



IGF 2022
Best Practice Forum
Gender and Digital Rights

How regulatory practices undermine gender-diverse rights

BPF Output Report
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Disclaimer

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Executive Summary

The BPF Gender and Digital Rights addresses different challenges on meaningful and safe access of women and gender-diverse communities to online spaces. It draws its work from the principle that gender cannot be debated only at the fringes of other Internet governance issues, as it is intersectional on its origin. The 2022 BPF Gender and Digital Rights work connects itself with previous discussions on e.g., online abuse, gendered violence, and civic spaces for non-binary people, and revisits some of these by analyzing how regulatory practices undermine gender-diverse rights.

The report aims at raising awareness on the impacts regulation might represent to the permanence or persecution of marginalized groups online. It presents a collection of regulatory practices which can lead to gendered censorship, classified under three focus areas:

Privacy and Surveillance - used as means of social control and segregation, online surveillance of women and non-binary communities has social and gendered aspects, besides not being only a state monopoly. Persecution can happen under the context of sexual morality, political stance, or professional activities. Without considering surveillance both a tech and policy issue, structural changes on digital vigilance cannot happen. Privacy instruments are equally necessary to avoid unsafe digital access;

Freedom of Expression - women and gender-diverse people experience freedom of expression (or lack thereof) in different ways than their male, white, cis counterparts. Marginalized groups are more subjected to attacks based on their sexual and cultural expression. Beyond the safety to express opinions and ideas, a social justice perspective on freedom of expression amplifies this right to the protection of identities and spaces traditionally left aside in social interactions;

Freedom of Association and Religion - members of a democratic society are ensured freedom of association around topics of shared interest, as well as the practice of their religious beliefs. Legal removal of both rights from marginalized groups is an attempt of social control by the State or by men-created religious rules.

At the IGF 2022, the BPF Gender and Digital Rights held a hybrid session to discuss current affairs of the above-mentioned topics with experts from the private sector, academia, activists, and civil society. The key takeaways were:

- Despite representing different stakeholder groups, the speakers demonstrated having aligned positions on the protection of gender-diverse communities online.
- Online regulation is needed but should be an empowering tool – women and gender-diverse communities are unable to implement proposals on their behalf since they are out of places of influence and power.
- There is a need to occupy such spaces and/or find allies in negotiation, legislation, and decision-making.
- Regulation needs to present an evidence-based approach; platforms should make it easier for victims to collect evidence (e.g., chats that disappear or images that can be quickly deleted are problematic).
- Similarly, more attention needs to be paid to regulation enforcement. Capacity deficits within current enforcement agencies and content moderation are significant issues and can worsen the chain of online violence.

- Products and technologies should be designed with an outlook on possible risks and human rights infringements (e.g., privacy by design). There is the need to look at biases brought into technology from its inception – if not addressed at the outset, it is very difficult to bring about changes once risky behaviors and product misuse are consolidated.
- Policies and actions should protect women on the internet and not from the internet.
- Making the Internet safer for women ought to make it safer for everyone – freedom cannot be exclusive.

Both the report and the session outcomes point to the same direction: gender is an intersectional factor in the development of technology and regulation, as equality is necessary to bring groups from the fringe of society to places of power.

1. Introduction

During 2022, the Best Practice Forum on Gender and Digital Rights (BPF Gender & Digital Rights) intends to analyze the various impacts of regulation from a gender justice perspective, following up on the work of the United Nations Special Rapporteurs for Freedom of Expression and Opinion, Violence against Women and Human Rights Defenders - and widen the scope of discussion on how the lack of regulation or the misuse of said term undermines human rights of women, LGBTQIA+ people, and historically marginalized communities.

With this topic, the BPF Gender & Digital Rights aims to:

- Assess the impacts of the diminishing privacy and the gendered censorship of women and LGBTQIA+ people online;
- Assess the role of privacy, freedom of expression, and targeting/surveillance provisions on female and LGBTQIA+ groups online identities;
- Promote the defense of digital rights as human rights, understanding the biases and divides that keep women and LGBTQIA+ people out from these conversations in order to avoid framing these issues from a revictimizing perspective;
- Understand the importance of the internet as an ecosystem of democratic development, aiming towards more accessibility and fewer constraints towards underrepresented/historically marginalized populations.

This work builds upon last year's assessments on gendered disinformation and the BPF's previous reports on access and online violence, both under gendered lens.

About the Internet Governance Forum (IGF)

The Internet Governance Forum (IGF) is a global arena, convened by the United Nations'¹ Secretary-General, where governments, civil society, the Internet technical community, academia, the private sector, and independent experts exchange information and share practices around Internet governance and policy issues.²

In 2022, the seventeenth annual meeting of the IGF explores the overarching theme “Resilient Internet for a shared sustainable and common future”. The meeting is hosted by the Government of Ethiopia and takes place from 28 November to 02 December, in Addis Ababa and online.

¹ The [resolution adopted by the UN General Assembly on 16 December 2015 \(70/125\)](#), “Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society”, extended the mandate of the IGF as set out in paragraphs 72 to 78 of the Tunis Agenda.

² IGF website: <http://www.intgovforum.org>. The IGF is one of the key outcomes of the World Summit for the Information Society (WSIS).

IGF Best Practice Forums (BPFs)

The IGF Best Practice Forums (BPFs)³ are a part of the intersessional activities which complement the IGF's work by providing a platform for experts and stakeholders to exchange experiences in addressing Internet policy issues, while discussing and identifying tangible good practices.⁴ BPFs are expected to be open, bottom-up and collective processes, and their outputs to be community-driven. They are organized under the supervision of the IGF Multistakeholder Advisory Group (MAG) and receive substantive IGF Secretariat support.

The BPF members prepare their work in a series of frequent engagements throughout the year, leading to a BPF session at the annual IGF meeting and the production of a report, published as a component of the IGF general outputs. Similarly to the IGF mandate, BPFs do not develop policies or practices. Their outputs should be interpreted as a repository of community experience, collected to serve as a resource to inform policy discussions and standards development, create awareness, and bring public understanding within the Internet governance ecosystem about pressing topics.

About the BPF on Gender and Digital Rights

The BPF Gender & Digital Rights, originally founded as BPF Gender & Access in 2015, has addressed different challenges of women's meaningful access. The BPF community addressed the following topics:

- 2015: Online abuse and gender-based violence
- 2016: Barriers for accessing the Internet
- 2017: Identification of needs and challenges of diverse women's groups with respect to Internet access
- 2018: The impact of supplementary models of connectivity on women's Internet access
- 2019: Beyond access: women, transgender and gender non-conforming people's participation in the digital economy
- 2020: Violence, harm, pleasure, and content online / Gender mainstreaming within the IGF structure

The outcomes of these meetings demonstrated that “the IGF has made good progress over the years in fostering better gender diversity”⁵, yet improvements are needed for more meaningful participation. The discussions should move from the women/men binary view to those that embrace gender diversity. Additionally, gender cannot be debated only at the fringes of other Internet governance issues, as it is an important and nuanced one on its own.

As one of the results from the 2020 output report, the term “gender” started being used within IGF in a broader sense, incorporating non-binary terms and discussions. In the following year, gendered disinformation was the topic of choice. A proactive multistakeholder approach is required to tackle

³ BPFs were re-introduced in 2014 to “enhance the impact of the IGF on global Internet”. This intersessional programme was designed in accordance with the recommendations of a 2012 report by the Commission on Science and Technology for Development's (CSTD's) Working Group on IGF Improvements.

https://www.intgovforum.org/multilingual/index.php?q=filedepot_download/4586/588

⁴ Past BPF outputs and activities are archived on the IGF webpage <https://www.intgovforum.org/en/content/bpfs-outputs>

⁵ 2020 Best Practice Forum on Gender and Access Final Output Report:

https://www.intgovforum.org/multilingual/index.php?q=filedepot_download/5004/2371

the problem, focusing on accountable and transparency actions towards the protection of victims. The 2022 BPF Gender & Digital Rights connects itself with previous topics and revisits some of them by analyzing how regulatory practices undermine gender-diverse rights.

Methodology and work plan IGF 2022 BPF Gender and Digital Rights

With the increasing wave of censorship and unlawful criminalization of different minority communities worldwide, it is important to raise awareness on the impacts regulation can bring to diverse groups - i.e., newly proposed regulation or legal amendments that might represent changes to users' rights in areas such as freedom of expression, online identity, safety, and civic spaces.

Therefore, the BPF community decided to evaluate regulatory practices which can lead to gendered censorship based on the following thematic areas:

- Theme 1: Privacy and Surveillance
- Theme 2: Freedom of Expression
- Theme 3: Freedom of Association and Religion

The 2022 BPF Gender & Digital Rights' work plan takes into account the achievement of the Sustainable Development Goals as laid out by the UN Secretary-General's report "Our Common Agenda"⁶. Special attention is given to Commitment 5 - "Place women and girls at the center" - with its proposed action on repealing gender-discriminatory laws. The Forum's contribution to Commitment 7 - "Improve digital cooperation" is envisioned as an input to the Global Digital Compact.

⁶Our Common Agenda - Report of the Secretary-General, 2021. https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf

2. How regulatory practices undermine gender-diverse rights

Human rights must be observed in all aspects of one's life – personal and professional, online and offline. On the Internet, both women and gender-diverse communities have found safe spaces to freely express themselves. Similarly, journalists and human rights activists were able to exercise their right to freedom of expression without being targeted as if they were using traditional media.

Notwithstanding, censorship based on sex and gender still happens, persecution of dissident voices, likewise. The tool that promotes civic spaces and global outreach is the same that amplifies discrimination. In some countries, legal instruments provide the regulatory base to suppress the rights of marginalized communities in different spheres. Once pushed away from societal life, these marginalized communities are now leaving the online space as a means to protect their privacy and safety.

This BPF Gender & Digital Rights report presents a collection of regulatory practices which can lead to gendered censorship, classified under three topics: Privacy and Surveillance; Freedom of Expression; and Freedom of Association and Religion. Curbing rights or misinterpreting legislation can have disastrous effects on women and LGBTQIA+ communities, undermining their agency and removing their constitutional rights.

Each of the topics above-mentioned is accompanied by support case studies. Under privacy, the report brings examples of gendered and social surveillance. Gendered disinformation, the BPF Gender & Digital Rights' work theme in 2021, is put under the spotlight once more for its connections with freedom of expression – and legislation that tries to curb it. Additionally, this second focus area discusses discriminatory laws and hate speech, and sexual and cultural expressions as freedom of expression. Freedom of Association and Religion explores cases of legally imposed restrictions to civil society organizations. Despite the examples presented here being country-based, they paint a global picture of the issues faced by women and gender-diverse communities both in the online and offline environments.

Lastly, this document collates a few takeaways with regard to the protection of human rights and the enactment of regulation that ensures a fair and equal treatment to all.

3. Case studies

3.1. Privacy and surveillance

3.1.1. Background

It has become difficult to discuss surveillance without detaching it from everyday life. Historically, women and gender-diverse communities have been targeted by it as means of social control and segregation⁷. As one is subjected to scrutiny in offline relations, these communities are usually met with unwilling accumulation and monitoring of their data, ghosting of their voices in public discourse, and erasure of their rights in online spaces. Social and gendered surveillance reveal the dynamics of power relations correlated with race and class: persecution can be based on a given sexual morality perceived as appropriate; political stances; or professional activities, to name a few examples.

More than a technological debate, surveillance should be considered on the policy side, both a privacy issue as well as a matter of social justice. Kovacs highlights that “gender has always already been surveilled”⁸ and it cannot be left aside when discussing structural changes to the debate on digital vigilance. She continues by stating that “[t]echnologies of control at a distance facilitate the naturalisation of inequalities. It is only by putting technologies back into social contexts, and the webs of power relations that underlie them, that the promise of surveillance as empowering - which safety apps, for example, like to claim - can ever possibly be realised”⁹.

The analyses below illustrate how internet regulation can be used for said purpose, and how privacy provisions may avoid inequalities when being promoted under an intersectional lens.

3.1.2. Cases

a. APC: EROTICS Global Survey 2017 - Sexuality, rights and internet regulations

The Association for Progressive Communications’ project EROTICS - Exploratory Research on Sexuality and ICTs - is a “global network of activists, academics and organisations working on sexuality issues including LGBTIQ+ rights, sex work, sex education, sexual and reproductive health and rights (SRHR) and gender based violence, in addition to internet freedom advocates, policy experts and techies”¹⁰. In 2017, its global survey¹¹ investigated the potential of the internet as a medium to explore gender and sexuality rights. Hence, interviewees had a chance to describe not just how they use the tool, but also their experiences with online violence, surveillance, and censorship.

⁷ Shepard, 2016. Available at <https://blogs.lse.ac.uk/gender/2016/06/02/5-reasons-why-surveillance-is-a-feminist-issue/>

⁸ Kovacs, 2017. Available at <https://genderingsurveillance.internetdemocracy.in/theory/>

⁹ Idem.

¹⁰ <https://erotics.apc.org>

¹¹ EROTICS Global Survey 2017. Available at <https://www.apc.org/en/pubs/erotics-global-survey-2017-sexuality-rights-and-internet-regulations>

The survey was directed at persons who self-identified as women or gender-diverse, and worked on themes related to these communities' rights, regardless of the economic sector. It had a global outreach, with most of the respondents coming from Latin America and the Caribbean. Confirming previous ethnographic findings, the results have demonstrated that internet users navigate in a sea of biased internet regulation mixed with self-regulation or self-removal. In most cases, the State, religious authorities, or the family of the user are the entities on the legalized surveillance side, mostly acting under pretenses of sexual morality and family honor to implement censorship. Internet platforms are the standard space for direct online violence and harassment, with users opting to self-regulate how they occupy it - including whether to self-restrain their speech or abandon the online space completely. The insufficient or absent lack of rules and accountability of private tech actors on online gendered violence was the main reason pointed out for such behavior.

The data provides insightful information on social and technical contexts of online presence for women, LGBTQIA+ persons, and current limitations on their right to privacy and freedom of expression. More on this challenge in section 3.2.

b. Pakistan: The Prevention of Electronic Crimes Act 2016 and the Personal Data Protection Bill 2021 (Draft) - chilling effects

Also known as the Cybercrime Act, the Prevention of Electronic Crimes Act was approved by the National Assembly of Pakistan in August 2016 - amidst uncleared controversies and nationwide concerns on its application:

[p]artisans of the bill believe that it is a viable solution to the crimes against women and other marginalized communities. It will prevent the bullying and harassing of women online, as well as transferring any unauthorized data or information. Action will be taken against any entity or person that tries to hack the identity of a woman online or disperse digital information related to her. Anyone who tries to transfer indecent pictures or content related to a woman will be heavily punished. Impersonating someone or sending indecent messages to women are punishable crimes according to the cybercrime bill of Pakistan.¹²

Nonetheless, opponents of the bill argue its terms are broad, ambiguous and loose, leaving to the state authorities the responsibility of interpreting them, and letting them decide what to censor online without judicial orders. Human rights activists are concerned on how such power in the hands of single government figures can be used to persecute women, marginalized groups, and whistleblowers - women journalists can particularly be targeted under the Cybercrime Act¹³. This is the bill's chilling effect: instead of protecting minorities, it has the potential of deterring or censoring free speech by installing legalized surveillance means. In Pakistan, increased social surveillance of women journalists also leads to its gendered type, observed by the state and their audience. The societal perception of these professionals is defined not only by their work, but also their class, religion, and sexual orientation - proving once more the weight of intersectionality in the matter.

The potential censorship brought in by the Cybercrime Act not only affects freedom of expression and access to information, it equally affects the right to sexual education and sexual health, as even scientific terms related to above mentioned topics can be considered inappropriate under such law.

¹² Nasir, Amna. New Cybercrime Bill in Pakistan leaves much uncleared. Available at <https://feminisminindia.com/2016/08/23/cyber-crime-bill-pakistan/>

¹³ Gendered surveillance of journalists in Pakistan. Available at <https://feminisminindia.com/2017/02/07/gendered-surveillance-female-journalists-pakistan/>

In 2021, the federal government released a fourth draft of the upcoming Personal Data Protection Bill¹⁴ for public feedback, which was taken to parliamentary appreciation in the following year. Human rights organizations such as the Digital Rights Foundation have submitted their concerns for a fair and transparent feedback period. To avoid undesired chilling effects in this piece as well, the organization submitted legal suggestions¹⁵ to the text that ensure non-discriminatory discourse in the privacy regulation articles and digital data provisions.

3.2. Freedom of expression

3.2.1. Background

In 2022, the free speech mandate holders (United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States [OAS] Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights [ACHPR] Special Rapporteur on Freedom of Expression and Access to Information) launched a Joint Declaration on Freedom of Expression and Gender Justice¹⁶.

The Joint Declaration addresses gender justice as a precondition for the universal right to freedom of expression: women – and others who experience discrimination and marginalization – face structural barriers to the enjoyment of their rights, online and offline. Restricted access to information, gender-based harassment and abuse, the digital divide, as well as biased technologies or discriminatory deployment of technology limit women's ability to exercise their right to freedom of expression. Free speech challenges are greater for women in the public sphere or executing scrutiny, such as women journalists, as well as those with intersecting identities. It is also possible to draw a clear link to authoritarian trends and the overall backsliding of human rights and civic space.

The Joint Declaration's recommendations provide guidance on eliminating discrimination and prejudice; ensuring access to information; averting gender-specific restrictions on expression; addressing online sexual and gender-based violence; and on human rights due diligence. Thereby, the Declaration recognizes the gender impact of regulation inevitably has led (historically, regularly) to marginalizing women's expression.

Below a collection of examples of regulatory efforts are presented; despite allegedly seeking varied objectives, including many related to the protection of human rights, they had the effect of (or have the potential to) curtail non-binary persons' freedom of expression.

3.2.2. Sexual expression and cultural expression as freedom of expression

One of the main impacts of looking at freedom of expression from a gender justice lens is the realization that the very meaning of freedom of expression is something different for women and gender-diverse people, when compared to the traditional view based on the lived experiences of cis,

¹⁴ [https://www.moitt.gov.pk/SiteImage/Misc/files/25821%20DPA%20Bill%20Consultation%20Draft\(1\).pdf](https://www.moitt.gov.pk/SiteImage/Misc/files/25821%20DPA%20Bill%20Consultation%20Draft(1).pdf)

¹⁵ <https://digitalrightsfoundation.pk/wp-content/uploads/2021/09/PDPB-2021-Submission-by-DRF.pdf>

¹⁶ Available at <https://www.osce.org/files/f/documents/6/4/517266.pdf>

and mainly white, men. This is particularly evident when reviewing cases on violations of gender and sexual expression, and of cultural expression.

While a liberal approach to freedom of expression is centered mainly on the expression of opinions and ideas, as well as on the issue of speech and press freedom, a gender justice approach to the matter highlights other forms of expression that should be equally protected under law. These embodiments are at the core of the notion of identity, both individual and collective.

As explained by the former Special Rapporteur in the field of cultural rights, Farida Shaheed, [i]ndividual identities promote characteristics that distinguish one person from another, while collective identities privilege similarities among the individual members of a group. However, each individual is the bearer of a multiple and complex identity, making her or him a unique human being and, at the same time, enabling her or him to be part of communities of shared culture (...) Collective identity plays a central role in concepts and processes of inclusion/exclusion that define who we are and who we are not; who the other(s) is/are; what we can do and what we cannot do. Belonging does not confer equality, however, and every ‘collective identity’ is in a constant state of flux, being defined and redefined in response to external factors and internal reflection. Collective identity thus entails contestations over meanings and definitions, and is always linked to the underlying structures and dynamics of power related to accessing and exercising control over economic, political and cultural resources.¹⁷

Collective identities, therefore, are built and reinforced according to power relations within a group, and “cultural rights must be understood as also relating to who in the community holds the power to define its collective identity.”¹⁸ When individual and collective identities clash, a person’s ability to express the first may be put at risk and censored, leading to discrimination, and even violence.

The most common manifestation of this scenario is the weaponization of religion and public morals to restrict freedom of expression. Examples of such are blasphemy laws, legislation criminalizing homosexuality or protecting family values, as well as the removal of content considered indecent or obscene.

a. United States of America: the gag rule in the US school system

In the first nine months of 2021, PEN America identified 54 bills characterized as “educational gag orders”¹⁹ which were introduced or pre-filed in 24 states of the United States of America. The bills referred to ‘prohibited’ or ‘divisive’ concepts that mostly referred to discussions pertaining race, gender, and American history. An example is a bill introduced in Tennessee that sought to ban curricular materials that “promote, normalize, support, or address lesbian, gay, bisexual, or transgender (LGBT) issues or lifestyles.”²⁰

In the same year, Texas state representative Matt Krause wrote a letter to the Texas Education Agency's Deputy Commissioner of School Programs and School Superintendents, announcing an inquiry into the school books offered by the districts. According to National Public Radio (NPR), “Krause attached a 16-page list of roughly 850 book titles, most of which appear to be related to gender identity, sexuality, race, and sexual health. They were published between the 1960s and this

¹⁷ A/67/287, paragraphs 9 and 10. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/30/PDF/N1245930.pdf>

¹⁸ A/67/287, abstract. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/30/PDF/N1245930.pdf>

¹⁹ https://pen.org/wp-content/uploads/2022/02/PEN_EducationalGagOrders_01-18-22-compressed.pdf

²⁰ <https://capitol.tn.gov/Bills/112/Bill/HB0800.pdf>

year, and several have won awards. An analysis from The Dallas Morning News found that ‘of the first 100 titles listed, 97 were written by women, people of color or LGBTQ authors’.”²¹

This trend continued in 2022, according to the American Library Association (ALA).

b. India: The Information Technology Act (2000)

Section 67 of the Indian IT Act²² refers to punishment for publishing or transmitting obscene material in electronic form:

[w]hoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.²³

It is important to note the above section does not define important terms as ‘obscenity’ or ‘lascivious’: this can lead the state authority to interpret the Act as they deem appropriate and cause unintended chilling effects of censorship and persecution.

c. Malaysia: Religion and gender

In Malaysia, religious state authorities have targeted a feminist Muslim women’s rights group named Sisters in Islam (Sis) as a deviant organization through a fatwa²⁴ which called for any ‘liberal and plural’ publications or content to be banned and seized. Internet regulators have also actively blocked online content and initiated investigations against individuals who were accused of spreading anti-Islam content through social media.

According to Serene Lim, “SIS has been an instrumental actor in amplifying the voices of Muslim women to public, decision makers and legislators across various issue i.e. gender-based violence, child marriage, female genital mutilation (FGM), gender equality in Muslim marriages and Islamic Family Laws.”²⁵ The case demonstrates how laws aimed at protecting the exercise of religions have been used to silence women from those same creeds, removing from them the ability to express their views and concerns relating to their rights and the violence they face.²⁶

On cases involving gender and religion, “the critical issue, from the human rights perspective, is not whether and how religion, culture and tradition prevail over women’s human rights, but how to arrive at a point at which women own both their culture (and religion and tradition) and their human

²¹<https://www.npr.org/2021/11/02/1051471236/texas-governor-abbott-calls-for-removal-of-obscene-school-library-books>

²² Available at <https://www.meity.gov.in/writereaddata/files/itbill2000.pdf>

²³ Available at https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf

²⁴ “Fatwa is a formal ruling or interpretation on a point of Islamic law given by a qualified legal scholar (known as a mufti). Fatwas are usually issued in response to questions from individuals or Islamic courts”.
<https://www.britannica.com/topic/fatwa>

²⁵ <https://genderit.org/feminist-talk/we-are-sisters-islam>

²⁶ Malaysian news organization “Free Malaysia Today” interviews members of Sisters in Islam on International Women’s Day in 2011: <http://bit.ly/2tJEzqx>

rights.”²⁷ This case represents a clear example of how regulations are used to curtail women’s voices from debates concerning their own faith. Women should be free to express their views and help define the contours of their communities’ religious practices.

3.2.3. Gendered disinformation

Gendered disinformation is the dissemination of false or misleading information attacking women under the basis of their identity as women: misogynist comments, gender stereotypes, appearance, sexualization, defamation, online harassment and cyberattacks²⁸. The goal is shaming and undermining the target’s credibility in society, in positions of power, and silencing them in the public debate. While the concept is wide and applicable to varied situations, the case below focuses on misogynistic disinformation for professional discredit²⁹.

a. The Philippines: online abuse and offline prosecution of journalists

Maria Ressa, the co-founder and CEO of Rappler has experienced extreme abuse due to her work as a journalist, her gender, and sexual orientation. In March 2021, a case study³⁰ commissioned by the International Center for Journalists (ICFJ) highlighted that most of the disinformation attacks targeted at her were committed by supporters of former President Rodrigo Duterte - who has openly spoken out against Ressa and her work. 34% of the personal attacks against her between 2016-2021 could be considered misogynistic, sexist and explicit. The use of degrading memes, which are not subjected to detection, were common. 40% of the attacks (some of which were coordinated) targeted Ressa on a personal level, using sexist hashtags or insults, including “Queen of Fake News” and “#Presstitute.”

3.2.4. Discriminatory and hate speech

a. Brazil: Provisional Executive Order 1.068/2021

In 2021, President Jair Bolsonaro issued a Provisional Executive Order that intended to forbid the practice of content moderation - except for ‘justified’ cases - under the pretense of allowing ample freedom of expression, communication, and expression of thought. The Executive Order amended the Brazilian Civil Rights Framework for the Internet (“Marco Civil da Internet”) to establish provisions on the use of social media. While the political and official ground underlying the Order was free speech, it was enacted in a context when an expressive amount of content published by the president, his family, and allies had been excluded or flagged on social media under misinformation³¹. The Order also seemed to be a legal response of the federal government to the due process of the Brazilian Law on Freedom, Responsibility and Transparency on the Internet (the “Fake News Bill”)

²⁷ R. Aída Hernández Castillo, “National Law and Indigenous Customary Law: The Struggle for Justice of Indigenous Women in Chiapas, Mexico”, in *Gender Justice, Development, and Rights*, Maxine Molyneux and Shahra Razavi, eds. Oxford University Press, 2002, p. 57

²⁸ <https://www.disinfo.eu/publications/misogyny-and-misinformation:-an-analysis-of-gendered-disinformation-tactics-during-the-covid-19-pandemic/>

²⁹ A thorough analysis of gendered disinformation can be found in the 2021 BPF Gender Output Report. Available at https://www.intgovforum.org/en/filedepot_download/62/20661

³⁰ Maria Ressa: Fighting an Onslaught of Online Violence. Available at <https://www.icfj.org/our-work/maria-ressa-big-data-analysis>

³¹ Washington Post. YouTube removes videos posted by Brazilian President Jair Bolsonaro that spread coronavirus misinformation. Available at <https://www.washingtonpost.com/world/2021/07/22/youtube-bolsonaro-brazil-removal-covid-19/>

in the National Congress, for which the combat of disinformation was the main initial goal. Moreover, the Order tried to hold platforms liable for removing content, modifying article 19 of the Civil Rights Framework - that determines platforms should be held liable only under disobedience of a judicial order of content removal.

Among the exceptions for content moderation listed in the Order, that is, content authorized to be excluded or blocked based on ‘due cause’, was article 8-C, paragraph 1, II, d, which holds that “practice, endorsement, encouragement or incitement of acts of threat or violence, including on the basis of discrimination or prejudice of race, skin color, sex, ethnicity, religion or sexual orientation”³².

By determining as a general rule the prohibition of content removal with sanctions for non-compliance, albeit its established exceptions, the regulation could have created an online environment prone to the dissemination of harmful speech - particularly, distorted speech on political gender violence, hate speech, and misinformation targeting women and LGBTQIA+ people. The uncertainties and broad interpretation loopholes on the exceptions raised the cost of improperly excluding content.

It is also noteworthy that there is no mention of gender-based violence among the listed bypass possibilities, which opens a gap for the maintenance of this type of discourse on social networks. Additionally, the Brazilian regulation reinforces marginalization of gender-diverse people by establishing a biological attribute to a specific form of discrimination when referring to sex-based prejudice. Thus, when the norm excludes said community from its scope, it deprives them of any value of existence.

Political parties and the Brazilian Bar Association challenged the formal and substantial constitutionality of the Executive Order in the Supreme Court. On 14 September 2021, the president of the Senate summarily rejected the Executive Order.

3.2.5. Reporting on gender-based violence

a. Ecuador: regulation against digital sexual violence and computer crimes

On May 2021, the National Assembly approved the Law to Prevent and Combat Digital Sexual Violence and Strengthen the Fight against Computer Crimes, which proposes amendments to the Criminal Code to prevent and tackle online sexual violence. While the objective seems legitimate, the norm brings potential risks of targeting journalists and human rights defenders who try to report sexual and gender abuses. The chilling effect of such regulation could precisely silence those it seeks to protect given the fear of being criminalized - restricting the free flow of information on issues of public interest.

President Guillermo Lasso has vetoed parts of the bill. The article below was vetoed in its entirety:

Art. 11 (art. 179 of the Criminal Code): The person who, without legal consent or authorization, accesses, intercepts, examines, records, reveals, disseminates, publishes or gives any improper or unauthorized treatment to third-party content, personal data and documents, data messages, voice, audio and video, personal photos, postal objects, information contained in computer media, digital content or private or reserved communications, by any means or through any of the information

³² Lima Monteiro, Artur Pericles. Unofficial English Translation of Brazilian Provisional Measure 1068 on Content Moderation (September 13, 2021). Available at <http://dx.doi.org/10.2139/ssrn.3922992>

and communication technologies, will be sanctioned with a custodial sentence of one to three years.³³

3.2.6. Child protection laws

a. Hungary: legal amendments that criminalize gender diversity

Over the past decades, the Hungarian government has issued a series of Act amendments³⁴ to ensure child protection. However, the norms were designed in ways to criminalize gender diversity, limiting human rights such as freedom of expression, information, speech, reproductive rights, free personality development, and others. Below are some examples.

Amendment to Act XXXI of 1997 on the protection of children and guardianship administration:

Section 6/A: For ensuring the fulfillment of the objectives set out in this Act and the implementation of the rights of the child, it is forbidden to make accessible to persons who have not attained the age of eighteen years content that is pornographic or that depicts sexuality in a gratuitous manner or that propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality.

Amendment to Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities:

In section 8 of Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities, the following paragraph (1a) shall be added:

(1a) It shall be forbidden to make accessible to persons who have not attained the age of eighteen years advertisement that depicts sexuality in a gratuitous manner or that propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality.

Amendment to Act CLXXXV of 2010 on media services and mass communication:

In Section 9 (1) of Act CLXXXV of 2010 on media services and mass communication (hereinafter the “Mttv.”) shall be replaced by the following provision:

“(1) With the exception of news programmes, political information programmes, sports programmes, programme previews, political advertisements, teleshopping, community facility advertisements, and public service announcements, media service providers offering linear media services shall classify all programmes they wish to broadcast into one of the categories under paragraphs (2) to (7).”

(2) Section 9 (6) of the Mttv. shall be replaced by the following provision:

“(6) Programmes shall be classified into category V if they are capable of exerting negative influence on the physical, mental or moral development of minors, in particular as a result of having as their central element violence, propagation or portrayal of divergence from self identity corresponding to sex at birth, sex change or homosexuality or direct, naturalistic or gratuitous depiction of sexuality. These programmes shall be rated as follows: not appropriate for audiences under the age of eighteen.”

(3) In section 32 of the Mttv., the following paragraph (4a) shall be added:

“(4a) Programmes shall not qualify as public service announcements and community facility advertisements if they are capable of exerting negative influence on the appropriate physical, mental or moral development of minors, in particular as a result of having as their central element

³³ President Guillermo Lasso vetoed this article. Available at <https://www.eluniverso.com/noticias/politica/presidente-guillermo-lasso-veta-parcialmente-proyecto-de-ley-contra-la-violencia-sexual-digital-y-lucha-contra-delitos-informaticos-nota/>

³⁴ https://njt.hu/translation/J2021T0079P_00000000_FIN.PDF

gratuitous depiction of sexuality, pornography, propagation or portrayal of divergence from self-identity corresponding to sex at birth, sex change or homosexuality.”

Amendment to Act CXC of 2011 on national public upbringing Section 11:

(1) In section 9 of Act CXC of 2011 on national public upbringing (hereinafter the “Nktv.”), the following paragraph (12) shall be added:

“(12) In the conduct of activities concerning sexual culture, sex, sexual orientation and sexual development, special attention shall be paid to the provisions of Article XVI (1) of the Fundamental Law. Such activities cannot be aimed at the propagation of divergence from self-identity corresponding to sex at birth, sex change or homosexuality.”

(2) In subtitle 7 of the Nktv., the following section 9/A shall be added: “Section 9/A (1) A person or organization other than an employee employed as a teacher by an educational and upbringing institution, a professional providing school health services in such an institution and a state organ party to a cooperation agreement concluded with such an institution may conduct an activity in class or organized otherwise for students relating to sexual culture, sex, sexual orientation, sexual development, the adverse effects of drug consumption, the dangers of the Internet, and any form of physical or mental health development (for the purposes of this section, hereinafter the “programme”) only if he is registered by the organ designated by law. (2) Data in the register under paragraph (1) shall qualify as data accessible on public interest grounds that shall be published on the website of the organ designated by law to keep the register under paragraph (1). (3) The register under paragraph (1) shall contain the following:

- a) title of the programme,
- b) contact data and b) name of a natural person programme owner or bb) name and seat of an organization programme owner,
- c) specification of the type of public upbringing institution in which the programme is to be implemented,
- d) date of registration and period (school year) during which the registered programme may be carried out in a public upbringing institution, and
- e) topic of the programme.

3.3. Freedom of association and religion

3.3.1. Background

As another important piece of a democratic society, freedom of association ensures people can easily meet, gather, and constitute assemblies around a topic of shared interest. Freedom of religion or belief secures the right of practice of faith as a single individual and united in assembly. There have been instances that regulation attempted to remove both rights from marginalized groups - either as an attempt of social control by the State or by men-created religious rules.

3.3.2. Case

a. Guatemala: state legal control on non-profit associations and their members

In May 2021, the Constitutional Court of Guatemala revoked an injunction that suspended the implementation of the Decree 4-2020³⁵. The norm amended the Law of Non-Governmental Organizations for Development and the Civil Code in Guatemala to restrict the activities of civil

³⁵ Decreto 4-2020. https://www.congreso.gob.gt/detalle_pdf/decretos/13510#gsc.tab=0

society organizations and amplify state control over them³⁶. The State held that the amendment aimed at improving “the development of Guatemala by establishing mechanisms that allow transparency in the actions of national or international Non-Governmental Organizations”³⁷. It establishes a set of legally disproportionate requirements for the constitution, registration, regulation, operation, and supervision of national and international NGOs, in addition to allowing arbitrary restrictions.

Concerning provisions include³⁸:

- An obligation to inscribe and register non-governmental organizations established abroad
- A *numerus clausus* of types of organizations that are non-governmental, excluding any other institution from this characterization
- A prohibition on the existence of organizations with similar denominations, indicating that the NGO registration will be canceled if it falls under this case
- Articles 5, 8, 9, 10 and 12 impose mandatory registration in various State dependencies, as well as the creation of a centralized registry, which violates international standards on freedom of association. Any NGO which does not update its registration details will be dissolved
- Article 13 criminalizes foreign funding for “activities that alter public order in national territory.” The vagueness of ‘activities that alter public order’ offers large discretion to judges to criminalize NGOs’ activities that report state abuses and express criticism or dissent against government³⁹
- The law authorizes state authorities to request the closure of any NGO that violates the law without offering due process guarantees.

The regulation came into force in a context of increasing harassment and discrimination against women, indigenous journalists, and human rights defenders in the country. Frontline Defenders pointed out that women human rights defenders who work on the protection of land and of sexual diversity are particularly at risk. The organization expresses that drug trafficking and the pandemic have been used as an excuse to enhance state persecution⁴⁰.

In this political and social environment, the Network of Ancestral Healers of Territorial Community Feminism has denounced being under constant risk of political persecution and state surveillance. It is also worth mentioning the recent case of Anastasia Mejía Tiriquiz, indigenous journalist and director of the broadcasting radio and TV station Xol Abaj. She was arrested in September 2020 by the Specialized Criminal Investigation Division of the National Civil Police for the crimes of sedition and attack with specific aggravations⁴¹.

³⁶ Guatemala: UN and OAS experts sound alarm about ‘choking’ NGO law. Available at

<https://www.ohchr.org/en/press-releases/2021/07/guatemala-un-and-oas-experts-sound-alarm-about-choking-ngo-law>

³⁷ La CIDH y su RELE rechazan entrada en vigor de reformas a la Ley de Organizaciones no Gubernamentales en

Guatemala. Available at <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2021/128.asp>

³⁸ El Presidente Giammattei consolida la restricción a la libertad de asociación al sancionar el Decreto 4-2020.

Available at <https://www.omct.org/es/recursos/llamamientos-urgentes/el-presidente-giammattei-consolida-la-restricci%C3%B3n-a-la-libertad-de-asociaci%C3%B3n-al-sancionar-el-decreto-4-2020>

³⁹ NGO oversight law limits and restricts freedom of association in Guatemala. Available at

<https://monitor.civicus.org/updates/2020/03/09/ngo-oversight-law-limits-and-restricts-freedom-association-guatemala/>

⁴⁰ Preocupación por la situación de defensoras mayas de derechos humanos en el nororiente de Guatemala. Available at

<https://www.frontlinedefenders.org/es/statement-report/growing-concerns-regarding-situation-women-human-rights-defenders-northeast>

⁴¹ Fundamedios. Annual report. La calidad de la libertad de expresión retrocedió en la región. Available at

<https://www.fundamedios.org.ec/wp-content/uploads/2021/12/Informe-Anual-Regional.pdf>

4. 2022 BPF Gender and Digital Rights & IGF 2022 Session: takeaways and final considerations

During the IGF 2022 in Addis Ababa, the BPF Gender hosted a hybrid session to discuss the state of regulatory practices which affect digital rights.

IGF 2022 BPF Gender and Digital Rights session

Regulatory Practices: A Friend of Foe to Gender and Digital Rights?

Friday 02 December 2022, 10:45 - 12:15 UTC

[Session Summary](#) and [Recording](#)

Speakers:

- Ms. Marwa Azelmat - Digital Rights Expert, RNW Media (moderation)
- Ms. Mariana Valente, Professor - St. Gallen University
- Ms. Julia Haas, Project Associate Officer - Office of the OSCE Representative on Freedom of the Media
- Ms. Onica N. Makwakwa, Independent
- Ms. Bia Barbosa, Activist - Coalizão Direitos na Rede
- Mr. Theo Jaekel, Director Business and Human Rights - Ericsson
- Ms. Mahima Kaul, Public Policy APAC - Bumble

Key takeaways:

- Despite representing different stakeholder groups, the speakers demonstrated having aligned positions on the protection of gender-diverse communities online.
- Online regulation is needed but should be an empowering tool – women and gender-diverse communities are unable to implement proposals on their behalf since they are out of places of influence and power.
- There is a need to occupy such spaces and/or find allies in negotiation, legislation, and decision-making.
- Regulation needs to present an evidence-based approach; platforms should make it easier for victims to collect evidence (e.g., chats that disappear or images that can be quickly deleted are problematic).
- Similarly, more attention needs to be paid to regulation enforcement. Capacity deficits within current enforcement agencies and content moderation are real issues and can worsen the chain of online violence.
- Products and technologies should be designed with an outlook on possible risks and human rights infringements (e.g., privacy by design). There is the need to look at biases brought into technology from its inception – if not addressed at the outset, it is very difficult to bring about changes once risky behaviors and product misuse are consolidated.
- Policies and actions should protect women on the internet and not from the internet.

- Making the Internet safer for women ought to make it safer for everyone – freedom cannot be exclusive.

The lively discussion which took place in Ethiopia confirms the challenges presented in the cases mentioned in this report, and offers a glimpse of the global picture women and gender-diverse communities face on a daily basis while occupying online environments. All three focus areas analyzed demonstrate that gender is an intersectional factor in the development of technology and regulation, and that equality is noted when institutionalized places of power welcome traditionally marginalized groups.

References

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- [APC EROTICS Global Survey on Sexuality, Rights, and Internet Regulation, 2017](#)
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- [Pakistan's Personal Data Protection Bill \(Draft\), 2018 - Comments and Feedback](#)
- [Joint Declaration on Freedom of Expression and Gender Justice](#)
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- [Misogyny and Misinformation](#)
- [El Universo, Veto en Proyecto de Ley Contra la Violencia Sexual](#)
- [Hungarian Legislation](#)
- [Decreto 4-2020, Guatemala](#)
- [Guatemala: UN and OAS experts sound alarm about 'choking' NGO law](#)
- [La CIDH y su RELE rechazan entrada en vigor de reformas a la Ley de Organizaciones no Gubernamentales en Guatemala](#)
- [El Presidente Giammattei consolida la restricción a la libertad de asociación al sancionar el Decreto 4-2020](#)
- [Preocupación por la situación de defensoras mayas de derechos humanos en el nororiente de Guatemala](#)
- [Annual Report, Fundamedios](#)
- [Cybercrime acts increase surveillance and punishment](#)
- [New Cybercrime Bill in Pakistan leaves much uncleared](#)
- [Reading Surveillance through a Gendered Lens](#)
- [5 reasons why surveillance is a feminist issue](#)

Annexes

Annex I: BPF Gender Institutional Memory - output reports between 2015 - 2021

- 2015: [Online abuse and gender-based violence](#)
- 2016: [Barriers for accessing the Internet](#)
- 2017: [Identification of needs and challenges of diverse women's groups with respect to Internet access](#)
- 2018: [The impact of supplementary models of connectivity on women's Internet access](#)
- 2019: [Beyond access: women, transgender and gender non-conforming people's participation in the digital economy](#)
- 2020: [Violence, harm, pleasure, and content online / Gender mainstreaming within the IGF structure](#)
- 2021: [Gender and Disinformation](#)

Annex II: 2022 BPF theme and focus areas

- Link: <https://www.intgovforum.org/en/content/igf-2022-bpf-gender-and-digital-rights>

Annex III: 2022 BPF Learning Session

During the 2022 process, the BPF Gender and Digital Rights hosted a learning session with Julia Haas, Project Associate Officer at the Office of the OSCE Representative on Freedom of the Media. In an intimate, fireside-like chat, she explained about her policy and advocacy work on freedom of expression as an integral part of human security guarantees. She also discussed the BPF's focus areas with the audience. The [transcript](#) is available online.

Annex IV: IGF 2022 BPF Session Report

- Link: <https://www.intgovforum.org/en/content/igf-2022-bpf-gender-digital-rights-regulatory-practices-a-friend-or-foe-to-gender-and>