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UN Special Rapporteur on Freedom of Opinion and Expression
Call for Inputs: UNGA 76th Report on Gender Justice and Right to Freedom of Opinion and Expression

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About Access Now

Access Now welcomes this opportunity to provide relevant information to the United Nations (U.N.) Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression (the Special Rapporteur) to inform the Special Rapporteur's report to be presented at the 76th session of the General Assembly on Gender Justice and the Right to Freedom of Opinion and Expression.[1] Access Now works to defend and extend the digital rights of users at risk around the world through policy, advocacy, technology support, grants, legal interventions and global convenings like RightsCon. As an ECOSOC accredited organisation, Access Now routinely engages with U.N. Special Procedures in support of our mission to extend and defend digital rights of users at risk around the world.[2]

Introduction

Access Now is pleased to provide input on the Special Rapporteur's thematic report by offering a digital rights perspective. In this submission we address (I) barriers, challenges and threats women[3] experience exercising their right to freedom of opinion and expression online, including gender and intersecting digital divides and internet shutdowns (II) measures necessary to the exercise of freedom of opinion and expression, including privacy and freedom from surveillance and violence online, (III) the role of online intermediaries and (IV) recommendations.

Overall, our submission draws upon examples from various regions worldwide, and highlights stories from our Shutdowns Stories Project, as well as cases from our 24/7 Digital Security Helpline (the Helpline). Nonetheless, it is important to note that while this submission draws upon examples from various regions worldwide, these examples are non-exhaustive, and do not represent the lived experiences of all women seeking to exercise their right to freedom of opinion and expression online. We recognize that further research is required to take into account intersecting structures of oppression, including the situations of transgender people, those with non-binary gender identities, and gender non-conforming people, in addition to individuals' various intersecting identities including, but not limited to, race, ethnicity, sexual orientation, disability, class, language, religion, age, citizenship, and family status.[4]

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[1] OHCHR, Call for Submissions: Gender Justice and the Right to Freedom of Opinion and Expression, 2021.

[2] Access Now, About Us, 2021.

[3] Please note we consider "women" to include everyone who self-identifies as "women." Since Access Now does not specifically address the rights of children, we refrain from making references to "girls" however we note that much research is needed to assess the rights of girls in the context of gender justice and the right to freedom of opinion and expression online.

[4] *See, e.g.*, efforts like the Initiative for a Representative First Amendment, at https://www.ifrfa.org , Equality Labs, at https://www.equalitylabs.org , and Algorithmic Justice League, at https://www.ajl.org.

I. Barriers, challenges, and threats women experience exercising their right to freedom of opinion and expression online

The 2030 Agenda is grounded in human rights. Protecting human rights is therefore necessary to reach the U.N. Sustainable Development Goals (SDGs). Extending access to universal, affordable, open, secure, and high-quality connectivity is therefore essential to exercise human rights in the digital age, and therefore to reaching the SDGs, including SDGs 5 (gender equality) and 16 (peace, justice, and strong institutions).[5] Currently, more than 3.5 billion people remain in the dark — often by malicious design — or are limited to censored and surveilled connections, despite SDG 9.C.[6] As half of the world's population remains offline, we are failing not only to meet the ultimate goal of closing digital divides among countries, but also within countries. The lack of internet access disproportionately affects people in under-served and at-risk communities, such as women, people in racial and ethnic minority groups, rural and indigenous populations, and people with disabilities.[7] People in these groups have traditionally been left at the margins of political power, public policies, and investments. This is also the case when it comes to internet infrastructure and connectivity.

(a) Gender and other intersecting digital divides

Exercising the right to freedom of opinion and expression online is particularly important for the realization of women's human rights. As the Office of the High Commissioner for Human Rights (OHCHR) notes in its report on the gender digital divide, "women activists, including women human rights defenders, increasingly rely on [ICTs] to advocate, communicate, mobilize, protect, access information and gain visibility."[8] OHCHR specifically highlights that "as many women human rights defenders still struggle to gain access to online spaces, the need to share devices, use cybercafes and rely on legacy or 'dumb'[9] mobile telephones may impair their right to freedom of opinion and expression and further contribute to their digital insecurity."[10]

Access to information and communications technology (ICTs) is a key pathway for achieving gender justice through the free exercise of the right to freedom of opinion and expression. Yet, worldwide,

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[5] Access Now, Digital rights are vital for sustainable development, 6 February, 2020.
[6] Sustainable Development Goals Tracker, Sustainable Development Goal 9 Build resilient infrastructure, promote sustainable industrialization and foster innovation, 2018; *see also* UNGA, Information and Communication Technologies for Sustainable Development, Resolution adopted by the General Assembly on 21 December 2020, UN Doc. A/RES/75/202 ("Recognizing that realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all of the Sustainable Development Goals, and emphasizing the need to target science, technology and innovation strategies to address the empowerment of women and girls and to reduce inequalities, including the gender digital divide").
[7] Access Now, More than 3.5 billion left in the dark: why we're still fighting to reach U.N. targets for internet access, 5 November 2020.
[8] OHCHR, Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective, UN Doc. A/HRC/35/9, at para 23.
[9] Usually referred to as "feature phones."
[10] OHCHR, Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective, UN Doc. A/HRC/35/9, at para 23. *See also* Association for Progressive Communications/Connect Your Rights!, "What are the digital security concerns and threats facing women human rights defenders?" (2012). *See also* Association for Women's Rights in Development, "Our right to safety: women human rights defenders' holistic approach to protection", p. 19. See also Point of View, Free To Be Mobile, a non-for-profit organization based in India that aims to equip women, girls, queer and trans persons to freely inhabit digital domains released a report "Free to Be Mobile," which provides 10 stories to capture online violence through the use of mobile phones.

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women are less likely than men to have access to digital technologies, a divide that exacerbates inequality and prevents women from exercising their human rights. According to the International Telecommunications Union (ITU), in 2019, before the COVID-19 pandemic, only 48% of women had access to the internet.[11] Such disparities represent a significant challenge, particularly in some regions of the world. For example, in **Africa**, "women are less likely than men [...] to have phones with access to the internet, to own computers, to access the internet regularly, or to get news from the internet or by social media."[12] However, geography is not the only indicator that determines whether individuals have tools to participate in the digital age.[13] Scientific research finds that there is "a strong and persistent political bias in the allocation of [i]nternet coverage across ethnic groups worldwide."[14] Other indicators impacting an individual's access to the internet, including race, must also be considered. For instance, according to the PEW Research Center (Internet and Technology), in the **United States** "92% of Whites nationally used the internet in 2019, compared to 85% of Blacks and 86% of Hispanics."[15] Examining intersecting digital divides, such as race and ethnicity, therefore challenges "the frequent assumption that the uneven global distribution of digital technology can be mitigated by economic forces and incentives," like competition and smart regulations – or deregulation – of telecommunication companies.[16] Such analyses are particularly imperative when discussing gender justice and access to the internet, and the social, economic, and health consequences arising from the COVID-19 pandemic and its aftermath.

Lack of access is one of the primary barriers for women to exercise their right to freedom of opinion and expression online. Internet connectivity is essential for economic, social, cultural, political, and civic participation in the digital age. Meaningful participation in turn is essential for freedom of expression. While half the world lacks access to the internet,[17] who has access to the internet and meaningful connection[18] is determined by, among other factors, gender, race, education, geography, income, and age. Even where service is available, digital literacy and online resources remain out of reach for many women.

Gender and other digital divides represent a significant challenge, particularly in some regions of the world. Yet the majority of **North and Latin American countries** should be commended for their efforts to address gender divides relatively well. According to Doreen Bogdan-Martin, Director of the ITU's Telecommunication Development Bureau, "more men than women use the Internet in every single

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[11] International Telecommunication Union, Development Center, Measuring Digital Development. Facts and Figures, 2020, P. 8.

[12] Carmen Alpin Lardies, Dominique Dryding and Carolyn Logan, African women have less access to the Internet than African men do. That's a problem, *The Washington Post*, 8 March 2020.

[13] Access Now, We can't reach the U.N. goals for sustainable development without the internet, 22 June 2017.

[14] Nils B Weidmann, Suso Benitez-Baleato, Philipp Hunziker, Eduard Glatz, Xenofontas Dimitropoulos, Digital discrimination: Political bias in Internet service provision across ethnic groups, *Science* Vol 353 Issue 5304, 9 September 2016 DOI: 10.1126/science/aaf5062.

[15] PEW Research Center Internet & Technology, Internet/Broadband Fact Sheet, 12 June 2019; See also National Telecommunications and Information Administration, The State of the Urban/Rural Digital Divide, 10 August 2016.

[16] Nils B Weidmann, Suso Benitez-Baleato, Philipp Hunziker, Eduard Glatz, Xenofontas Dimitropoulos, Digital discrimination: Political bias in Internet service provision across ethnic groups, *Science* Vol 353 Issue 5304, 9 September 2016 DOI: 10.1126/science/aaf5062; Access Now, We can't reach the U.N. goals for sustainable development without the internet, 22 June 2017.

[17] Access Now and Public Knowledge, Human Rights Principles for Connectivity and Development, October 2016; *See also* ITU, New ITU data reveal growing Internet uptake but a widening digital gender divide, 5 November 2019.

[18] Alliance for Affordable Internet (A4AI), Meaningful Connectivity - unlocking the full power of internet access, 2020.

region of the world except the Americas – and I applaud the efforts of policy-makers in the nations of North and Latin America for their success in promoting digital equality."[19]

The Americas is the only region with a higher percentage of women than men using the internet,[20] but some countries in the region, such as **Bolivia**, still present a reversed situation with 43.5% of men using the internet compared to 36.4% of women.[21] In terms of gender-based violence, in spite of reports by civil society[22] recounting growing incidents of online harassment and threats on social media, there is no systematic public policy aimed at addressing digital violence in Bolivia and many other countries. With the rise of online and ICT facilitated violence during the COVID-19 pandemic, practices and strategies deployed to combat such violence and provide women with the tools allowing them to safely exercise their rights to freedom of expression online are increasingly crucial.[23]

Bridging gender and other digital divides goes beyond ensuring all women have access to the internet. As EQUALS notes in a recent research report led by the United Nations University, bridging the gender digital divide also "means providing training so [women] have the skills to use information and communication technologies (ICTs) to their benefit, and taking active measures to boost the numbers of women in ICT leadership positions, including in academia and entrepreneurship."[24] For example, women with disabilities face added barriers when accessing training on the use of digital technologies, particularly if a service, website, app, or software is designed without the person with disabilities' needs and interests in mind.[25] These accessibility barriers compounded during the pandemic, when schools struggled to serve students with learning difficulties and disabilities through remote programs.[26] Lack of access shrinks the space to seek and impart information, and limits the exercise of the right to freedom of expression and participation in knowledge societies.

GSMA's 2018 research found that in **India**, 26% of men but only 8% of women had accessed the mobile internet.[27] Even when women are able to get online, their freedom of expression is further threatened by the fact that they are closely monitored by male family members.[28] The Internet Democracy Project (IDP), based in New Delhi, documents how technology can further deepen the scrutiny that women are subject to in the digital age, and fights back against gender-based restrictions to privacy and free expression.[29] Their research helps build an understanding of these challenges and promotes policy debates to address them.[30]

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[19] Doreen Bogdan-Martin, Measuring digital development: facts & figures 2019, ITU, 5 November 2019.

[20] International Communications Union, Development Sector, Measuring Digital Development. Facts and Figures, 2020.

[21] Gender Summit 12 para América Latina y el Caribe, El uso de internet: Brechas de género y desafíos para la autonomía económica de las mujeres en la era digital, 6 December 2017

[22] CPBnoticias, En Bolivia se presentó una guía anti-acoso digital, 12 April 2018.

[23] UN Women, Online and ICT Facilitated Violence Against Women and Girls during COVID-19. Brief, 2020.

[24] UN News, In tech-driven 21st century, achieving global development goals requires closing the digital gender divide, 15 March 2019.

[25] See Deepti Samant Raja, World Bank Development Report, Background Paper: Digital Dividends Bridging the Disability Divide through Digital Technologies, World Bank Group, 2016, at page 22.

[26] Education Week, Schools Struggled to Serve Students With Disabilities, English-Learners During Shutdowns, 19 Nov 2020.

[27] GSMA, Connected Women - The Mobile Gender Gap Report 2018, 2018.

[28] Internet Democracy Project; Access Now, Internet Democracy Project: Fighting gendered surveillance and access disparities in India, 28 March 2018.

[29] Internet Democracy Project; Access Now, Internet Democracy Project: Fighting gendered surveillance and access disparities in India, 28 March 2018.

[30] Id.

The internet has proven to be a vital tool for women to amplify their voices, express themselves online and beyond. In an IDC report submitted to the U.N. Special Rapporteur on Violence against Women, the authors highlighted the importance of protecting women's ability to remain anonymous while taking advantage of these opportunities online, to stay safe in patriarchal culture that seeks to stop them from doing so.[31] **Anonymity, and encryption,**[32] are necessary for enabling open and secure access to ICTs, and therefore essential to the exercise of human rights, such as the rights to freedom of association and assembly, online.[33] Those advocating for gender justice often benefit from anonymity online. For example, the Feminist Principles of the Internet[34] declare:

> *We defend the right to be anonymous and reject all claims to restrict anonymity online. Anonymity enables our freedom of expression online, particularly when it comes to breaking taboos of sexuality and heteronormativity, experimenting with gender identity, and enabling safety for women and queer persons affected by discrimination.*

Anonymous browsing networks like Tor facilitate safe access to the internet for survivors of domestic violence. Such networks help ensure that abusers cannot track their movements online, allowing survivors to freely access information and resources, and contact aid and protection services without fear of discovery and reprisal.[35]

When women have internet access, they nonetheless face other challenges including online hostility when they are (willingly or not) identified by their gender online. Research finds that women get twice as many death and sexual violence threats online as men do, yet only a tiny fraction of women report these incidents. Such violence against women can be perpetrated by the private parties, as well as the governments. For example, in **Belarus**, the government is increasingly using anti-extremism and anti-terrosim laws[36] to retaliate against protesters and government critics, online and off, which disproportionately affects women. In addition to legal persecution, Belarusian women protesters, activists, and opposition figures face sexism, harassment, and gender-based violence offline and online.[37] Moreover, worrying trends exist whereby women protesters are faced with threats to deprive them of their custodial rights of their children.[38] For women to be safe while exercising their fundamental human rights, we must bridge such digital divides and ensure safe, open and secure .[39]

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[31] Internet Democracy Project, Submission by the Internet Democracy Project in response to the Special Rapporteur on Violence agaisnt Women, its causes and consequences' call on online violence against women, 2 November 2017

[32] *See, e,g*., Access Now, To Protect Privacy in the Digital Age, World Governments Can and Must Do More, 25 January 2021

[33] Internet Democracy Project, Submission by the Internet Democracy Project in response to the Special Rapporteur on Violence agaisnt Women, its causes and consequences' call on online violence against women, 2 November 2017; *See, e.g.* David Kaye, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 22 May 2015.

[34] *See, e.g.*, Principle: Anonymity.

[35] *See* MalwareBytes, Defending online anonymity and speech with Eva Galperin: Lock and Code S02E03; *see also*, The Verge, Domestic violence survivors turn to Tor to escape abusers, 2014.

[36] Reform.by, Lukashenko has signed the law "On counteracting extremism," 14 May 2021; Human Constanta, Whom do the Belarusian authorities consider terrorists? 18 May 2021.

[37] Wolfgang Benedek, OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus, OSCE, 29 October 2020; Amnesty International, Belarusian authorities are targeting women who participate in protest activity, 17 July, 2020.

[38] Wolfgang Benedek, OSCE, "OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus," 29 October 2020, p. 34.

[39] Access Now, Access Now Backs UN Efforts to Bridge Digital Divide, 8 March 2017.

(b) Internet Shutdowns[40]

Internet shutdowns are increasingly targeted at minorities and vulnerable groups, and women are disproportionately affected by shutdowns.[41] Especially where women's presence is already limited in the public spaces, further restrictions on the access to information are increasingly detrimental to their exercise of rights and freedoms.[42] At the same time, the internet is essential to save lives and maintain the livelihoods of all people, particularly amid the COVID-19 pandemic. People depend on the internet and need access to social media and messaging platforms to connect with each other, get important news and updates, pursue educational and work opportunities. Internet shutdowns not only aim to silence government watchdogs and press from accessing, sharing and providing information, internet shutdowns harm civil society, depriving people from connecting with loved ones, expressing and sharing their experiences, accessing education and jobs, health services so crucial especially during the COVID-19 pandemic.

In **Uganda**, the government shut down the internet on January 13, 2021, during the disputed election. Access Now's Shutdowns Stories project captured personal stories from diverse communities in Uganda which shed light on the devastating repercussions of this abuse of power and attack on their human rights and public health. Some Ugandans lost trust in their government, fearing they would be punished for any attempt to get back online, such as using virtual private networks (VPNs). Others suffered both practical and emotional hardship from losing human contact and access to information. People with disabilities had their livelihoods halted. Women lost a channel to ensure equitable access

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[40] Update on internet shutdowns: Access to the internet is also being maliciously denied to groups already facing challenges as it is evident through the rise of internet shutdowns. Data collected by Access Now and the #KeepItOn campaign found that between January and May 2021 alone, at least 50 internet shutdowns were reported in 21 countries (Access Now, #KeepItOn; Access Now, #KeepInOn update: who is shutting down the internet in 2021?, 7 June 2021.) 2021 has seen extension of the long shutdown that started in prior years -- the people of **Jammu and Kashmir** suffered the longest internet shutdown on record in a democracy that lasted from August 4 2019 until February 5, 2021, and they are still suffering from the repeated and intermittent shutdowns (Access Now, Who is Shutting Down the Internet in 2021?, 7 June 2021). Similar is the situation in **Ethiopia**, where over 100 million people were disconnected from the internet for two weeks on the height of the COVID-19, with the **Tigray region** being cut off from the internet since November 2020 -- with the situation exacerbated by blocking of the phone calls and texts. The latter started working intermittently again, but the internet remains shut down. Across the world, the governments are deploying what seems to be similar playbook by tightening information control through blocking platforms that do not comply with their orders: Russia tried to throttle traffic from Twitter after it refused to take down accounts that government wanted taken down while Uganda blocked Facebook when it took down government-linked accounts that were spreading misinformation. Across the world - in **Iran**, **Cuba**, **Chad**, **Kazakhstan**, **Jordan**, **Myanmar**, internet was either completely shut down or disrupted during protests, with government using network disruptions as a tool not only to suppress protests but also to hide human rights violations that are occuring, suppressing people's rights to freedom to peaceful assembly as well as opinion and expression. In May 2021, when Israeli Airforce destroyed or compromised telecommunication infrastructure, the Gaza strip was plunged into total and partial shutdowns, silencing the voices of the people of **Palestine**. When they were able to connect, they found that major platforms such as Facebook, Instagram and Twitter removed their content and suspended their accounts, without providing any adequate explanation of their actions (Access Now, Sheikh Jarrah: Facebook and Twitter Systematically Silencing Protests, Deleting Evidence, 7 May 2021). Most recently, since June 2021, in **Nigeria**, a partial shutdown prevents people from accessing Twitter, a platform that is crucial for many to exercise their right to freedom of opinion and expression. This "indefinite" suspension comes amidst a wave of online oppression following both the #EndSARS protests that were globally trending on Twitter last October and Twitter's more recent decision to remove President Muhammadu Buhari's tweet threatening genocide on Nigerian citizens in the south. It also builds on longstanding efforts to pass regressive social media regulation, including a government directive to tax so-called over-the-top (OTT) services (Access Now, Nigeria Blocks Twitter, 5 June 2021).

[41] Deborah Brown and Allison Pytlak, Why Gender Matters in International Cybersecurity, Association for Progressive Communications, April 2020; *see also* DW.com, India's Internet Shutdowns Function like 'Invisibility Cloaks', 2020 ("Shutdowns also have a particularly adverse effect on women's lives. In areas where women's presence in public spaces is already limited, having further lack of access to information is detrimental to their rights and freedoms.")

[42] DW.com, India's Internet Shutdowns Function like 'Invisibility Cloaks', 2020 ("Arshie Qureshi, a writer and feminist activist from Kashmir, wrote in a personal account of an extended shutdown in Kashmir in 2016: "The only window to [the] outside world for many women happens to be social media. I, like many other women, would wait for some male member from the house to return and bring an update on what was happening outside."); *see also* "The Gendered Impact of Intentional Internet Shutdowns": Panel at the Global Digital Development Forum 2021; GenderIT.org, How Internet Shutdowns Affect the Lives of Women in Manipur, 6 December 2018

to knowledge.[43] Even though the internet censorship and social media blackout has ended, the impact the disruptions had on their lives and rights lingers on.[44] From the stories of those affected by the shutdown, collected by Access Now and #KeepItOn coalition, it is clear how greatly the shutdown impacted the women. This is just one of the stories from an Ugandan woman affected by the internet shutdown:

> *The internet shutdown affected my home schooling, with children at home for over a year. In addition, it affected my work because as a researcher, I rely on the internet to access a lot of information. So for the days when the internet was off, I could not do my work efficiently and effectively. With the internet off, I couldn't exercise my freedom of expression on political issues, and speak up against injustices. [. . .] I do a lot [of this] online and [on] social media.[45]*

Similar developments occurred in **Myanmar** in February 2021[46] and **Belarus** in August 2020.[47] In Belarus, the government shut down the internet during the August 2020 elections, which affected not only the right to protest the results of the contested elections — the protests led by women[48] — but also denied Belarusians their right to freedom of opinion and expression.[49] The internet shutdown also led to significant interruptions in the work of independent press. Journalists, prevented from immediate upload of photos and other content, were vulnerable to the subsequent police detention, where their equipment was seized or even destroyed. According to the Belarusian Association of Journalists, during the 9-12 August internet shutdown, 87 journalists were detained in Belarus, including 18 women.[50] According to the Human Rights Center "Viasna" at least 95 women were arrested during the four days of the Internet shutdown in Belarus, meaning that all of them were prevented from receiving clothes, food, hygiene and medicine items from their families which were unable to receive any information about the place of their detention from the online sources.[51]The situation has only worsened in 2021 as recent amendments to the Law on Telecommunications grants Belarusian authorities the discretion to restrict the functioning of telecommunication networks and their constituent telecommunication means (reducing the time and volume of their use)[52] or in other words to shut down the internet in order to prevent situations that pose a threat to national security.

Overall, internet shutdowns violate free exercise of freedom of opinion and expression and damages education, economic and health outcomes for all, but especially women whose marginalisation was

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[43] Access Now, Internet Shutdown Stories From Uganda, 9 February 2021.
[44] *Id.*
[45] *Id.*
[46]In Myanmar, for nearly two and a half months since the violent military coup in February 2021, the junta has intermittently shut down fiber optic and fixed cable connectivity throughout the night. As of April 28, fixed-line connectivity in Myanmar is resuming across the country. The vast majority of people in Myanmar, however, rely on fixed wireless connectivity and mobile data connectivity — which remain unavailable. "The majority of people in Myanmar essentially remain in a total blackout, while the junta continues to escalate its serious human rights abuses." Access Now, Update: internet access, censorship, and Myanmar coup.
[47] Access Now, Belarusian Election tainted by internet shutdown and state-sponsored violence, 13 August 2020
[48] Ivan Nechepurenko, In Belarus, Women Led the Protests and Shattered Stereotypes, The New York Times, 1 October 2020.
[49] Access Now, Belarusian election tainted by internet shutdown and state sponsored violence, 13 August 2020
[50] Belarusian Association of Journalists, Repression against journalists in 2020 (table, list of arrested), 31 December 2020.
[51] Human Rights Center "Viasna", Administrative persecution statistics (table, list of arrested)
[52] President of the Republic of Belarus, The Law on Telecommunications was signed, 24 May 2021.

specifically exacerbated during an unprecedented global health crisis caused by the COVID-19 pandemic, when access to health information is vital to save lives.[53]

II.   Measures necessary to the exercise of freedom of opinion and expression

(a) Privacy and freedom from surveillance and violence online

Privacy is an important enabler for the rights to freedom of expression, and it is key to building the trust of vulnerable and marginalized individuals and communities when they come online, particularly to exercise their right to express opinion. As noted by Association for Progressive Communications (APC), "surveillance has historically functioned as a tool of patriarchy, used to control and restrict women's bodies, speech, and activism."[54] Therefore, fighting for stronger legal protections alone is not enough to address the systemic harms of surveillance and the disproportionate impact on women, which is exacerbated when identities intersect. For instance, APC explains that "participating in queer or feminist activism online and/or navigating social media as a member of a sexual minority, particularly when additionally racialized, can come at great cost, ranging from involuntary 'outing' of one's identity, to harassment, social stigma, violence and persecution."[55]

Gender digital divides and safe access to the internet must be addressed by enhancing digital security, tracking emerging threats to the privacy and safety of particular communities, as well as offering support through helplines and education.[56] Governments and other stakeholders can start such efforts by consulting data collected from helplines and building upon existing international human rights norms and standards. In 2013, a global coalition of civil society, privacy, and technology experts drafted the International Principles on the Application of Human Rights to Communications Surveillance (the Necessary and Proportionate Principles). The "Necessary and Proportionate Principles" – endorsed by over 600 organizations and over 270,000 individuals worldwide – show how existing human rights law applies to modern digital surveillance.[57] Further, the Yogyakarta Principles outline principles and state obligation in the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics. Principle 36 specifically focuses on the Right to the Enjoyment of Human Rights in Relation to ICTs, including the right of freedom of opinion and expression.[58]

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[53] Access Now, #KeepItOn: internet shutdowns during COVID-19 will help spread the virus!, 17 March 2020.

[54] Association for Progressive Communications (APC), Feminist Principles of the Internet 2.0, August 2016.

[55] Association for Progressive Communications (APC), Providing a gender lens in the digital age: APC Submission to the Office of the High Commissioner for Human Rights Working Group on Business and Human Rights, November 2018, at page 12.

[56] Governments and other stakeholders can start such efforts by consulting data collected from helplines and building upon existing international human rights norms and standards. In 2013, a global coalition of civil society, privacy, and technology experts drafted the International Principles on the Application of Human Rights to Communications Surveillance (the Necessary and Proportionate Principles). The "Necessary and Proportionate Principles" – endorsed by over 600 organizations and over 270,000 individuals worldwide – show how existing human rights law applies to modern digital surveillance. The Yogyakarta Principles further outlines principles and state obligation in the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics. Principle 36 specifically focuses on the Right to the Enjoyment of Human Rights in Relation to ICTs, including the rights to peaceful assembly and association.

[57] "Necessary and Proportionate Principles"

[58] Yogyakarta Principles

At Access Now, we operate a **24/7 Digital Security Helpline** (the Helpline), which provides direct support to at-risk users and organizations globally to strengthen digital security and build capacity in local communities. Our Helpline is intentionally reaching out to specific at-risk communities, and looking to help spawn regional and local versions to better serve diverse populations. The Helpline just released its report on the first 10,000 cases it has handled since 2013, highlighting key trends and findings, exploring case studies, and unpacking data from across the globe.[59]

In the Digital Security Helpline's view, one of the biggest challenges to guarantee the enjoyment of women's rights to freedom of opinion and expression – while ensuring gender equality and addressing the specific needs of diverse women – is that women are still vulnerable and are easy targets for attacks and retaliation online (through account compromise, harassment, death and sexual violence threats, doxxing and revenge porn) and off (persecution), for expressing their opinions and fighting for their rights. This is especially true in conservative and patriarchal societies where women are considered to play a certain traditional, rigid gender role, and to "know their place." States do not do enough to protect the rights of women from such attacks, and sometimes participate in the attacks themselves.[60]

According to the recent Helpline report, women are targeted online not only by the public officials and religious and community leaders, but also by the society at large.[61] Online harassment, especially of women and gender minorities, has been dramatically increasing on social media platforms since 2017. [62] Women and individuals and organizations working to defend women's rights are also targeted by hacking, phishing, doxxing, censorship, and other forms of gender based violence online. In fact, the 10,000th case Helpline handled involved a phishing attack against a Costa Rican women's rights NGO on Facebook.[63]

As of June 17, 2021, the Helpline has opened a total of **667 cases coming from clients who work on women's rights issues.** This number has been growing steadily each year, from 6 in 2013 to 153 in 2020. **Top five countries where these clients work include Iran (130), Costa Rica (32), Tunisia (31), Pakistan (29), Syria (23).** Out of all cases the Access Now Helpline has handled related to women's rights organizations from 2013 through 2020, **the largest number of cases (23.6%) related to account compromise, followed by harassment (9.4%) and censorship (7.6%). Facebook was the platform where Helpline beneficiaries reported the most attacks (20.5% of cases), followed by Twitter (10.3%) and Instagram (8.9%).**

[59] Access Now, Strengthening civil society's defenses: Digital Security Helpline hits 10,000 cases, 7 June 2021.
[60] For instance, in Russia, LGBTIQ and feminist activist Yulia Tsvetkova faced government retaliation for advocating for body positivity and respect for women and their sexuality online. A social media user complained about her vagina drawings as pornography and the government opened a criminal case against her. See Helen Holmes, Artist Yulia Tsvetkova, Accused of Distributing Pornography, Begins Hunger Strike, Observer, 3 May 2021; In 2021, in Belarus, government authorities blocked female-led independent news media website Tut.by and arrested its leaders and journalists arrested. See Reporters Without Borders, Belarus tries to silence the most popular independent news site, 19 May 2021.
[61] Access Now, Strengthening civil society's defenses: Digital Security Helpline hits 10,000 cases, 7 June 2021.
[62] Id.
[63] Id.

These findings indicate that women's rights organizations (and women in general) continue to be disproportionately targeted for attack on social media platforms.[64] There is an increasing number of initiatives aimed to assist survivors of gender-based harassment and intimate partner violence in addressing harms related to digital technologies.[65]

III. The role of online intermediaries

(a) Content governance free of discriminatory biases

Where hate speech policies are under-inclusive – that is, where they fail to address lawful but harmful speech—online spaces may become an unsafe or unwelcome environment for members of marginalised groups, effectively pushing them out. This is particularly problematic in light of the important role played by internet intermediaries. The result may be a 'democratic deficit', whereby individuals from marginalised groups — women and non-binary persons, racial and ethnic minorities, members of the LGBT community — are unable or unwilling to fully participate in the democratic discourse.[66] Moreover, policies may be underinclusive in failing to account for intersectionality — that is, hate speech targeting individuals or groups on the basis of two or more identifying factors.[67]

The ability to safely participate in online platforms is critical for marginalised groups to form a community and find support.[68] Automated tools develop their ability to identify and distinguish different categories of content based on the datasets they are trained on. If these datasets do not include examples of speech in different languages and from different groups or communities, they will not be equipped to parse these groups' communication. Automated tools may either miss the potentially harmful or illegal content by generating false negatives or wrongfully label legitimate expressions as for instance, hate speech, so-called false positives. This way, those targeted by online hate speech and harassment remain without any effective remedy against abuse; while at the same time, other, legitimate speech may be unjustifiably restricted.

The impact of discriminatory bias can manifest as "biased censorship" against content posted by groups and their members who are at the same time often targeted by hateful expressions and online abuse, specifically LGBT community. While any user-generated content that is deeply context dependent is difficult to automatically identify and remove, groups likely to be targeted by online abuse and hate speech may themselves find their communications censored and thus, being silenced. Applying a tool to a domain or group of speakers who do not closely match the groups represented in the training data can lead to erroneous classifications that disproportionately affect historically marginalised and oppressed groups. Hence, automated tools developed with the purpose to identify "toxic speech" can themselves introduce further collective harm by failing to recognise the context in

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[64] Id.

[65] See, e.g., Digital Rights Foundation's Cyber Harassment Helpline and the Cornell Clinic to End Tech Abuse.

[66] Nani Jansen Reventlow, The power of social media platforms: who gets to have their say online? Lilith, 4 February 2021.

[67] UN Strategy and Plan of Action, p 28.

[68] Tomasev N., McKee, K., Kay J., Mohamed S., Fairness for Unobserved Characteristics: Insights from Technological Impacts on Queer Communities, 2021

which speech occurs and thus, reinforcing harmful stereotypes against marginalized groups.[69] Therefore, U.N. Special Rapporteurs should provide recommendations to identify, analyse and assess significant systemic risks stemming from content moderation systems against marginalised groups and their negative impact on their participation in public discourse.

While governments can play a strong role in addressing concerns impacting one's right to privacy, the issue cannot be solved by governments alone. Recalling the U.N. Guiding Principles on Business and Human Rights, which just commemorated its 10th anniversary, social media companies have a specific responsibility to respect all human rights, including the right to non-discrimination and freedom of expression.[70] Yet private companies remain insensitive to and even perpetuate issues that women face on their platforms. Across the world, women's rights groups face online attacks, not just from governments and institutions, but also within societies. These companies' policies and practices, including whose voices are amplified and silenced, have a direct impact on achieving gender justice in freedom of expression. For instance, "when Google chose a rainbow-colored doodle for the Sochi Olympics, they were expressing a corporate interest in LGBT rights … However, unlike a rainbow flag, other forms of sexual speech remain less welcome, such as … Facebook's ban of women's nipples during the Black Lives Matter nude protest in San Francisco."[71]

Increasing the dialogue between social media platforms and civil society groups across regions is an opportunity to better understand and tackle the manifestations of violence in the digital space. Indeed, social media and other tech platforms have systemic barriers to address in order to meaningfully meet the needs and interests of all their users. As Maya Indira Ganesh rightfully questions, "how can we rethink the role of these platforms and companies when they take credit for supporting popular uprisings around the world, yet have no accountability to their users in the regulation of speech?"[72]

The #MeToo movement sparked a global phenomenon on social media of sharing personal experiences and expressing solidarity with victims of sexual harassment and abuse. In 2020, in **Tunisia,** thousands of women participated in the #EnaZeda campaign, the Tunisian version of #MeToo, which rose in popularity following allegations of sexual harassment and public indecency against a newly sworn-in member of parliament. On International Women's Day that year, Access Now and Business and Human Rights Resource Centre, shared lessons learned on the potential and limitations of social media as a platform for amplifying women's voices and catalyzing the movement for equality

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[69] A recent study demonstrated that an existing toxicity detection system would routinely consider drag queens to be as offensive as white supremacists in their online presence. The system further specifically associated high levels of toxicity with words like 'gay', 'queer' and 'lesbian'. For further details, please consult Gomes A., Antonialli D., Dias Oliva T., Drag queens and Artificial Intelligence: should computers decide what is 'toxic' on the internet?, 2019.

[70] Further noting the 2018 United Nations Human Rights Council Internet Resolution "encourages business enterprises to work towards enabling technical solutions to secure and protect the confidentiality of digital communications, which may include measures for encryption and anonymity, and calls upon States not to interfere with the use of such technical solutions, with any restrictions thereon complying with States' obligations under international human rights law" See Human Rights Council, Resolution on the promotion, protection and enjoyment of human rights on the internet, UN Doc A/HRC/38/L. 10/Rev. 1, 4 July 2018.

[71] Nadine Moawad, One and the Other: Fighting Online Misogyny, Fighting a Corporatised Internet, Arrow for change: Sexuality, Sexual and Reproductive Health and Rights, and the Internet, ARROW, Vol 22, No 1, 2016, p. 8.

[72] Maya Indira Ganesh, The New Green: The Landscapes of Digital Activism, Arrow for change: Sexuality, Sexual and Reproductive Health and Rights, and the Internet, ARROW, Vol 22, No 1, 2016, p. 4.

in the digital era.[73] While the thousands of testimonies that women shared online powerfully exposed the prevalence of sexual harassment in Tunisia, and demonstrated the need for the government to ensure there are legal remedies and psycho-social resources in place to protect Tunisian women, these testimonies also reveal new forms of gender-based violence emerging via **Facebook**[74] — the social media platform with the most users in Tunisia. The spread of online gender-based violence[75] constitutes a threat to those using social media as a platform to express their opinions, feelings, and views on diverse topics.

Platform policies also impact individuals and communities differently based on their sexiual orientation and gender identity. For example, Facebook's "real name" policy, which tied online account handles to one's legal identity, was enforced in ways that put burlesque dancers and drag performers, among others, at greater risk of account suspension and reprisal for their identities and livelihoods.[76] By adjusting their use policies to protect female identifying persons online, the internet intermediaries such as social media networks would help to ensure that they are free to exercise their right to freedom of opinion and expression and not become targets of gender-based violence on and off the internet.

IV. Recommendations

Universal, affordable, open, secure and high-quality access to the internet, privacy, freedom from surveillance and online violence are crucial to achieve gender justice in the exercise of the right to freedom of opinion and expression. Access Now therefore respectfully urges the following recommendations:

States:

1. Fulfill international obligations to protect the right to freedom of expression and promote access to information by guaranteeing universal, affordable, open, secure and high-quality access to the internet, free of restrictions, shutdowns and gender based violence.

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[73] International Women's Day, International Women's Day; *See also* Access Now, Facebook in the era of #EnaZeda: A toxic or liberating platform for women?, 6 March 2020 (this blog post also provides tips to users at-risk for posting and sharing stories on Facebook).

[74] Facebook has also been used as a space to target Tunisian feminist activists and to lead defamatory shaming campaigns against women's rights defenders. Back in 2017, feminist figure and head of the Individual Freedoms and Equality Committee (COLIBE) Bochra Belhaj Hmida was the subject of a massive social media attack following her submission of a list of recommendations on individual freedom in Tunisia. More recently, solidarity movement Falgatna denounced the digital campaign of defamation, stigmatization, and incitement to hatred against Tunisian women activists after women human rights defenders carried the coffin of deceased human rights figure Lina Ben Mhenni. Nawaat, Falgatna: flashmob féministe contre les agression sexuelles (video), 15 December 2019; Falgatna, #Communiqué de Soutien, 3 February 2020; For another recent example regarding Emma Chargui, a 27-year old Tunisian blogger, was prosecuted for posting a religious satire on Facebook concerning the COVID-19 scenario in the country, see Amnesty International, Blogger prosecuted for humorous post, 2020.

[75] According to feminist activist Amal Bint Nadia, several incidents have shown how violence against women is reproduced in digital spaces. Several users of the #EnaZeda Facebook group have reported receiving unwanted, harassing messages after sharing their testimonies online. Further, countless testimonies of #EnaZeda campaign members illustrate the rampant online harassment Tunisian women continue to experience on social media: from profiles sharing nudes on Facebook Messenger to strangers harassing women in the comment section. The #EnaZeda Facebook page has highlighted countless comments aiming to intimidate and threaten women who posted their testimonies online.

[76] The Verge, New 'Nameless Coalition' challenges Facebook's real-name policy, 5 Oct. 2015.

2. Adopt and implement a human rights-based approach centered on the needs and interests of women, and their intersecting identities, and integrate both civil and political rights with economic, social, and cultural rights, to close digital divides and ensure everyone can exercise their right to freedom of expression online and off.
3. Prioritize funding for digital development that meets the diverse needs and interests of all women and reallocate existing funds toward building inclusive digital infrastructure, particularly amid the COVID-19 pandemic.
4. Promote universal and non-discriminatory digital literacy by providing training to women to develop their skills to use information and communication technologies.
5. Commit to stopping online and offline harassment and intimidation of women and women's rights defenders. Specifically, repeal laws that disproportionately target such populations; investigate attacks; and pass legislation to ensure adequate protection.
6. Protect and promote encryption and anonymity, including against demands for "tracing" of private messages, or weakened encryption standards.
7. Affirm and promote the integration of the Yogyakarta Principles into national and international law, and national policy frameworks respecting sexual orientation and gender identity.

Private Sector:

8. Explicitly acknowledge and publicly commit to maintain tech platforms as spaces that enable human rights, such as the right to freedom of expression and opinion for all rights holders, through the full operationalization of the U.N. Guiding Principles on Business & Human Rights.
9. Adequately prepare for a range of threats to the rights of users -- particularly those at the margins -- including where bandwidth is overwhelmed and congested as a result of demonstrations and ensure that the company deploys extra capacity throughout such events.
10. Challenge censorship and service limitation requests from states, using all available tools of law and policy, in procedure and practice. Notify affected users and the public of any such requests and any orders implemented, early and often.
11. Promote open identity standards and avoid "real name" policies that link online identities with legal names.
12. Provide all with appropriate and accessible channels to communicate questions, concerns, and grievances about terms of use, company policies, or restrictions on access, freedom of expression, and privacy.
13. Guarantee everyone's rights to appeal, and facilitate effective remedies in accordance with international human rights standards that balance the rights, interests, and needs of victims, in addition to the company's capacity to effectively execute such remedial mechanisms.
14. Enable independent stakeholders, such as civil society organizations or human rights experts, to regularly check content-moderation and content-distribution systems and to ensure that platforms' policies are in line with international human rights legal standards to mitigate the risk imposed by algorithmic decision making on users' human rights.

International Organizations:

15. Establish a global fund to increase internet access. This fund should include the full participation of local communities and civil society in technical skill transfer and digital literacy programming, especially with gender focus (building on the Global Connect Initiative and EQUALS projects) to ensure digital inclusion.
16. Preserve civil society space online and offline. When hosting physical or virtual meetings, particularly those that amplify voices of women and other marginalized groups, such as the Commission on the Status of Women, prioritize and be transparent about opportunities, maintain digital security standards and extend accessibility and respect confidentiality as appropriate.
17. Commit to promptly addressing any case of intimidation or reprisal that is reported in connection to women's human rights defender's participation in public processes on a digital platform directly with the state in question and in partnership with the senior official responsible for reprisals.
18. Call on U.N. Special Rapporteurs to provide recommendations to identify, analyse and assess significant systemic risks stemming from content moderation systems against marginalised groups and the negative impacts on their participation in public discourse.

Access Now (https://www.accessnow.org) defends and extends the digital rights of users at risk around the world. By combining direct technical support, comprehensive policy engagement, global advocacy, legal interventions, grassroots grantmaking, and convenings such as RightsCon, we fight for human rights in the digital age.

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