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## **Freedom of Expression and Participation in Digital Spaces**

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<sup>1</sup> The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.



# Freedom of expression and participation in digital spaces

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**Topic:** Women's and girls' freedom of expression, voice, agency and participation in digital spaces and specific groups of women targeted online: women human rights defenders (WHRDs) and activists, politicians and other women in the public eye, journalists, etc.

*We defend the right to sexual expression as a freedom of expression issue of no less importance than political or religious expression. We strongly object to the efforts of state and non-state actors to control, surveil, regulate and restrict feminist and queer expression on the internet through technology, legislation or violence. We recognise this as part of the larger political project of moral policing, censorship, and hierarchisation of citizenship and rights. (Feminist Principle of the Internet: Expression)<sup>2</sup>*

In authoritarian and democratic countries alike, the internet and other digital technologies have historically provided freedom and opportunity to gather and share information, collaborate and organise. For communities and individuals who bear the brunt of discrimination and structural inequalities as a result of intersecting systems of oppression,<sup>3</sup> these technologies have had critical roles in ensuring state accountability, supporting civic action and organising, providing

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<sup>2</sup> <https://feministinternet.org/en/principle/expression>

<sup>3</sup> For example, sexism, racism, classism, casteism, ableism, compulsory heterosexuality, etc.

possibilities for connection and solidarity across geographical boundaries and, significantly, making struggles visible. Particularly since the proliferation of social media, they have become critical mobilising and influencing tools for all actors engaged in civic and political movements – whether towards the goals of justice and development or to maintain or advance the interests of particular structures of power.

Significantly, digital technologies have contributed towards countering the historical exclusion of marginalised communities within the public space<sup>4</sup>. Feminists, women’s rights and other social justice activists are increasingly engaging with the digital/online space – simultaneously as sites and as tools for protest – and through this, enabling new forms of protest.<sup>5</sup> Women, people of diverse genders and sexualities and other groups who experience multiple forms of discrimination and oppression, and who have experienced consistent exclusion from public and political participation, have embraced online spaces which, according to Prinsloo, MacLean and Moletsane, have come to serve “as spheres for different ‘publics’ or counter-publics and so enable those whose voices tend to be dismissed or marginalised generally, to engage and act.”<sup>6</sup>

Taking Prinsloo et al.’s reference to counter-publics further, Hill conceives of “digital [own emphasis] counterpublics” as “any virtual, online, or otherwise digitally networked community in which members actively resist hegemonic power, contest majoritarian narratives, engage in critical dialogues, or negotiate oppositional identities.”<sup>7</sup>

Broadly speaking, the women’s rights movement’s participation online can be seen as heterogeneous digital counter-publics as they occupy digital spaces to share information and raise awareness, build solidarity across borders, campaign for change, and to build and strengthen feminist movements and organising, and through this, according to the Feminist Principles of the Internet, “facilitate new

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<sup>4</sup> Association for Progressive Communications (APC). The rights to freedom of peaceful assembly and of association in the digital age: Submission to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. (2019, January). Available at: [https://www.apc.org/sites/default/files/APCSubmissionFoAADigital\\_AgeJanuary2019.pdf](https://www.apc.org/sites/default/files/APCSubmissionFoAADigital_AgeJanuary2019.pdf). Date accessed: 15 October 2022.

<sup>5</sup> Baer, H. (2016). Redoing feminism: digital activism, body politics, and neoliberalism. *Feminist Media Studies*, 16(1), 17-34. <https://dx.doi.org/10.1080/14680777.2015.1093070>

<sup>6</sup> Prinsloo, J., McLean, N., & Moletsane, R. (2011). South Africa: The internet and sexual identities: Exploring transgender and lesbian use of the internet in South Africa. In J. Kee (Ed.), *EROTICS: Sex, rights and the internet*. Association for Progressive Communications. <https://www.apc.org/es/node/12781>

<sup>7</sup> Hill, M. L. (2018). “Thank You, Black Twitter”: State Violence, Digital Counterpublics, and Pedagogies of Resistance. *Urban Education*, 53(2), 286-302. <https://doi.org/10.1177/0042085917747124>

forms of citizenship that enable individuals to claim, construct and express selves, genders and sexualities.”<sup>8</sup>

Conversely, however, as the internet becomes more ubiquitous, less is being heard from those who are unconnected – the less wealthy and more marginalised – who are unable to exercise their rights on the same footing as those who are connected. Those who do not have access are doubly excluded: excluded from the “new” world of information and communications that the internet delivers, and also excluded from the “old” analogue world they used to have access to – even if imperfectly – because so many opportunities to express and participate are increasingly only available online.<sup>9</sup>

The right to freedom of expression and opinion is key to women and girls’ individual development and empowerment, and is essential to the women’s movement’s ability to operate as an effective digital counter-public. This paper briefly highlights how attacks on freedom of expression and opinion work against the goals of social justice, freedoms and equality.

## Context

A June 2022 report by ARTICLE 19, *The Global Expression Report 2022: The intensifying battle for narrative control*, found that 80% of the global population lives with less freedom of expression now than they had a decade ago.<sup>10</sup> The report highlights that a significant number of people who lived in less restricted countries 10 years ago are now categorised as living in highly restricted countries, owing to an increase in control on freedom of expression in these countries. The report states, “Freedoms are more precarious than ever, and scores are plummeting at higher rates than ever before.” It adds, “Freedom of expression is the first right authoritarian leaders attack as they move to undermine democracy. Autocrats, populists and dictators know that the defining battle for power is a battle to control the narrative.”<sup>11</sup>

Information has always been at the heart of the struggles for social justice, freedoms and equality, but the expansion of the internet and digital technologies has given it a renewed centrality and protagonism. Today, the rights and development agendas are very much centered on who controls the production, access to and the circulation of information of public interest, as well as opinions,

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<sup>8</sup> <https://feministinternet.org/en/principle/movement-building>

<sup>9</sup> Ending digital exclusion: Why the access divide persists and how to close it. Association for Progressive Communications. (2016, April).

[https://www.apc.org/sites/default/files/EndingDigitalExclusion\\_dig.pdf](https://www.apc.org/sites/default/files/EndingDigitalExclusion_dig.pdf)

<sup>10</sup> ARTICLE 19. (2022). *The Global Expression Report 2022: The intensifying battle for narrative control*. <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-Report-22.pdf>

<sup>11</sup> Ibid.

ideas and worldviews.

As a reaction to this context, even in non-authoritarian countries, responses based on briskly passed legal responses, have caused more harm than good. The state of freedom of expression continues to worsen as more countries introduce laws that stifle this fundamental right while trying to regulate the internet and other emerging technologies.<sup>12</sup>

People who express opposition, contestation or non-mainstream positions are increasingly attacked. They are also attacked for expressing themselves in non-traditional ways. Those who challenge the status quo are especially targeted. In view of their visibility and influence, journalists, human rights defenders, activists and politicians are the most common prey. This trend is mirrored in digital spaces as malicious state and non-state actors with racist, homophobic, xenophobic and conservative motives use technology to attack, threaten and harm people and communities who are especially marginalised.<sup>13</sup>

The state of freedom of expression continues to worsen as more countries introduce laws that stifle this fundamental right.<sup>14</sup> Journalists, human rights defenders, activists, politicians and regular people are increasingly targeted for exercising their right to freedom of expression and for challenging the status quo.

In her 2021 report to the United Nations General Assembly, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, states:

Expression is not free for many women or gender nonconforming people. Their voices are suppressed, controlled or punished explicitly by laws, policies and discriminatory practices and implicitly by social attitudes, cultural norms and patriarchal values. In its most extreme form, sexual and gender-based violence online and offline is used to chill or kill expression that is nonconformist or transgresses patriarchal and heteronormative societal or moral codes or norms.

She continues:

While the international human rights system has focused largely on censorship as repressive action by the State, non-State and private actors – whether social, cultural, religious or commercial – often play a leading and visible role

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<sup>12</sup> Freedom House. (2021). Freedom on the Net 2021. The Global Drive to Control Big Tech. <https://freedomhouse.org/report/freedom-net/2021/global-drive-control-big-tech>

<sup>13</sup> This includes attacks on sexual and reproductive health and rights activists.

<sup>14</sup> Freedom House. (2021). *Freedom on the Net 2021: The Global Drive to Control Big Tech*. <https://freedomhouse.org/report/freedom-net/2021/global-drive-control-big-tech>

in gendered censorship alongside the State, using various social mechanisms that mute women's voices, deny validity to their experience, and exclude them from the political discourse. In the digital age, the spate of online violence, hate speech and disinformation often compel women to self-censor, limit what they post or leave platforms.<sup>15</sup>

Attacks on women's and gender diverse people's freedom of expression are multifaceted, targeted, and are not always necessarily state-backed. Women from all fields are silenced through gendered and sexualised hate speech on the internet that incites fear for their physical safety and of those close to them, forcing them to self-censor, de-platform, or reduce their interaction in online spaces. Character assassination, gendered slurs, sexualised speech, and rape and death threats are common themes of these attacks. While it can be argued that these kinds of online attacks are common to most who engage in the public space, it *is gendered* as women are not attacked the same way and experience far more vicious and frequent attacks, especially if they inhabit overlapping and intersecting social identities that are marginalised based on race, sexuality, class, abilities among others. Not only do the attacks against women take on a particular form, but the impact of these attacks on their lives are also differentiated in view of the structural inequality and discrimination they face.

While this prevalence cannot be contested, it is imperative to look at this violence in its various forms and understand how they impact women's and girls' right to free speech, to access public spaces online, and infringes their right to privacy and dignity.

## **Online gender-based violence and freedom of expression**

Since the early 2000s, there has been much progress in relation to how gender-based violence is understood and recognised. The Association for Progressive Communications (APC) has stressed that online gender-based violence is part of the continuum of violence against women and as such is a global issue of concern, occurring in all contexts and is "manifestation of the historically unequal power relations between men and women and systemic gender-based discrimination<sup>16</sup>".

There have been shifts over time, including in taxonomy and in the concept of online GBV itself. These shifts relate both to changes in technology and how we relate to it, as well as insights gained through an intersectional understanding of violence which considers race, class, sexuality, age and other social identities as

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<sup>15</sup> Khan, I. (2021). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Irene Khan. A/76/258. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/76/258&Lang=E>

<sup>16</sup> See Agreed Conclusions, CSW 57, available at <http://undocs.org/E/CN.6/2013/4> Para 15

impacting peoples experience of online. Evolving forms of technology have also resulted in evolving forms of harassment.

These shifts have been reflected in advances in policy and legal frameworks, including at the international level.

In 2017, the Association for Progressive Communications traced the development of a global normative framework on online gender-based violence<sup>17</sup>. In 2006, an in-depth study on violence against women by the UN Secretary-General's already noted that: "More inquiry is needed about the use of technology, such as computers and cell phones, in developing and expanding forms of violence. Evolving and emerging forms of violence need to be named so that they can be recognised and better addressed."<sup>18</sup>

In 2013, the UN Working Group on the issue of discrimination against women in law and practices issued a thematic report<sup>19</sup> to the Human Rights Council which highlighted the risk of harassment faced by women who engage in public debate through the internet as well as the safety that anonymity provides for those who face discrimination due to their sexual orientation which allows them to "freely speak out, establish virtual communities and participate in public debates".

Still in 2013, states were urged to promote, respect and ensure the exercise of women's opinion and expression online through the Human Rights Council resolution on the role of freedom of opinion and expression in women's empowerment<sup>20</sup>. By 2017, there was much more awareness about how online gender-based violence was an obstacle to the realisation of women's rights, illustrated by the Report of the United Nations High Commissioner for Human Rights on ways to bridge the gender digital divide from a human rights perspective. The report highlighted that online violence against women must be dealt with in the broader context of offline gender discrimination and violence. It states that any measures to eliminate online violence against women must comply with international human rights law, including the criteria for permissible restrictions to freedom of expression provided under article 19 (3) of the International Covenant on Civil and Political Rights.

The need to respond to online GBV as part of protecting freedom of expression was clearly expressed by the UN Special Rapporteur on freedom of expression and opinion and the Special Rapporteur on violence against women and girls, its causes

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<sup>17</sup> See <https://www.apc.org/en/pubs/online-gender-based-violence-submission-association-progressive-communications-united-nations>

<sup>18</sup> United Nations General Assembly (UNGA). (2006). In-depth study of all forms of violence against women (A/61/122/Add.1). [www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm](http://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm)

<sup>19</sup> A/HRC/23/50 available at [http://www.ohchr.org/Documents/Issues/Women/WG/A.HRC.23.50\\_English.pdf](http://www.ohchr.org/Documents/Issues/Women/WG/A.HRC.23.50_English.pdf)

<sup>20</sup> See [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/23/2](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/23/2)

and consequences, whose joint statement pointed emphasised: “All actors in the digital space should ensure that any attempt to restrict freedom of expression is necessary and proportionate to address violence against women online.”<sup>21</sup>

Commenting on the nature of the attacks experienced online, the Special Rapporteur at the time, David Kaye, said: “These attacks chill and disrupt the online participation of women journalists, activists, human rights defenders, artists and other public figures and private persons.” Significantly, he warned that vaguely formulated laws and regulations that prohibit nudity or obscenity could have a significant and chilling effect on critical discussions about sexuality, gender and reproductive health. He also noted that discriminatory enforcement of terms of service on social media and other platforms could also disproportionately affect women and other users.<sup>22</sup>

By 2018, the resolution on “Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts”<sup>23</sup> firmly established online GBV as a rights violation. It called on states to ensure that “women and girls are able to exercise the right to freedom of opinion and expression online and offline without discrimination, and do not experience violence or threats of violence while exercising this right.” It also recognised that:

[A]ll forms of discrimination, intimidation, harassment and violence in digital contexts prevent women and girls from fully enjoying their human rights and fundamental freedoms, including the right to freedom of opinion and expression, the rights to freedom of peaceful assembly and of association, and the right to privacy, in accordance with obligations under international law, which hinders their full, equal and effective participation in economic, social, cultural and political affairs and is an impediment to achieving gender equality and the empowerment of all women and girls.<sup>24</sup>

The latest resolution of the Human Rights Council on freedom of opinion and expression, adopted in June 2022<sup>25</sup>, provides an updated framework for looking at the intersections between online GBV and freedom of expression.

It stressed:

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<sup>21</sup> Office of the High Commissioner for Human Rights. (2017, 8 March). UN experts urge States and companies to address online gender-based abuse but warn against censorship. <https://www.ohchr.org/en/press-releases/2017/03/un-experts-urge-states-and-companies-address-online-gender-based-abuse-warn?LangID=E&NewsID=21317>

<sup>22</sup> Ibid.

<sup>23</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/38/L.6](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.6)

<sup>24</sup> Ibid.

<sup>25</sup> A/HRC/50/L.11, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G22/393/52/PDF/G2239352.pdf?OpenElement>



the importance of empowering all women and girls by enhancing their equal access to information and communications technology, promoting digital, media and information literacy and connectivity to enable the participation of women and girls in education and training, which is also essential to respecting and promoting all human rights, including economic, social and cultural rights, and the possibility of women to interact with society at large on equal terms and without discrimination, particularly in the realms of economic and political participation, and reaffirming that the full, equal and meaningful participation of women and girls in the digital age is critical to achieving gender equality, sustainable development, peace and democracy.

The Council also expressed concern at the spread of disinformation, which can be designed and implemented so as to mislead, to violate and abuse human rights, including privacy and the freedom of individuals to seek, receive and impart information, and to incite all forms of violence, hatred, discrimination and hostility, inter alia, racism, xenophobia, negative stereotyping and stigmatisation.

The rest of this paper provides some practical insights into how threats to and attacks on freedom of expression and opinion online affects public and political participation in digital spaces and the extent to which women's and feminist movements are able to benefit from digital technologies. It is divided into five sections:

- Occupying public spaces: Women journalists
- In the defence of rights: WHRDs
- Privatised public spaces: The role of tech companies
- When laws meant to protect don't work
- When misogyny becomes hate speech
- Access and the digital divide.

## **Occupying public spaces: Women journalists**

Women journalists<sup>26</sup> around the world are subjected to violence that results in psychological trauma and impacts their personal and professional lives. This leads to self-censorship, changing their beats to ones that do not require political commentary and reporting, deactivating their social media accounts, or leaving journalism altogether. In extreme cases, though not rare, it can also lead to forced relocation, migration and exile. In situations where there is already a dearth of

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<sup>26</sup> As clarified by the UN Special Rapporteur on freedom of opinion and expression in her 2022 report to the Human Rights Council, "[t]oday, neither the concept of a journalist nor the practice of journalism is limited to those employed by news publishers. The Human Rights Committee has recognized journalism as a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere." A/HRC/50/29, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/323/44/PDF/G2232344.pdf?OpenElement>

women's voices and gendered reporting in news media, these attacks further widen the gap, contributing to a chilling effect on expression. In instances where women's voices are absent from the discourse, the public narrative invisibilises issues focused on women's and gender and sexual minorities, and an information blackout is perpetuated.

Maria Ressa, a Nobel Peace Prize recipient and journalist from the Philippines, who heads *Rappler* – a digital news website fighting for press freedom in the country – has been the subject of constant political harassment and attacks from the state for her work on press freedom<sup>27</sup>. There are a number of cases against her based on vague charges leading to two arrests and at least 10 pre-arrest bail requests.<sup>28</sup> As a result, she was convicted of cyber libel in 2020, an order that was appealed in the Court of Appeals that upheld the conviction against the journalist on 7 July, 2022. The UN Special Rapporteur on freedom of opinion and expression, Irene Khan, said, "The criminalisation of journalists for libel impedes public interest reporting and is incompatible with the right to freedom of expression. Criminal libel law has no place in a democratic country and should be repealed."<sup>29</sup>

In India, investigative journalist Rana Ayyub is consistently attacked from the supporters and members of the ruling Bharatiya Janata Party (BJP) for her reporting and for speaking up against ongoing attacks against Muslims in the country, and for highlighting various human rights abuses in the country. While Ayyub's online profiles are riddled with coordinated gendered, sexual and religiously motivated attacks and hate campaigns in her comment sections, she has been the target of judicial harassment with multiple cases filed against her in various states in India.<sup>30</sup> Ayyub is at the receiving end of vicious online abuse as a woman, as a journalist and as a Muslim.

A 2019 study by Media Matters for Democracy, *Hostile Bytes: A study of online violence against women journalists*, explores the impact of online harassment on women journalists in Pakistan. It found that 77% of those surveyed self-censor on

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<sup>27</sup> See: Association for Progressive Communications, series of statements on Ressa's case, as a member of the #HoldTheLine coalition, available at: <https://www.apc.org/en/tags/maria-ressa>

<sup>28</sup> Gutierrez, J., & Stevenson, A. (2021, 8 October). Filipino Journalist Maria Ressa Convicted of Libel. *The New York Times*. <https://www.nytimes.com/2020/06/14/business/maria-ressa-verdict-philippines-rappler.html>

<sup>29</sup> Office of the High Commissioner for Human Rights. (2022, 14 July). Philippines: UN expert slams court decision upholding criminal conviction of Maria Ressa and shutdown of media outlets. <https://www.ohchr.org/en/press-releases/2022/07/philippines-un-expert-slams-court-decision-upholding-criminal-conviction>

<sup>30</sup> Al Jazeera. (2022, 21 February). India journalist Ayyub faces 'judicial harassment': UN experts. *Al Jazeera*. <https://www.aljazeera.com/news/2022/2/21/india-journalist-ayyub-faces-judicial-harassment-un-experts>

the internet as a way to counter online violence.<sup>31</sup> A 2020 study, *Women Journalists and the Double Bind: The Self-Censorship Effect of Online Harassment in Pakistan*, also backs the findings and states that 77% of those women journalists surveyed said that it is impossible to practise journalism without self-censoring.<sup>32</sup>

The PEN America report *No Excuse for Abuse* points out:

The consequences are dire. Online abuse strains the mental and physical health of its targets and can lead to stress, anxiety, fear and depression. In extreme cases, it can escalate to physical violence and even murder. Because the risks to health and safety are very real, online abuse has forced some people to censor themselves, avoid certain subjects, step away from social media, or leave their professions altogether.<sup>33</sup>

It is important to note the scenario is similar for women politicians. For example, in 2018, in response to Mexico's gender parity law for federal elections, an unprecedented number of women ran for office. Luchadoras AC monitored online GBV against women involved in the electoral process, documenting tech-related attacks on women candidates. A total of 62 women politicians experienced GBV such as gender discriminatory expression including sexualisation of women candidates, which constituted 41% of the aggressions; direct threats, 20%; and smear campaigns, 16%. Other tactics included deep fakes and identity fraud, frequently interwoven to provoke maximum impact.

One example is the case of Patricia Azcagorta, a candidate for municipal president in Sonora, who was plagued by social media trends insisting she was a nude dancer by associating her photos with an erotic video. Despite reports to platforms about the fake content, damage transcended the campaign; even the notes and tweets that spread the complaint and its respective clarification reproduced her sexualised image. Even months later, internet searches under her name yield as main results the hashtag, the videos and her images. In this case, a false Twitter account under her name was also uncovered, in which pornographic photos and videos are published.<sup>34</sup>

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<sup>31</sup> Kamran, H. (2019). *Hostile Bytes: A study of online violence against women journalists*. Media Matters for Democracy. <https://digitalrightsmonitor.pk/wp-content/uploads/2019/11/Hostile-Bytes.pdf>

<sup>32</sup> Shaukat, A., & Naeem, W. (2020). *Women Journalists and the Double Bind: The Self-Censorship Effect of Online Harassment in Pakistan*. Media Matters for Democracy. <https://drive.google.com/file/d/1nt9hTGPxdaoOqiZtsPouV66FdzILuwok/view>

<sup>33</sup> PEN America. (2021). *No Excuse for Abuse: What Social Media Companies Can Do Now to Combat Online Harassment and Empower Users*. <https://pen.org/report/no-excuse-for-abuse>

<sup>34</sup> Luchadoras MX. (2018). *Violencia Política a Través de las Tecnologías contra las Mujeres en México*. <https://luchadoras.mx/violenciapoliticaenlinea>

## **In the defence of rights: WHRDs and women’s rights activism**

In 2013, the UN General Assembly resolution on protecting women’s human rights defenders (WHRDs) stated:

Information-technology related violations, abuses, discrimination and violence against women, including women human rights defenders, such as online harassment, cyberstalking, violation of privacy, censorship and the hacking of e-mail accounts, mobile phones and other electronic devices, with a view to discrediting them and/or inciting other violations and abuses against them, are a growing concern and can be a manifestation of systemic gender-based discrimination, requiring effective responses compliant with human rights.<sup>35</sup>

Since then, online attacks targeting WHRDs and their work have intensified, evidenced in large part by the increase in the number of alerts and calls for holistic protections for WHRDs<sup>36</sup>. Moreover, in addition to the attacks described above, gendered disinformation has emerged as a key issue affecting WHRDs. In an APC submission to the UN Special Rapporteur on freedom of expression and opinion, APC argued that the impact of disinformation is “particularly pernicious against groups in situations of vulnerability or marginalisation.”<sup>37</sup> It observed that “longstanding issue-based campaigns are particularly strong in relation to gendered disinformation, hatred against minorities and vulnerable groups, and human rights and environmental activists.” In another submission, APC pointed out that disinformation “causes confusion and has a chilling effect on freedom of expression and information and directly impacts on the level of trust in the public sphere as a space for democratic deliberation.”<sup>38</sup>

The APC submission cites research by EU DisinfoLab, which showed that “misogynistic narratives have been retrieved and adapted to fit within the mis- and disinformation landscape around COVID-19 – an event which has had a disproportionately negative impact on women’s rights.”<sup>39</sup> This research found that

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<sup>35</sup> Resolution adopted by the General Assembly on 18 December 2013: Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms: Protecting women human rights defenders. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/450/31/PDF/N1345031.pdf?OpenElement>

<sup>36</sup> See for example <https://www.apc.org/sites/default/files/IMD-GEF-Demandas-ENG-Final.pdf>

<sup>37</sup> APC. (2021). *Disinformation and freedom of expression: Submission in response to the call by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. <https://www.apc.org/en/node/37175>

<sup>38</sup> APC. (2021). *Gender justice and the right to freedom of opinion and expression*. <https://www.apc.org/en/node/37390>

<sup>39</sup> Sessa, M. G. (2020, 4 December). Misogyny and Misinformation: An analysis of gendered disinformation tactics during the COVID-19 pandemic. *EU DisinfoLab*.

the narratives tend to produce “either a negative representation of women as enemies, in order to fuel the public debate; or a pitiful depiction of women as victims in order to push an alternative agenda.”

In Argentina, a group of women journalists published an investigative piece, *The Conservative Reaction in Argentina*, analysing anti-rights discourse and actors in Argentine social media in 2021. The site created to house the research was immediately hacked and all authors subject to online attack, including sexualisation, death threats and delegitimisation of their professionalism.<sup>40</sup> The site and full research, which utilised mapping technology to interconnect conservative voices and relationships, are still not available online.

In a recent statement on the brutal crackdown which followed the death in custody of 22-year-old Mahsa Amini in Iran,<sup>41</sup> APC highlighted the intermittent internet shutdowns and blocking of apps<sup>42</sup> like Instagram, WhatsApp, Skype and LinkedIn as well as Apple and Google’s app stores as actions that violated rights to access to information and freedom of expression and of assembly. The statement points to a new presidential decree signed in August which expands the scope of the “morality and chastity law” of the country to apply on the internet as well, according to which women’s clothing will also be monitored on their social media accounts. It states:

Owing to the spread of videos from the protests where women can be seen dancing, singing, removing their hijabs and just walking on the streets – all acts barred for women in Iran – the government has responded by inflicting violence on protesters and by blocking access to the internet and social media apps to control the flow of information in an already controlled online regime.<sup>43</sup>

In a statement condemning Amini’s death and calling for an end to violence against women, protesters and human rights defenders, a group of UN experts noted:

Disruptions to the internet are usually part of a larger effort to stifle the free expression and association of the Iranian population, and to curtail ongoing

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<https://www.disinfo.eu/publications/misogyny-and-misinformation:-an-analysis-of-gendered-disinformation-tactics-during-the-covid-19-pandemic>

<sup>40</sup> Leclercq, G. (2021, 20 June). "La reacción conservadora": la lista de la Discordia. *Revista Noticias*. <https://noticias.perfil.com/noticias/informacion-general/la-reaccion-conservadora-la-lista-de-la-discordia.phtml>

<sup>41</sup> APC. (2022, 5 October). APC calls for Iran to immediately stop violence against citizens and blocking of internet access during the latest protests. <https://www.apc.org/en/node/38299>

<sup>42</sup> Basso, S., Xynou, M., Filastò, A., & Meng, A. (2022, 25 September). Iran blocks social media, app stores and encrypted DNS amid Mahsa Amini protests. *OONI*. <https://ooni.org/post/2022-iran-blocks-social-media-mahsa-amini-protests>

<sup>43</sup> APC. (2022, 5 October). Op. cit.

protests. State-mandated internet disruptions cannot be justified under any circumstances.<sup>44</sup>

In 2021, the UN General Assembly also urged Iran to end violations of the rights to freedom of expression, opinion, peaceful assembly and association, “including through practices such as disrupting communications through internet shutdowns, or measures to unlawfully or arbitrarily block or take down media websites and social networks, and other widespread restrictions on Internet access or dissemination of information online.”<sup>45</sup>

APC has also stated that internet shutdowns hit entire communities; however, because of power differentials in society and the specific manner in which women use the internet, the gendered impacts of internet shutdowns must be further explored<sup>46</sup>.

## **Privatised public spaces: The role of tech companies**

The role of internet intermediaries has increasingly come under the spotlight in relation to the governance and regulation of the internet. This is because online GBV is transmitted through privately owned platforms that are often operating in many jurisdictions. Given the inadequate response of law enforcement, many victims/survivors often turn to social media platforms to seek remedy. While a great deal of attention has been placed on the business and human rights practices of intermediaries, less attention has been paid to how their policies and practices impact specifically on communities outside of the US where the majority of social media platforms used by victims/survivors are based.

APC research demonstrates that poor responses from intermediaries in relation to online GBV contributes to the chilling effect on expression mentioned previously, with terms of service that can lead to censorship by platforms, other users (through reporting), or self-censorship, without actually providing the targets of harassment with redress or recourse, especially for those in non-English speaking countries.

APC conducted research assessing existing company policies to shed light on best practices and possible solutions to women’s demands for corporate accountability.

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<sup>44</sup> Office of the High Commissioner for Human Rights. (2022, 22 September). Iran: UN experts demand accountability for death of Mahsa Amini, call for end to violence against women.

<https://www.ohchr.org/en/press-releases/2022/09/iran-un-experts-demand-accountability-death-mahsa-amini-call-end-violence>

<sup>45</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/403/86/PDF/N2140386.pdf?OpenElement>

<sup>46</sup> Association for Progressive Communications. Internet shutdowns and human rights. (2022, February). Available at: [https://www.apc.org/sites/default/files/internet\\_shutdowns\\_and\\_human\\_rights\\_ohchr\\_submission\\_2022.pdf](https://www.apc.org/sites/default/files/internet_shutdowns_and_human_rights_ohchr_submission_2022.pdf)

Twenty-four case studies were conducted across seven countries and 22 company policies were reviewed in 2014.<sup>47</sup>

While some things have changed since 2014, most notably major social media platforms' consultation with a variety of women's rights and activist groups, improved privacy configuration orientation and changes in reporting systems; recent research by Web Foundation<sup>48</sup> and Pollicy<sup>49</sup> demonstrate problems flagged over a decade ago continue, where women find themselves without recourse from platforms or even more attacked upon public denouncement of abuse.

One example is of feminist activists denouncing rights violations or doing educational and advocacy work, especially regarding sexual rights, who have seen their communications channels regularly targeted through social network reporting mechanisms which result in temporary or permanent account closure. In contrast, when women report the dozens to hundreds of comments attacking them and burying their message on platforms, they are told that threats and other violent content is not against community standards, suggesting an inherent sexist bias in either support staff or company policies.

Furthermore, any display of women's naked bodies is frequently interpreted in company terms of service and by other users (seeking to silence feminist expression) from a moralist point of view that automatically sexualises the female body for the male heterosexual gaze. Censoring women's representations of their own bodies denies women's right to political, creative, sexual and other expression through embodiment. Social networking platforms, given their ubiquity, increasing user base and contradictory enforcement of terms of service, play a reinforcing role in normalising gender-based violence and reducing women's bodies to sexual objectification.<sup>50</sup>

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<sup>47</sup> Athar, R. (2015). *From impunity to justice: Improving corporate policies to end technology-related violence against women*. Association for Progressive Communications. [http://www.genderit.org/sites/default/upload/flow\\_corporate\\_policies\\_formatted\\_final.pdf](http://www.genderit.org/sites/default/upload/flow_corporate_policies_formatted_final.pdf)

<sup>48</sup> Web Foundation. (2021). *Tech Policy Design Lab: Online Gender-Based Violence and Abuse*. <https://techlab.webfoundation.org/ogbv/overview>

<sup>49</sup> Iyer, N., Nyamwire, B., & Nabulega, S. (2020). *Alternate Realities, Alternate Internets: African Feminist Research for a Feminist Internet*. Pollicy. <https://ogbv.policity.org/report.pdf>

<sup>50</sup> See, for example: Datta, B. (2014, 16 September). Never mind the nipples: Sex, gender and social media. *GenderIT.org*. <https://www.genderit.org/es/node/4149>; Japleen. (2016, 10 November). It's 2016 and Facebook is still terrified of women's nipples. *GenderIT.org*. <https://www.genderit.org/feminist-talk/its-2016-and-facebook-still-terrified-womens-nipples>; Chemaly, S. (2014, 22 April). Why female nudity isn't obscene, but is threatening to a sexist status quo. *Huffington Post*. [https://www.huffingtonpost.com/soraya-chemaly/female-nudity-isnt-obscen\\_b\\_5186495.html](https://www.huffingtonpost.com/soraya-chemaly/female-nudity-isnt-obscen_b_5186495.html); Gibbs, S. (2017, 5 December). Facebook bans women for posting 'men are scum' after harassment scandals. *The Guardian*.



Pornography websites frequently face attacks from moralistic fronts questioning their right to freedom of expression. Platforms like Twitter have been cautious about censoring sexual expression in sharp contrast to Meta, for example, and its obsession with nipple-censoring. However, the use of pornography websites for the non-consensual distribution of content continues to be widespread with little legal recourse or platform response. In accompanying women seeking takedown of intimate material from do-it-yourself pornography sites, we have noted in such sites the striking difference between their terms of service regarding privacy and consent versus their advertising and uploading forms which urge contributors to cite age, names and geographic locations with no mention of consent.

Another significant change in recent years is social platforms' use of algorithms in filters to aid in content moderation, an area loath to reveal guidelines citing concern their platform could be manipulated while denying how content moderation actually shapes and controls expression, beliefs and creation of discourse. Rules that content moderators and algorithms follow may play out in complete contradiction to public community guidelines. For certain voices, such as LGBTIQ, moderation can be the equivalent to silencing. As journalist Paula Apkan asks regarding Instagram's policies: "What would you do if your work, your body, or your life choices were deemed to go against *community guidelines*?" While there is no doubt about the innovation and creativity used by LGBTIQ+, gender non-binary and feminist activists at evading content moderation to continue to assert their rights, the impact on their expression and who it can reach on such platforms, especially due to platform tactics such as "shadow banning" or limiting advertising, is undeniable.<sup>51</sup>

APC continues to recommend promoting the important role of intermediaries in fostering positive attitudes and accountability online in a way that does not lead to state manipulation or co-option.<sup>52</sup>

## Laws limiting speech

APC has highlighted elsewhere that tensions around multiple rights are often raised in discussions on online GBV, as states have responded to calls for action with conservative, often moralistic, protectionist measures which can have the

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<https://www.theguardian.com/technology/2017/dec/05/facebook-bans-women-posting-men-are-scum-harassment-scandals-comedian-marcia-belsky-abuse>

<sup>51</sup> Goldsman, F. (2021). *Non-binary TikTokers in Latin America: Sharing Debates and Circumventing Censorship*. Centre for International Governance Innovation.

[https://www.cigionline.org/static/documents/SaferInternet\\_Paper\\_no\\_3\\_k7UQsBc.pdf](https://www.cigionline.org/static/documents/SaferInternet_Paper_no_3_k7UQsBc.pdf)

<sup>52</sup> Nyst, C. (2013, 26 November). Towards internet intermediary responsibility. *GenderIT.org*.  
<https://genderit.org/feminist-talk/towards-internet-intermediary-responsibility>



consequence of censoring or limiting speech.<sup>53</sup> APC argues that measures that protect women online must consider multiple rights including the right to safety, movement, to participate in public life, freedom of expression, and privacy, among others, and to take into account existing inequalities and discrimination that may affect how rights are protected and recognised. In considering any restriction on these rights, states need to consider the importance, nature and extent of any limitation proposed and should opt for the least restrictive means to achieve that purpose. This is particularly essential in a global context of closing civil society spaces and the development and implementation of laws and policies which reveal a backlash against the gains made in relation to women's rights more generally.

Governments have been increasingly invested in curtailing free speech and incriminating journalists and rights activists under draconian legislations passed with the sole intention to silence anyone who challenges the state's narrative. Whether in autocracies or democracies, the situation of and response towards freedom of expression appears all the same everywhere. While these laws impact all free speech advocates across the spectrum, much like in all other cases, these attacks impact differently in cases of women and young girls who are already disproportionately affected by laws that disregard their interests.<sup>54</sup>

With the internet's ability to democratise political discussions and enable citizens to partake in law-making and governance processes, as well as holding public officials accountable when needed, the focus of many governments' proposed cybercrime laws seem misplaced and appear to be more inclined towards regulating free speech rather than curtailing online crimes. In many countries, social media-related laws stifle dissent and become a tool for intimidation that forces critical voices to be silent in order to avoid prosecution. The laws are designed in a way that they give broad powers through vague terms and definitions to law enforcement authorities over online spaces, and by extension, on the right to freedom of speech, right to privacy, right to access information and right to political affiliation of citizens.

But in the context of gender-based violence that these laws promise to curtail, the implementation of these policies becomes the tool of oppression against the victims and survivors of abuse reporting an incident. Pakistan's Prevention of Electronic Crimes Act (PECA) 2016 is a strong example of this in action. The law was passed for "protecting the daughters of the nation", as per the then-IT minister, Anusha Rehman. However, it has done very little to protect; rather, it has proved to be a

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<sup>53</sup> Association for Progressive Communications. (2017). Op. cit.; this section of the paper reproduces excerpts from this 2017 submission to the UN Special Rapporteur on violence against women, its causes and consequences.

<sup>54</sup> Kamran, H. (2022, 4 April). Considering Gendered Implications When Drafting Data Protection Law in Pakistan. *Hamara Internet*. <https://hamarainternet.org/considering-gendered-implications-when-drafting-data-protection-law-in-pakistan>

tool to silence women and girls who want to report the violence they face online. PECA, which criminalises defamation under Section 20, has enabled the alleged perpetrators of abuse to file defamation cases against the victims and survivors of violence in order to force them to withdraw their complaints. While some victims have withdrawn their complaints after issuing public statements apologising for “defaming” the accused, others have entered in a long legal battle that has proven to be mentally, physically and financially exhausting.

Civil society, activists, researchers, lawyers, journalists and free speech advocates have expressed concerns over broad powers that laws like PECA grant to the government and law enforcement authorities without proper accountability and transparency procedures in place. As a result, freedom of expression and other civil liberties are constantly at risk, both at the hands of cyber criminals and also from the state.

Another challenge that these laws pose is their disconnect from the gendered implications at the time of drafting, which leads to the laws becoming a weapon against those they promise to protect. It is an established argument that criminalising defamation and false information under cybercrime laws can lead to direct attacks on freedom of expression, and this has been seen in many countries around the world. In August 2022, the Philippines National Police warned the public against spreading “fake news” that can lead them to be charged under the country’s cybercrime laws.<sup>55</sup> The Foundation for Media Alternatives in the Philippines tracked 75 cases of online GBV in the country through media reports in 2021.<sup>56</sup> Its report indicated that while the number may be severely underreported given the gap in reporting of gender-based cybercrimes, the prevalence is still high. While the Philippines enacted the Cybercrime Prevention Act in September 2012, there is ongoing concern over its implications for freedom of speech. Survivors of GBV can be charged under the section criminalising cyber libel, which is not clearly defined, thus paving way for its misuse by perpetrators of violence as a weapon to silence the victim, and its ambiguous application by the authorities and the state.<sup>57</sup>

Women and gender minorities often find themselves struggling to report online violence owing to victim-blaming at the hands of the law enforcement authorities who lack basic gender sensitisation training and understanding of handling sensitive

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<sup>55</sup> Caliwan, C. L. (2022, 28 August). PNP to fake news peddlers: ‘We are watching you’. *Philippines News Agency*. <https://www.pna.gov.ph/articles/1182359>

<sup>56</sup> Foundation for Media Alternatives. (2022, 28 January). Online Gender-based Violence in the Philippines: 2021 Year-end Report. <https://fma.ph/2022/01/28/online-gender-based-violence-in-the-philippines-2021-year-end-report>

<sup>57</sup> Kumar, S. (2021, 17 October). All you need to know about the Cybercrime Prevention Act in the Philippines. *iPleaders*. <https://blog.ipleaders.in/all-you-need-to-know-about-the-cybercrime-prevention-act-in-the-philippines>

cases like online GBV.<sup>58</sup> This is borne out by APC's extensive research into this issue in seven countries as complainants find themselves teaching officers how to apply the law, highlighting the gaps in implementation of the law supposedly protecting them from the abuse they are reporting, while the courts demand unreasonable documents, proof and records, forcing the victims of abuse to relive trauma.<sup>59</sup>

For laws to be truly respecting of gendered considerations, they will have to consider women's and gender and sexual minorities' interests and experiences, and translate them into effective policies that are based on sensitivities that these experiences require, not just during drafting, but also in implementation.

Another example is Uganda's 2011 Computer Misuse Act meant to "enhance safety and security" through the "prevention of unlawful access, abuse or misuse of information systems including computers and securing the conduct of electronic transactions" and the recent Computer Misuse Amendment Bill (2022).<sup>60</sup> Instead of enhancing safety and the realisation of rights, the Act and the Bill pose serious challenges to freedom of expression online.

According to the Women of Uganda Network (WOUGNET), Section 24 of the Act creates the offence of "cyber harassment" by making it an offence to make "any request, suggestion or proposal which is obscene, lewd, lascivious or indecent" using a computer. Section 25 creates the offence of "offensive communication" by criminalising communication that "wilfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication."<sup>61</sup>

The Act was used to charge and convict outspoken feminist activist and academic Stella Nyanzi of cyber harassment for a poem she wrote and published in a social media post in which she criticised the sitting President Yoweri Museveni. The poem included a verse that spoke about "oppression, unemployment and the country's

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<sup>58</sup> Kamran, H., & Ahmad, M. (2021, 30 April). Pakistan's revenge porn law is stronger than most. For one woman, that made no difference. *Rest of World*. <https://restofworld.org/2021/pakistans-revenge-porn-law-is-stronger-than-most-for-one-woman-that-made-no-difference>

<sup>59</sup> Padte, R. K., & Women's Legal and Human Rights Bureau. (2015). *From impunity to justice: Domestic legal remedies for cases of technology-related violence against women – Summary*. APC. <https://genderit.org/resources/impunity-justice-domestic-legal-remedies-cases-technology-related-violence-against-women-0>

<sup>60</sup> CIPESA. (2022). *Proposed Changes to Uganda's Computer Misuse Law a Blow to Civil Liberties*. <https://cipesa.org/wp-content/uploads/2022/07/Analysis-of-Uganda-Computer-Misuse-Amendment-Bill-2022.pdf>

<sup>61</sup> WOUGNET. (2021). *Advocating for Freedoms of Structurally Silenced Women in Uganda: A Case for Legal and Policy Reforms*. [https://wougnnet.org/assets/portal/wougnnetwebsite/publications/2022-04-19/Advocating\\_for\\_Freedoms\\_of\\_Structurally\\_Silenced\\_Women\\_in\\_Uganda-\\_A\\_Case\\_for\\_Legal\\_and\\_Policy\\_Reforms.pdf](https://wougnnet.org/assets/portal/wougnnetwebsite/publications/2022-04-19/Advocating_for_Freedoms_of_Structurally_Silenced_Women_in_Uganda-_A_Case_for_Legal_and_Policy_Reforms.pdf)

absence of good governance and rule of law.”<sup>62</sup> She was charged with sections on cyber harassment and “obscene, lewd, lascivious or indecent” content production and was imprisoned for 18 months before she was acquitted of all charges.

Another dimension relates to anti-rights movements worldwide which are gaining traction through legal attacks resulting in silencing, self-censorship, the curtailing of public debate and access to information in other normative spheres that can evade the radar of freedom of expression advocates. To illustrate, Human Rights Watch reviewed 217 bills presented by lawmakers at the federal, state and municipal levels in Brazil prohibiting “indoctrination” or “gender ideology” in schools. These initiatives attempted to curb teachers’ ability to carry out gender and sexuality education, and teachers found themselves subject to online attacks including doxxing, threats and disinformation for, for example, encouraging a deeper understanding of commemorative holidays. Virginia Ferreira from São Paulo was subject to two years of disciplinary proceedings, social media threats and attempts to discredit her as a teacher “after she asked her eighth-grade students to research feminism and gender-based violence in commemoration of International Women’s Day in 2019.”<sup>63</sup>

## **When misogyny becomes hate speech**

Much of the discourse targeting women and women’s rights online is aggressive, misleading and may be considered to constitute attacks. However, much of the unpleasant and offensive speech is protected under international law. This protection results from the factual verification that, when states try to regulate speech and expression, those in situations of vulnerability and marginalisation end up being the targets, as evidenced in the preceding section.

In some cases, however, the degree of harm caused and the gravity of the message itself can reach such levels that a discourse could amount to hate speech. Although broadly used in day-to-day vernacular as a social concept, hate speech is a legal category defined under article 20 of the ICCPR.

According to CEDAW, states have a duty to protect against abuse and violence against women. This duty extends to ensuring accountability for any attacks on women exercising their right to freedom of expression by taking positive steps to

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<sup>62</sup> Michael, W. (2019, 6 August). To Silence a Poet, and a Nation: What Stella Nyanzi’s Conviction Means for Uganda. *IPS*. <http://www.ipsnews.net/2019/08/silence-poet-nation-stella-nyanzis-conviction-means-uganda>

<sup>63</sup> González Cabrera, C. (2022, 12 May). “I Became Scared, This Was Their Goal”: Efforts to Ban Gender and Sexuality Education in Brazil. *Human Rights Watch*. <https://www.hrw.org/report/2022/05/12/i-became-scared-was-their-goal/efforts-ban-gender-and-sexuality-education-brazil>

prevent, punish, investigate and redress abuse of women by non-State actors. In this respect, States are required to criminalise exceptional types of action/expression, both online and offline, including direct and public incitement to genocide, child pornography, and incitement to national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. There is increasing consensus that incitement on the basis of sex and gender should also be prohibited under article 20 of the ICCPR, mentioned above.

This may lead to an apparent contradiction. The previous section has highlighted how laws can be abused or be ineffective to counter online GBV, while in this section we propose an extended interpretation of article 20 that would allow for further grounds for criminalisation of speech online, as a form of GBV.

APC believes, however, that women's rights require the same level of recognition at the international level to gender and sex based discrimination as other grounds of discrimination that are protected under article 20 (national, racial or religious). This recognition would be an important next step in the consolidation of the struggle for gender equality and would send an important political message to national states. If well applied, with due consideration for necessity and proportionality, this could also have an impact on accountability for violations.

The recognition that misogynistic speech may amount to hate speech would need to go hand in hand with extensive efforts dedicated to looking at the development of guidance that defines a clear threshold to identify the most extreme cases that would legitimise application of article 20 and of criminal law. This is neither an easy or quick task.

In view of the current international context – one that has seen so much pressure for the restriction of the rights framework - maybe this is not the time for pushing for this agenda. However, the fact that the severe attacks against women in the form of inciting expression are considered less of less concern than other targeted attacks, remains evidence of the long path ahead in international law for securing both women's free expression and their safety.

## **Access and the digital divide**

Digital technologies have become critical in times of multiple concurrent humanitarian crises and play an important role in relief and aid work. This can be seen in Pakistan, which is experiencing its worst climate catastrophe ever in the form of flooding that has engulfed one third of the country. During this emergency, social media proved to be a primary mode of communication for relief workers providing aid. The online conversation that drives relief work was heavily led by those situated in unaffected areas with little clarity of the magnitude of the

situation and the needs of the victims. As a result, the solidarity and relief efforts were disconnected from the lived realities, experiences and needs of the people affected, most of whom were women. For example, there was a huge outcry on social media about women’s sanitary hygiene products, a discussion led by women in urban cities with an evident disconnect from the cultural sensitivities of women in rural areas affected by the floods. “Should they be sent pieces of cloth, a roll of cotton, a towel or packaged sanitary pads to help with their menstruation?” was a cause of concern, with little consultation with women affected or from the region where affected women reside. Non-existent digital literacy, lack of affordable devices and internet connection, broken infrastructure, and patriarchal control over internet access, all contributed to the exclusion of voices of affected women in need of urgent care and relief.

A GSMA report published in June 2022 states that women reported lack of family’s approval among the top three barriers to mobile ownership and internet usage in Nigeria, Bangladesh and Pakistan. It adds, “In Pakistan, it was the most frequently cited individual barrier, reported by 35 percent of women who do not own a phone compared to just three percent of men.”<sup>64</sup>

During the COVID-19 pandemic, women living under extreme poverty were excluded from digital platforms, which led to restriction in access to information regarding healthcare. In Uganda, for instance, the high cost of the internet which is coupled with a “social media tax” makes it unaffordable for women living in poverty, costing 40% of their monthly income.<sup>65</sup> It also did not help that the weak healthcare system was already out of reach due to lockdown, and the adoption of telemedicine services could not be reached either because of the lack of digital access. As a result, women, and their families, were left with little to no information about the virus. The consequence of the divide was exacerbated as governments were also unable to gauge the magnitude of the spread of the virus accurately, because most of it was based on the track-and-trace method dependent on mobile ownership. Not only did it bar a significant chunk of population from accessing critical life-saving information, but it also may have proved to be a hindrance in documentation of the virus.<sup>66</sup>

## Conclusion

This paper has attempted to provide broad brush strokes to illustrate some of the key issues related to how freedom of expression online is being curtailed in

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<sup>64</sup> GSMA. (2022). *The Mobile Gender Gap Report 2022*. <https://www.gsma.com/r/gender-gap>

<sup>65</sup> <https://gnwp.org/resources/covid-19-wps-database/worsened-gender-digital-divide-2>

<sup>66</sup> Johnson, A. (2021, 21 January). Human Rights and the Gender Digital Divide in Africa’s COVID-19 Era. *Global Campus of Human Rights*. <https://gchumanrights.org/preparedness/article-on/human-rights-and-the-gender-digital-divide-in-africas-covid-19-era.html>

ways that limits women's rights and the ability of women's movements to effectively act as effective digital counter-publics. We conclude by offering some recommendations:

- Elaborate on and further develop a comprehensive definition of online gender-based violence which reflects both the continuum of violence and the common root causes such as gendered and other forms of power inequality, as well as the particular experiences of victims/survivors made possible through the unique specificities of digital technologies.
- States should uphold, respect and protect women right to freedom of expression online, including by refraining from censoring online expression and content relating to women's sexual and reproductive rights and health .
- Morality and obscenity as rationale for protecting women and other communities affected by injustice must not be the basis for any legislative reform or new law in matters of GBV online. Any law must foreground rights to bodily autonomy, self-determination, freedom of expression and rights to participate in public debate. States should respect and protect women's freedom of expression online, including by refraining from censoring online expression and content relating to women's sexual and reproductive health.
- States should adopt measures and legislation that protect women's right to freedom from violence and offer means of swift and meaningful redress for survivors, which also takes into account their needs, without infringing on freedom of expression and the right to information. Some positive common elements that emerged from APC's research on legislation and that should be considered when crafting frameworks to tackle online gender-based violence include:
  - The use of a consultative process in designing the legislation, which expand and protect space for the meaningful participation and leadership of women and gender-diverse people in decision-making processes.
  - Utilising/amending existing legal frameworks versus creating new laws.
  - Focusing on redress over criminalisation, which seems to be the most effective, efficient and meaningful way of aiding victims of violence online and ensuring that justice is achieved.
- Sex and gender in all of their diversity should be recognised as protected characteristics for the prohibition of advocacy of hatred that constitutes incitement to discrimination, hostility, harassment or violence in line with Article 20 (2) of the International Covenant on A/76/258 24/26 21-10583

Civil and Political Rights and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

- The Human Rights Council, in collaboration with the special procedure mandate holders and the Office of the High Commissioner for Human Rights, should initiate a multistakeholder consultative process to develop guidelines on gendered hate speech and disinformation, along the lines of the Rabat Plan of Action.<sup>67</sup>
- States should implement any measures, including legislation introduced to address disinformation, in a manner that complies with international human rights law. Any restrictions on freedom of opinion and expression must be consistent with Article 19 of the International Covenant on Civil and Political Rights.

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<sup>67</sup> <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>