminal type psychological violence, however, the anonymity that occurs in most cases prevents identifying the aggressor as such, Thus, this article, being located in paragraph 1 of crimes of violence against women or members of the family nucleus, one of the evidentiary requirements is to maintain an intra-family link between victim and perpetrator.

For this reason, figure 4 is focused on determining the current state of the regulations and their effectiveness, demonstrating that it is not at all effective, given that most victims have not reported it, they present confusion as to the place or the specific procedure where this complaint should be made, and if so, There are no applicable regulations.

For this, Elliott (2019) concludes that there is a failure in the public administration about the investigation of the problem, being necessary to collect statistical data to understand its assessment, since without these it is invisible becoming one more difficulty of the private life of women, considers that street harassment represents a clear violation of human rights, where the woman is represented as a sexual object with limited movement and diminishing her dignity.

The existence of street harassment not only in the respondents, but also in order to witness other people being victims of it is revalidated in figure 5, in which a large part claim to have witnessed these events.

Figure 6 reflects the results of the question of knowledge of regulations regarding the problem, however, almost all respondents expressed not knowing any type of regulations; in simile, López (2020) confirms that street sexual harassment can be recognized as a type of systematic violence against women, related to their gender, in order to preserve a power relationship, due to this there is a low participation of women in public life and, therefore, affects the production of knowledge about the problems that beset them.

In addition, in order to determine the possible solution, the interview was applied to expert lawyers in the subject, of which in the first place the knowledge about the term was measured, as well as



the knowledge of an entity that regulates or sanctions this problem however they did not know about a specific one, but it was suggested, the cantonal board for the protection of rights and the Public Prosecutor's Office, likewise considered the possibility of fitting the figure of street harassment within a current legal type, which took into account crimes such as psychological violence, domestic violence, sexual abuse and harassment at work, but if neither fits comprehensively to this problem, About the knowledge of existing public policy regarding street harassment the interviewees did not know of any, and as for the existing regulations they considered it insufficient since the problem is recurrent and there are no means to solve it, for which a possible solution was asked in which in the main they mentioned the need to create a public policy that recognizes street harassment and that is conducive to raising awareness among the population. about this phenomenon.

For this, it is not possible to speak of normative applicability, since there is no regulation or public policy at both the national and local level that confronts street harassment, as evidenced in the refusal provided by GAD Tulcán.

As for the possible solution, IEXE (2021) mentions that 4 stages are needed to reach the recommendation of a public policy, in stage 1 is the analysis of the problem where the problem is determined: what is the applicability of the regulations around street harassment in the Tulcán canton?, the number of affected: infinite population in view of the fact that there are no updated data, geographical area: Tulcán canton, main causes: ignorance, invisibility of the problem, lack of means of support for women, and the application of the Pareto principle to determine the cause: ignorance.

In stage 2 is the analysis of solutions determines the objective and brainstorming for the guidelines, once selected the best solutions the result of these is reflected in table 9.

In stage 3 is the feasibility analysis developed within the aspects of economic feasibility which is justified in view of the second general provision of the LOIPEVCM, legal feasibility comprised by the constitutional mandate to prevent and punish all types of violence, political feasibility since we are in a constitutional State of rights which generates the supremacy of these, and administrative feasibility in view of the powers in art. 50 ibidem are established to the Cantonal Boards for the Protection of Rights, entities part of the GAD's.

In this way in stage 4 are the recommendations of the public policy with indicators or importance of the essential facts, which were suggested both with the existence of the problem evidenced in the surveys, the recommendation of the experts in the interviews, and the suggestions of course of action specified in the same table as goals, Once established, the following public policy is outlined:

**Table 8. Public policy to prevent and eradicate street harassment in the Tulcán canton.**

Objective	
The purpose of this public policy is to generate strategies to prevent and progressively eradicate street harassment that violates the fundamental rights of women in the Tulcán canton.	
Indicators	Goals
<ul style="list-style-type: none"> <li>Most of the female population has been harassed on the street.</li> <li>Inability to report cases of street harassment.</li> <li>Lack of knowledge of the term street harassment.</li> </ul>	<ul style="list-style-type: none"> <li>Progressively and significantly decrease the current rate of street harassment.</li> <li>Establish regulations that are ready to typify street harassment so that it can be denounced.</li> <li>Socialize the problem with both men and women to make visible and pay attention when it happens.</li> <li>Educate the population about the importance and consequences that street harassment can have in the social sphere.</li> </ul>
Public Policy Guidelines	



Options	Budget feasibility	Partner feasibility Economic	Legal feasibility	Political feasibility	Feasibility administrative
a) Conceptualize street harassment and its constituent elements to citizenship.	loud	feasible	feasible	Loud	loud
b) Form a specialized body for the reception of complaints, and administrative sanctions in cases of street harassment.	stocking	feasible	feasible	Loud	loud
(c) To promote prevention and care measures.	loud	feasible	feasible	Loud	Loud
d) Promote intersectional strategic alliances for training in public entities both of their conceptualization, and the procedure for reporting	loud	feasible	feasible	Loud	loud
e) Promote the denunciation of these cases personally or of third parties in the designated place.	loud	feasible	feasible	Loud	loud
(f) To generate training programmes for the sectors most likely to be perpetrators of street harassment.	loud	feasible	feasible	Loud	loud
(g) To establish and develop teaching modules in educational institutions at all levels.	loud	feasible	feasible	Loud	loud
h) Establish mechanisms for dissemination of the new measures to be taken with their supporting documents.	loud	feasible	feasible	Loud	loud
Normative and institutional agents for plans, programmes and projects.					
1. Constitution of the Republic of Ecuador.					
2. Comprehensive Organic Law to Prevent and Eradicate Violence against Women.					
3. Cantonal Board for the Protection of Rights of Tulcán.					
4. Equality Agenda of the Cantonal Council for the Protection of Rights.					

### CONCLUSIONS

Based on the socio-legal analysis it can be evidenced that from the theoretical aspect the authors agree that this problem is a type of violence that has not been recognized and on the contrary has been normalized over time, since it is used as a form of domination to highlight male superiority in the social unconscious. despite the fact that from the normative aspect Ecuador does not currently have sufficient applicability and scope to cover the problem and its effects, from any level that can address the constituent elements.

Likewise, based on the methodology with the survey instrument carried out, it can be concluded that the existence of street harassment in the Tulcán canton is a reality that women suffer daily. In short, the possible solution is established through an institutional constitutional guarantee of public policy, as evidenced in interviews with legal professionals who are experts in the subject, where prevention measures are established to raise awareness of the problem in order to eradicate it progressively.

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