



Submission by the TrialWatch Initiative of the Clooney Foundation for Justice in Relation to the Upcoming Thematic Report on Gender Justice by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

This note responds to the call for submissions regarding gender justice and the right to freedom of opinion and expression, and in particular the request for information on “barriers, challenges and threats” that “women in the public sphere face in exercising their freedom of opinion and expression online and offline.”

The [TrialWatch Initiative](#) of the Clooney Foundation for Justice (CFJ) monitors criminal proceedings around the world against journalists, women and girls, minorities, members of the LGBTQ+ community and human rights defenders and advocates for those unjustly convicted. Of relevance to the Special Rapporteur’s forthcoming thematic report, TrialWatch monitoring has shown how the authorities use laws that criminalize ‘offensive’ speech, as well as laws on ‘immoral’ conduct, to harass women who speak out in ways they deem socially unacceptable or who are critical of the government (or both). These kinds of laws—the latter directly, the former more indirectly—facilitate the imposition of gendered limits on speech. These barriers to women’s right to freedom of expression are exacerbated by a procedural possibility in some jurisdictions: that a private party may either bring, or spur, criminal prosecutions for speech.

CFJ recommends that the forthcoming report address the need to reform laws that criminalize speech in order to protect women’s right to freedom of expression. Of particular concern to CFJ, based on our monitoring and reporting, are laws that, either on their face or as applied, afford authorities broad discretion and so can facilitate the targeting of women who are perceived not to comply with social norms and gender paradigms. The ability of private parties to initiate criminal defamation suits may also be susceptible of abuse. Further, CFJ recommends that the Special Rapporteur consider seeking disaggregated data from states on the gender breakdown of those subject to prosecution for ‘offensive’ speech and other analogous offenses.

Below are descriptions of some of the cases we have monitored, or are monitoring, that demonstrate these phenomena.

Vague Laws and ‘Uncomfortable’ Speech: Too often, the authorities use overbroad laws to prosecute women who express themselves using language that is seen as incompatible with a traditional conception of gender roles and decorum. The criminal laws in these cases are

characterized by a lack of clear definitions, which leaves it to the beholder (often men) to define what is criminal, and what is not.

- In Uganda, *Stella Nyanzi* was prosecuted for posting a poem critical of Uganda’s President on Facebook. Using an anti-colonial protest tactic known as “radical rudeness,” the poem was intentionally graphic—referring for instance to the “cursed vaginal canal” through which Uganda’s President had been born. One of the charges brought against Ms. Nyanzi was ‘cyber harassment,’ which is defined under Ugandan law as “making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent.” But the law provides no definition of what would constitute “obscene, lewd, lascivious or indecent” language. Throughout the trial, which was monitored by CFJ’s partner the American Bar Association Center for Human Rights, there were indications that Ms. Nyanzi’s poem was simply assumed to be unlawful because it contravened social norms: Indeed, from the outset, the magistrate said that “[t]he accused is rude and disrespectful;” later, one of the prosecution’s witnesses who had been called to testify to the community’s views on the poem admitted that he had not interviewed any women in the course of his investigation and that his religious beliefs had shaped his evaluation. Following proceedings that were marred by other violations, Ms. Nyanzi was convicted and sentenced to eighteen months’ imprisonment (although she was subsequently acquitted on appeal). As found in the [TrialWatch Fairness Report](#) on her case, Ms. Nyanzi’s prosecution and conviction violated her right to freedom of expression.
- In Malaysia, in another case currently being monitored by CFJ’s partner the ABA Center for Human Rights as part of TrialWatch, blogger *Dian Abdullah* faces charges based on her criticism of the government’s response to COVID-19. In particular, the prosecution has alleged that one of her blog posts was ‘abhorrent in nature.’ The post in question referred to the Malaysian Prime Minister with a swear word (“puki mak,” loosely translated as “your mother’s vagina”), but was broadly focused on the disparate impact of COVID-19 on the poorest and most marginalized. Just as in the Uganda case, the law in question criminalizes communications that are “obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person,” without defining terms such as ‘offensive.’ To date, the only witness called to testify in support of the prosecution on this charge has simply described his personal reaction to the post. (For a different blog post, Ms. Abdullah was also charged with ‘causing fear or unrest’; as to this charge, the only prosecution witness to date has asserted that the post ‘caused discomfort’ to those who read it, although he admitted to not having interviewed anyone about their reactions.). As a [report](#) on this case found, Ms. Abdullah’s prosecution violates her right to freedom of expression.

‘Morality’ Laws: A second tool governments can use to suppress women’s ostensibly controversial or critical speech is laws that ‘protect family values’ or forbid certain practices deemed ‘immoral.’ These laws, even when ostensibly gender-neutral, risk disproportionately affecting women and girls.

- In Egypt, for instance, TrialWatch monitored the trial of *Haneen Hossam* and *Mawada al-Adham*, two women charged with violating “family principles and values” for photos and

videos that they posted of themselves on social media platforms—many of which simply consisted of them singing and dancing. As described in CFJ’s [statement on the case](#), the court’s judgment, however, spoke of the risk that women might seek to “attract[] young men who visit that platform” and used freighted terms, such as an assertion that one defendant had “seduc[ed] [other women] to follow her.” It focused heavily, too, on the assertion that the women’s videos aimed to use ‘immoral’ means to achieve material gain. This violated their right to freedom of expression, as well as their right to freedom from discrimination.

- In Russia, likewise, Human Rights Embassy has been monitoring the trial of LGBTQ-rights activist [Yulia Tsvetkova](#) as part of TrialWatch. She faces charges of distributing pornography to minors based on a set of abstract drawings of women’s genitalia that she posted on social media as part of a body-positive campaign. While her trial has been closed to the public, the indictment suggests that the charges may have been brought because the images are not heteronormative and do not comply with traditional conceptions of femininity; the indictment refers for instance to the role the images could play in creating “a stereotype of female sexuality as an isolated phenomenon that exists outside of sexual relations with men ” and the reduction of “the idea of human sexuality and the idea of female genitalia (‘vagina’) to being an exclusive source of bodily pleasure, while ignoring the topic of heterosexual relationships, pregnancy, childbirth, family relationships.” There is thus a concern that this law is being enforced in discriminatory fashion.
- In Morocco, TrialWatch monitored the trial of journalist *Hajar Raissouni*, who was convicted of the ‘crimes’ of abortion and sex outside of marriage (although she was subsequently pardoned by the King of Morocco). As found in the [TrialWatch Fairness Report](#) on her case, there were strong indications that these problematic—but rarely enforced—laws were invoked against her because of her journalism. While Ms. Raissouni’s speech was not the ostensible target, the use of ‘morality’ laws—and the public scrutiny to which she was subjected—was presumably another way to indict her reporting in the eyes of society; indeed, when she was interrogated, she has said she was asked questions about her political writings.

Private Prosecutions: A third dynamic that warrants attention is the ability of private parties to provoke prosecutions, which can permit private enforcement of gendered social norms.

- In Peru, journalist *Paola Ugaz* is facing criminal defamation charges brought by a private party after she criticized coverage of certain suits against her as ‘misogynistic.’ In particular, Ms. Ugaz has previously reported on alleged physical and psychological abuse committed by a Peruvian Catholic lay organization, the Sodalitium Christianae Vitae (SCV). In response, parties affiliated with or supportive of the SCV have brought various suits against her. These suits, in turn, were covered by a Catholic news website *La Abeja*, an avid defender of the SCV. Ms. Ugaz criticized *La Abeja*’s coverage of the suits and her reporting, saying, among other things, that “there is a campaign being waged through defamatory networks against women journalists, especially because with female journalists there is a sort of, I don’t know, a disposition . . . a lot of male chauvinism.” On this basis, the director of the *La Abeja* website filed a criminal defamation suit against Ms. Ugaz. In

the Peruvian system, private citizens can file complaints regarding certain offenses, including criminal defamation, without the participation of a public prosecutor. As found in a [report](#) by CFJ's partner the ABA Center for Human Rights, her prosecution violates her right to freedom of expression.

- In Pakistan, TrialWatch is monitoring the trial of *Meesha Shafi*, a popular singer who has said she was subjected to “sexual harassment of a physical nature at the hands of a colleague from my industry.” Other women likewise alleged harassment by the same celebrity. Ms. Shafi's claim of sexual harassment was dismissed by an Ombudsperson on the ground that it did not involve “an employer-employee relationship.” At the same time, the man in question responded by lodging a complaint with Pakistan's Federal Information Agency (FIA). The FIA investigated the man's complaint expeditiously (as compared to a complaint Ms. Shafi herself had also filed). And right before some of the women who had corroborated Ms. Shafi's account were to have testified in a civil case the man in question had brought against her, the authorities charged Ms. Shafi and others with transmitting false information electronically that ‘harms the reputation or privacy’ of a person. One of the women who had been about to testify--and now faced charges--withdrew her testimony and issued an apology, raising questions regarding the timing of the filing of the charges by the authorities. The criminal proceedings against Ms. Shafi and others remain ongoing.

CFJ would be pleased to provide any other information on these cases that might be helpful to the Special Rapporteur.