



Submission to the UN Special Rapporteur on violence against women, it's causes and consequences' call on online violence by International Women's Rights Action Watch Asia Pacific

Unpacking key issues on gender-based violence against women in digital spaces and through the use of ICTs under the CEDAW framework

Due to factors such as availability, ease of transmission and potential breadth of dissemination of content, ICTs and the internet has served as a platform to further accelerate and perpetuate patriarchal structures and subordination of women. As women's rights organizations are making strides in connecting the discourse between women's human rights violations in digital spaces with narratives on gender-based violence against women (GBVAW), human rights treaty bodies have recently begun to articulate online violence as a part of the continuum of violence women face offline.¹

In articulating women's human rights under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the CEDAW Committee recognizes the important role of digital spaces, technology and ICTs in exacerbating GBVAW, as well as its potential to empower women in claiming their rights. On one hand, the CEDAW Committee's recent adoption of General Recommendation 35 on gender-based violence against women, updating general recommendation no.19, explicitly recognizes the evolving contexts in which GBVAW manifests, as well as role of technological factors and increased globalization of economic activities in exacerbating GBVAW.³ On the other hand, general recommendation 33 of CEDAW on women's access to justice recognizes the important role of ICTs in transforming social and cultural stereotypes about women, as well as its potential in ensuring effectiveness and efficiency of women in accessing justice.⁴ General recommendation 34 on the rights of rural women further expands upon the conceptualization of technology and ICTs as an enabling tool for the realization of women's human rights by identifying access to ICTs as playing a key role in meeting the diverse

¹ 2013, the UN General Assembly adopted a consensus resolution on protecting women human rights defenders, which acknowledged that: "... information-technology-related violations, abuses and violence against women [...] such as online harassment, cyberstalking, violation of privacy, censorship and hacking of e-mail accounts, mobile phones and other electronic devices [...] are a growing concern and a manifestation of systemic gender-based discrimination, requiring effective responses compliant with human rights' 33 A/RES/68/181

³ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 6

⁴ General Recommendation No.33 (2013) on women's access to justice, Para. 17 d), Para. 30, Para. 34 – 35, Para. 37 c)

needs of women in which states have an obligation to improve, in addition to promoting gender equality in the ICT sector more generally.⁶

While there is ongoing debate on how internet access and internet freedom as a human right that should be protected beyond freedom of expression, there is clear recognition of internet and ICTs as an important enabler for political, economic, social and cultural rights. Implications of policy responses to GBVAW in digital spaces and the use of ICTs must be located within the broader context and narrative where internet and digital sphere actors, states and social justice groups are negotiating issues related to structural inequalities related to access, net neutrality, and various other principles related to governance/policies which enhance and protect internet freedoms while ensuring responsible use and regulatory schemes which protect civil and other rights of individuals and key stakeholders of the internet including content providers and service providers.

For the purpose of this submission, IWRAW Asia Pacific, as a women's rights organization focusing on implementation and progressive interpretation of CEDAW, aims to link contemporary narratives and state practices in responding to GBVAW in digital spaces and through the use of ICTs as identified by women's rights organizations, with the CEDAW framework, particularly under General Recommendation 35 and General Recommendation 33.

Normative gaps in legislative frameworks

Harassment on online and mobile platforms such as stalking, doxing and non-consensual distribution of private material (among others) causes psychological harm to women, and also portends the threat of physical harm.⁷ Threats to a woman's privacy and the disclosure of personal information through the use of ICTs without consent, especially when targeted at women's gender identity or sexuality, has a significant impact on impeding women's freedom of expression and participation in public life. However, most states still fail to recognize GBVAW in digital spaces and through the use of ICTs as a 'real' form of violence. Legal definitions of GBVAW are mostly interpreted as physical harm, failing to recognize the continuum of the 'offline' and 'online' violence and the way in which it impedes women's enjoyment of other human rights. Where legal frameworks provide an opportunity to address GBVAW in digital spaces and through the use of ICTs, legal and regulatory mechanisms and law enforcement bodies are often uncertain of which laws to apply in most cases. Most often women refer to ICT laws, cyber-crime bills, hate speech laws, anti-GBVAW law and laws on privacy rights. While the scope of these laws may be broad and flexible enough to be applied to cases of GBVAW in digital spaces, the applicability of these laws remains unclear.

General Recommendation 35 of CEDAW recognizes the various spheres in which GBVAW occurs, including its manifestation in "all spaces of interaction, whether in public or private...including its redefinition through technology mediated settings such as violence occurring in the internet and digital spaces."⁹ In keeping with the overarching CEDAW framework, it recognizes GBVAW as a form of discrimination that impedes upon the ability of women to enjoy all other human rights, and provides a broad definition of GBVAW recognizing its

⁶ General Recommendation No.34 (2016) on the rights of rural women, para. 75 and para. 76

⁷ Refer to 'Cyber Violence against Women and Girls: A world Wide Wake Up Call, 'A Report by the UN Broadband Commission for Digital Development Working Groups on Broadband and Gender

⁹ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 20

different forms manifestation “including act or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”¹⁰ Where definitional aspects and structures of the law fail to recognize contemporary forms violence in which women face and lead to uncertainty of its application, state parties have an obligation to include clear definitions of GBVAW in digital spaces or through ICTs in existing laws and policies. In its concluding observation to Ireland’s sixth and seventh periodic report, the CEDAW Committee raised concerns over the lack of legal protections against online stalking and urged the state to introduce a specific definition of online as an emerging form of GBVAW.¹¹

Freedom of speech and responses to GBVAW in digital spaces and through ICTs

Grounding responses to GBVAW in digital spaces and through the use of ICTs within the CEDAW framework requires states to take measures to address the underlying historical and structural discrimination faced by women due to their gender.¹⁴ Further, responses to GBVAW must also be based on the understanding of the right to life free of violence as interconnected to the ability of women to exercise their social, economic, cultural and political rights.¹⁵ As such, laws, policies, and accountability mechanisms aimed at eradicating online GBVAW must be established and implemented within a broader framework of measures that address the ‘offline’ inequalities and discrimination that women face, and also seek to create an enabling environment for the participation of women through the use of digital technologies.

Studies have shown that responses to online GBVAW that fail to address the underlying structures of discrimination and gender inequality end up further reinforcing gender stereotypes and policing women’s sexuality.¹⁶ As states often take a moralistic approach in adopting measures that are aimed at “harmful sexual consent,” measures purportedly seeking to eradicate GBVAW are often employed at the expense of women’s freedom of speech and expression, and other interrelated rights. For example, in India, the potential of the Information Act and Penal Code to combat non-consensual distribution of private material is hampered through the equation of intrusion of privacy with violation of modesty, and the failure to recognize ‘consent’ as a multi-layered concept that can also be withdrawn after it is given. As a result, sexual violence is conflated with the regulation of women’s bodies and representation of sexuality, and linked to laws on pornography.

¹⁰ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para.14

¹¹ CEDAW Concluding Observations Ireland, 2017, Para. 27 c) CEDAW/C/IRL/6-7

¹⁴ Article 2, CEDAW

¹⁵ Recommendation No. 19 (1992), para 7: Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.

¹⁶ ‘*Technology-mediated violence against women in India: How can we strengthen existing legal-institutional response mechanism?*’ A discussion paper from IT for Change, January 2017

Legislative approaches targeting GBVAW in digital spaces or through the use of ICTs should not undermine the universal principles of human rights, including the obligation of states to respect the freedom of information and expression.¹⁷ It should not be premised upon or conflated with measures aimed at protecting 'national security' and act as state censorship. In Pakistan for example, the government has justified censorship of the internet by citing Section 99 of the Penal Code, allowing the state to restrict access to information that might be "prejudicial to the national interest." In Brazil, the Cybercrimes Bill that aimed at combating online pedophilia resulted in grave media censorship due to the broad and vague provisions contained in the bill.¹⁸

Effective measures to address GBVAW and safeguard the right of women to freedom of expression in digital spaces and through the use of ICTs requires a shift from protectionist approaches in laws and policies to those that recognize the autonomy of women and their bodily integrity. General Recommendation 35 calls for states to take legislative measures against GBVAW as a violation of women's physical, sexual or psychological integrity.¹⁹ This approach recognizes women as active agents, and requires states to implement measures that enable them to make their own decisions, participate in all spheres of life and access information without facing barriers such as state or cultural censorship.

Accountability of intermediaries/private actors

As laws and policies to combat GBVAW in digital spaces proliferate, experts on online GBVAW have constantly reinforced the need for clear national policies on liability internet intermediaries²⁰ as a crucial aspect of enhancing accountability. This in line with the principle of due diligence as articulated under CEDAW, which obliges states to take all appropriate measures to eliminate discrimination against women by any person, organization and enterprise.²¹ States are under the obligation to 'implement diverse measures to tackle GBVAW committed by non-state actors,' including adopting 'laws, institutions and a system in place to address such violence,' as well as ensuring that these systems 'function effectively in practice.'²² Further, the CEDAW framework holds states responsible for the failure to prevent, investigate, prosecute, punish and provide reparation for acts or omissions by non-state actors. In the case of GBVAW in digital spaces, where intermediaries play a large role in facilitating online spaces, this means that states have an obligation to establish laws, policies ensure that intermediaries adopt appropriate and effective procedures, protocols and mechanisms to eradicate GBVAW in digital spaces. However, most countries still lack clear frameworks that identify and outline the responsibilities of intermediaries in providing relief and redress in cases of GBVAW needs to clarified. In doing so, the IGF 2015 Best Practice Forum: Online Abuse and Gender-Based Violence against Women Report

¹⁷ For trends a discussion of freedom of expression and legislative trends, please refer to Nyst C (2014) 'Technology related violence against women: recent legislative trends', available at:

http://www.genderit.org/sites/default/upload/flowresearch_cnyst_legtrend_In.pdf

¹⁸ <https://theintercept.com/2016/04/26/brazilian-cybercrime-bills-threaten-open-internet-for-200-million-people/>

¹⁹ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 20

²⁰ APC defines internet intermediaries as 'technical providers of internet access or transmission services and providers of content hosting services' APC (2014) FAQ on intermediary liability

<https://www.apc.org/en/pubs/apc%E2%80%99s-frequently-asked-questions-internet-intermed>

²¹ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 24(b)

²² General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 24(b)

specifically highlights the need for the state to evaluate its legal relationship with intermediaries, including the level of obligation that should be imposed upon them.

General recommendation 35 further places an obligation on states to adopt and implement effective measures to encourage all media, including communications technologies to eliminate discrimination against women for their activity.²³ This includes measures that encourage the creation or strengthening of self-regulatory mechanisms by media, including online and social media, aimed at the elimination of gender stereotypes, and to address GBVAW that takes place through their services and platforms.²⁴

Debates ensue with regards to the liability that should be fixed on internet intermediaries for unlawful content created by users of their services, and several regulatory models around the world have been identified, but with their own range of shortcomings.²⁵ In its discussion paper on 'Technology-mediated violence against women in India: How can we strengthen existing legal-institutional response mechanism?' IT for Change highlights the need to safeguard against privatizing censorship through private actors by over-centralizing the role of internet intermediaries as mediators/arbitrators of online platforms. Evidence also suggest that delegating enforcement to intermediaries delivers sub-optimal results (especially in cases of GBVAW) due to patriarchal structures and attitudes within the intermediaries themselves.²⁶ In regions where internet intermediaries are not responsive and fail to provide accessible reporting and redress process in cases of GBVAW, solutions that require constant intervention by courts and other public institutions are feared to cause delays in resolutions.²⁷

In general, women's experiences of GBVAW in digital spaces and through ICTs are ignored and trivialized by intermediaries. Under General recommendation 35 of CEDAW, the has an obligation to enhance engagement in the private sector, including business and transnational corporations in efforts to eradicate all forms of GBVAW, and to enhance its responsibility for such violence in the scope of its action.²⁸ The Internet Governance Forum has highlighted several recommendations for internet intermediary responses in addressing online GBVAW.²⁹ This includes: exploring commitments to comprehensive human rights standards to better address online abuse that takes place through their service or platforms, taking into account relevant social and cultural context in developing content regulation and privacy policies as well as in reporting

²³ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 19

²⁴ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 37(a)

²⁵ For an analysis of the different regulatory models, refer to '*Technology-mediated violence against women in India: How can we strengthen existing legal-institutional response mechanism?*' A discussion paper from IT for Change, January 2017, pg. 8 – 11 and IGF 2015 Best Practice Forum: Online Abuse and Gender-Based Violence Against Women

²⁶ For an analysis of the different regulatory models, refer to '*Technology-mediated violence against women in India: How can we strengthen existing legal-institutional response mechanism?*' A discussion paper from IT for Change, January 2017, pg. 9.

²⁷ Ibid.

²⁸ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 39

²⁹ <http://intgovforum.org/cms/documents/best-practice-forums/623-bpf-online-abuse-and-gbv-against-women/file>

mechanisms to facilitate ease and awareness of different levels of risks, and developing more formal accessible and transparent record keeping systems on online abuse and GBVAW.³⁰

Cross-jurisdictional nature of GBVAW in digital spaces and through the use of ICTs

In addition to the absence of procedures, mechanisms and the lack of capacity of states to address GBVAW in digital spaces, the fact that violations are perpetrated beyond the territorial limits and jurisdiction of the state makes it difficult for authorities, including law enforcement agencies and internet intermediaries to identify perpetrators, investigate, pursue and provide remedies for survivors of GBVAW.³¹ General Recommendation 35 places an obligation on states to take all necessary steps to prevent human rights violations abroad by corporations over which they exercise influence, whether by regulatory means or by the use of incentives, including economic incentives.³² The particular nature of GBVAW in digital spaces reinforces the need for cooperation amongst national and international stakeholders in identifying common strategies and implementing measures to combat GBVAW as a human rights violation. General Recommendation 35 reflects this by urging states to “consider in particular the evolving contexts and transnational nature of this violence, including in technology mediated settings” when seeking international cooperation to address GBVAW.³³

Access to justice

Institutional Capacity

Under General Recommendation 35, states have an obligation to implement capacity building strategies to strengthen the understanding of state institutions on the trauma and effect of GBVAW in digital spaces, recognizing the varying situations of women experiencing diverse forms of gender-based violence.³⁴ In awareness-raising and capacity building for justice actors, General Recommendation 33 in particular requires the state to address the issue of the credibility and weight given to women’s voices, arguments and testimonies, as parties and witnesses.³⁵ This is particularly relevant in the context of GBVAW in digital space and through ICTs, there exist a lack of institutional recognition and prioritization of online GBVAW as a form of real violence. As a result, women are unable to access justice and are further revictimized. In addition, training of state actors, such as police officers, and other investigative bodies, and guidelines and protocols on responding to GBVAW in digital spaces remain lacking.

Studies reveal that even in jurisdictions where there exist various laws that could be invoked related to GBVAW in digital spaces, the awareness of authorities of these available remedies and how to apply it were limited. State institutions are also not equipped with the relevant technological

³⁰ <http://intgovforum.org/cms/documents/best-practice-forums/623-bpf-online-abuse-and-gbv-against-women/file>

³¹ For an extended discussion on challenges posed by extraterritoriality, refer to ‘APC Issue Papers: Due Diligence and Accountability for Online Violence against Women,’ a paper by Zarizana Abdul Aziz (Due Diligence Project), July 2017, page 16.

³² G General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 38

³³ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 54

³⁴ G General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 38

³⁵ General Recommendation No.33 (2013) on women’s access to justice, Para. 29 c)

skills required to pursue investigations or address the complexity and specificities of communication through digital spaces and ICTs as evidence of GBVAW. For instance, studies reveal that in countries such as Bosnia and Herzegovina and Pakistan, cybercrime units dealt only with highly technical and commercially motivated crimes, such as criminal fraud, and did not specialize in technology-related GBVAW. Under General Recommendation 35 of CEDAW, states have a legal obligation to “provide mandatory, recurrent and effective capacity-building, education and training for the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators, health-care professionals....to equip them to adequately prevent and address gender-based violence against women.”³⁶ This reinforced the CEDAW Committee’s long standing practice that places an obligation on state to implement gender-sensitive training of judicial and law enforcement officers and other public officials for the effective implementation of CEDAW.³⁷

Remedies

The provision of remedies under the access to justice framework in General Recommendation 33 of CEDAW articulates the obligation States provide and enforce appropriate, timely remedies for discrimination against women and ensure that women have access to all available judicial and non-judicial remedies.³⁸ It recognizes the different manifestations of discrimination that different groups of women face, and the need for responsive and appropriate remedies. In cases of GBVAW in digital spaces, experts have persistently highlighted the inadequacy and inefficacy of utilizing national existing legal and criminal remedies for criminal abuse and violence as it fails to account for the online context and adequately deal with the pace of technological change and the ways in which, for example, content is shared and distributed online.³⁹ According to the IGF 2015 Best Practice Forum: Online Abuse and Gender-Based Violence Against Women Report, “The inadequacy of mechanisms available on online platforms to enable effective responses to cases of online abuse and gender-based violence makes it even more difficult for victims/ survivors. For these reasons, women often feel that there are little or no consequences and a perceived impunity for online crime.”

In compliance with General Recommendation 33, states must ensure that remedies provided are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered,⁴⁰ and it must respond to the different types of violation experienced by women.⁴¹ Formulation and implementation of remedies in response to GBVAW in digital spaces needs to be approached from a victim centered perspective that is cognizant of the technological context in which GBVAW manifests, as well as the ongoing discrimination faced by women both in the ‘online’ and ‘offline’ sphere.

³⁶ General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 38

³⁷ CEDAW General Recommendation No. 19 on Violence against women, Para. 24

³⁸ General Recommendation No.33 (2013) on women’s access to justice, Para. 19 c)

³⁹ IGF 2015 Best Practice Forum: Online Abuse and Gender-Based Violence Against Women, Para. 56

⁴⁰ General Recommendation No.33 (2013) on women’s access to justice, Para. 19 b)

⁴¹ General Recommendation No.33 (2013) on women’s access to justice, Para. 19 e)

GBVAW and women's access and participation to digital spaces and ICTs

Instruments adopted by the CEDAW Committee has consistently reinforced the need for law, policy, mechanisms and services aimed at addressing women's human rights violations to place women at the center of decision-making processes and ensure women's participation in doing so.⁴² In making policies to eliminate discrimination against women, general recommendation 28 on the core obligations of States parties under article 2 of CEDAW calls on states to "ensure that women, as individuals and groups, have access to information about their rights under the Convention and are able to effectively promote and claim those rights."⁴³ It also requires the state to take measures to "ensure that women are able to participate actively in the development, implementation and monitoring of the policy."⁴⁴ This includes devoting resources in "ensuring that human rights and women's non-governmental organizations are well-informed, adequately consulted and generally able to play an active role in the initial and subsequent development of the policy."⁴⁵

As such, addressing GBVAW in digital spaces and through the use of ICTs must not be viewed in a silo from issues of women's access, participation and governance surrounding the internet and digital spaces. Laws and policies to ensure that internet state actors and intermediaries are held accountable for GBVAW in digital spaces must be devised in tandem with measures that are aimed at enhancing internet governance practices that protect internet freedoms and encouraging women's active participation in digital spaces. This includes implementing strategies that ensure women play an active role in the development of human rights based policies, decision making processes and positions, and governance in digital spaces and the field of ICTs.

⁴² Please refer to General Recommendation No.35 (2017) on gender-based violence against women, updating general recommendation no.19, Para. 28, General Recommendation No.33 (2013) on women's access to justice, Para. 1, Para. 15 f), para. 19 e), General Recommendation No.34 (2016) on the rights of rural women, para. 12

⁴³ General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the CEDAW, Para. 27

⁴⁴ Ibid

⁴⁵ Ibid