



Submission from the Global Forum for Media Development (GFMD) on the UN Special Rapporteur's call for submissions on "Gender Justice and the Right to Freedom of Opinion and Expression"

The following submission was produced by the Global Forum for Media Development (GFMD), following a convening of an all-network learning and policy meeting on June 3, 2021, with specific input from Fondation Hirondelle together with the University of Sheffield and The Centre for Law and Democracy (CLD). Further references are made to a submission to the same call for contributions from International Media Support (IMS). The submission has been structured as a series of responses to several of the key questions provided by the UN Special Rapporteur on Freedom of Opinion and Expression. Any references to supplementary research are reflected in citations in the footnotes.

GFMD is an international network of around 200 journalism support and media development organisations working across more than 70 countries. Established in 2005 in Amman, Jordan, and based in Brussels, GFMD's core value is to support the creation and strengthening of journalism and free, independent, sustainable, and pluralistic news ecosystems, as defined by the declarations of UNESCO at conferences in Windhoek, Almaty, Santiago de Chile, Sana'a, and Sofia. Its main focus is to ensure proper collaboration as well as an exchange of information and experience among its members with a view to creating a strong, independent, and pluralistic media environment, which contributes to the development of empowered societies.

1.A. What barriers, challenges and threats do women in the public sphere face in exercising their freedom of opinion and expression online and offline?

Violence against women journalists: There is a continued and severe problem of safety of women journalists and those belonging to the LGBT community, as illustrated in research from [the International Center for Journalists \(ICFJ\)](#) and the [International Federation of Journalists \(IFJ\)](#).

Gendered Disinformation: Gendered disinformation as a form of gender-based violence is understudied and deserves more attention as it is a phenomenon that we currently know quite little about.

Hate speech: Hate speech, and the fact that sexist hate speech is not identified as hate speech, deserves greater attention. Sexist hate speech ultimately poses a democratic problem as it pushes women out from the public space.

Representation in media: When it comes to gender-equal representation in media, women must first be invited to speak and/or present on all topics and not only on issues supposedly of interest to them – or gender specific issues. If they appear only to talk about gender-related issues, their voice will be excluded from mainstream or traditionally male-oriented issues, which affect women too. Newsrooms, and media more generally, must therefore maintain a balanced, broad, and continually updated, address book of contacts and experts to speak on all topics and issues.

Including male voices as examples of women’s empowerment: If women are restricted to speaking only on women-related topics, men are, in turn, excluded from them. The media must include more men who have been involved in female empowerment to enable other men to identify with the broadcasts, underpinning the message that female empowerment does not just concern women. This will promote media’s transformative potential (or the ability to encourage women to challenge the social norms, attitudes, and constraints restricting their opportunities)ⁱ.

Unsafe/unsupportive media environments: Media must also provide an environment in which women feel secure and sufficiently confident to appear as sources of information. This also includes ensuring opportunities for women to talk in national or regional languages in which they have the confidence to speak, without being judged – or feeling they are being judged – for being uneducated.

Unequal opportunities to speak/be represented: Once ‘at the table’, women must be given an equal opportunity to speak. Research conducted at Studio Kalangou in Niger by Dr Emma Heywood (2020) highlighted an imbalance not only in the number of women on radio compared with men, but also the airtime given to women. As Heywood states, “The discrepancy between males and females in the broadcasts is particularly important on radio, where, because of the lack of visual presence, appearance is signalled only by participants’ spoken contributions. Also, because more female guests are invited on to the women-related programmes, it could be perceived that the issues being discussed only concern women.”

Unclear pathways to public participation: Gender-equal representations of women in and through media may lead to women developing a stronger belief in the abilities of other women. One challenge to women is that they may not identify sufficiently with successful women in media, and therefore may feel distanced from the case in hand. Clear guidance and information are needed on how women can increase their participation in society (for example, through politics).

Feeling of isolation: Women in remote or isolated areas do not receive the same voice as those in capitals or other urban areas.

1.B. What are the distinct challenges faced by those who experience multiple and intersecting forms of discrimination?

Perceptions and stereotypical roles of women in media: Perceptions of women are widely considered from the viewpoint of individual women's trajectories and the manner in which they could increase their agency leading to self-improvement. However, the multiplicity of relationships that constrain women and reinforce cultural values must be considered. Women cannot be empowered just as individuals and must not be discussed as a unitary construct focusing on male-female relationships (a widespread critique of development studies discourse).

In research conducted at Studio Tamani, Mali (Heywood and Ivey, 2021) it was found that when women were portrayed as part of a 'web' of individuals, they were always associated with others – often in secondary positions – for example in relation to in-laws and husbands, upholding social norms.ⁱⁱ

Media programmes must portray women in relation to other individuals and to other groups or roles (including with in-laws, siblings, widows, husbands, men, family, and children) challenging the assumed man/woman binary within patriarchal societies. They must determine the cultural and structural values or webs which shape women's status in broadcasts. The "plurivocality" of women, in terms of their experience, expertise, and perspectives, must also be considered. In doing so, this will nuance the individualised and/or homogenised perspectives of woman portrayed in development contexts, particularly with regard to their empowerment.

3. What in your view are the key elements of a gendered perspective on the human right to freedom of opinion and expression? What would a feminist perspective add to the understanding of this right?

A gendered approach to supporting the right of freedom of opinion and expression would ensure that the issue of inclusion of women's perspective and voices in the media, is increasingly present in media development programmes and within newsrooms as a way to enhance women's freedom of expression and opinion. Yet inclusion is not an end in itself. Women need more equitable access to knowledge and opportunities to not only be included but be active and heard when included.

Structural changes are also needed in media organisations to facilitate women's opportunities: flexible working hours to consider childcare; provision of onsite childcare where required; and greater training for women by women amongst women enabling women journalists to speak freely and be trained in a safe environment.

4. Do you see any legal gaps, inconsistencies or controversies that should be clarified in this report, e.g. between protecting the right to freedom of expression and protecting women from ICT violence? Please indicate any specific issues in the international legal framework that in your view would benefit from further analysis in this report.

Hate Speech: The regulation of hate speech varies from region to region but mostly concerns ethnic and religious minorities rather than sexism and sexual orientation and gender-identity. There is a gap in the fact that sexist hate speech is not recognised as hate speech in many contexts.

State Responses: State responses to gender-based online violence and harassment are sometimes clumsy and overly focused on criminal responses. Instead, a more nuanced range of policy and legal interventions is typically necessary. Legal reform often needs to focus on coordinating and updating a range of existing laws, including privacy/data protection laws, laws focused on gender-based violence, criminal codes, intellectual property laws, and others.ⁱⁱⁱ

Criminal laws are appropriate for some online behaviour that often has strongly gendered aspects, such as distributing intimate images without consent. In some cases, existing legislation can be adapted to the online context, but there are also some narrow categories where new criminal provisions may need to be designed. However, criminal provisions are also an area where laws frequently are overly sweeping and raise serious human rights concerns.

The Special Rapporteur's report should articulate clear guidelines around appropriate standards for crimes such as "cyber harassment", "cyber bullying", and "cyber stalking". Where these laws are enacted without sufficiently precise definitions, they may be used as a weapon against women activists and journalists instead of a means to protect them.

One of the most well-known examples of this is Uganda's Computer Misuse Act, 2011, which criminalised "cyber harassment", defined as using a computer to make requests or suggestions which are "obscene, lewd, lascivious or indecent", among other things.^{iv} Charges were brought against Ugandan academic and activist Stella Nyanzi, based on this and other provisions, for a Facebook post calling the Ugandan President Yoweri Museveni "a pair of buttocks".^v

It is very important that any such laws are drafted in clear language and with specific intent requirements. A good practice is to have exceptions in place for discussion of public interest matters or public figures. Concepts such as "harassment" should be clearly defined, including what behaviour rises to a sufficient level to constitute harassment. Many countries already have laws criminalising offline harassment, which may focus on actions such as repeated unwanted communications or threats to life and safety, which can be adapted to the online context.

A better approach may be to expand existing legislation addressing stalking, revealing personal information or invading privacy, rather than creating a new "cyber harassment" crime.

Other areas where criminal sanctions may be appropriate include non-consensual sharing of intimate and explicit images or actions such as “doxing”, although in both cases it will often be possible to address these through updating existing criminal and privacy laws.

Realistically, few women are likely to pursue civil lawsuits and criminal cases are slow and challenging to prosecute. Faster responses like restraining/protective orders and orders for content takedown are needed to address harmful content aimed at women.

This includes laws which empower women (and others) to take action to remove private content distributed without their consent, such as intimate images or their private identifying information such as addresses and telephone numbers. This can be quite challenging and there are not always clear legal avenues for doing so, with some women resorting to copyright laws. Better privacy laws and remedies are needed in this area.

- Laws and policies enabling this need to carefully define private information, however. This should not become a cover for politicians or other public figures, for example, to target those who reveal public information about themselves that may be in the public interest.
- One way to do this is to draft remedies focused on specific types of information (such as private intimate images or home addresses).
- Generally, better practice is for any content takedown orders to come from courts. However, provided the body has strong independence from political interference, independent commissioners or other regulatory entities may also play a role. In some cases, specialised bodies may be better equipped to deal with highly sensitive personal information and gender-specific concerns. They may also be able to act more rapidly.

One potential example of this is Australia’s eSafety Commissioner, whose precise powers vary depending on the type of content, but who can in some circumstances issue removal notices or initiate civil actions/injunction requests in the courts. This includes a complaint system for non-consensual sharing of intimate images and another for severe cyber-bullying of children.^{vi}

- Like broadcast regulators, such regulators would need to have strong protections for their independence and precisely defined procedures for considering complaints and issuing notices, along with an opportunity for an appeal against their decision.
- The Convention on the Elimination of All Forms of Discrimination against Women, along with the jurisprudence of the Committee on the Elimination of Discrimination against Women, make it quite clear that States have responsibilities to investigate, prosecute, punish and provide reparations for gender-based violence by non-State actors.^{vii} The Committee has provided significant guidance and recommendations to States over the years on the myriad of reforms needed to address the persistent challenge of poor investigation and prosecution of gender-based violence. The failure of States to meet these requirements has long meant offline gender violence is rarely

addressed or prosecuted. These same underlying problems are amplified in the online context where additional jurisdictional and technical challenges exist.

- States should focus on these measures rather than on enacting new criminal provisions to target online harmful speech directed at women, except where those new measures are genuinely necessary and respect human rights principles noted above. Effective investigation and prosecution of crimes against women is unlikely to raise difficult freedom of expression questions (outside of more general questions related to the scope of State surveillance powers). In contrast, decreased impunity for gender-based violence can strengthen women's ability to exercise their right to freedom of expression.
- This is particularly true for crimes against female journalists and female human rights defenders. Again, this is an area where international human rights standards are reasonably well developed.

10. What role has legacy media played in aggravating or addressing the challenges women face in exercising their freedom of expression? What do you think the legacy media can do to empower women and make the public space safe for them, especially for women journalists?

The changes have to come from the whole sector, not only from within the media organizations. Starting from journalism school, there is a need for modules on female journalists' safety and media management for inclusion and equality. From this, we need to see real life application of these new models of organization, safety, and management.

8.A. What specific measures have platform providers and intermediaries taken to i) protect women's freedom of opinion and expression; ii) protect women from online gender based violence, harassment, intimidation and disinformation; iii) promote women's equal access to the digital space; iv) address grievances and provide remedies to women users; v) ensure accountability of the intermediaries?

8.B. To what extent do you find these measures to be fair, transparent, adequate and effective in protecting women's human rights and promoting women's empowerment?

9. What do you think internet intermediaries should do to protect women's right to freedom of opinion and expression and make the online space safe for women?

Key concerns: The major tech platforms and digital intermediaries (Facebook/Twitter/Google etc.) have taken steps towards trying to combat gender-based harassment and violence on their platforms. However, below is an overview of a few key remaining concerns:

- Women reporting gender-based violence on online platforms describe that the complaints mechanisms are not very reliable, user friendly or transparent, and complaints often go unanswered or are dismissed. There is not great clarity around who makes decisions about whether or not complaints proceed.^{viii}

- A lack of algorithmic transparency and information about how certain content is prioritised has raised questions about algorithms favouring abusive content, since such content often generates reactions and is seen as “popular”. Lack of transparency on these issues has made it challenging for researchers to understand the impacts algorithms are having on how harassing or abusive content is featured.^{ix}
- Another concern is the lack of consultation and collaboration with women, civil society, and women from a diverse array of backgrounds when companies design policies. It is extremely important to see greater consultations and collaboration with women when designing these policies, including women from the Global South and from diverse backgrounds (not merely one or two major women’s organisations who serve as “default” references).

Encryption and anonymity: Preserving options for anonymity and encryption online is crucial for women journalists who rely on it to protect source confidentiality, women who use anonymous accounts to engage more safely in public discourse, and for women those who are at risk of surveillance and retaliation from government actors. Human rights law also clearly protects the right to anonymous speech and the right to use encryption tools.

However, anonymous accounts/“trolls” are also a major source of online violence and harassment directed at women. Such persons may be individuals acting on their own, but also may be linked to coordinated disinformation strategies. A 2020 UNESCO Survey found that 57% of women journalist respondents stated that sources of online violence against them were unknown or anonymous, while 41% thought they had been subject to an orchestrated disinformation campaign.^x

This suggests that greater efforts are needed by social media companies to screen for fake/inauthentic accounts, those that indicate they are part of “troll farms”, or otherwise do not represent real persons and those that operate in a manner designed to spread disinformation (although this should be done in a way that protects online anonymity). While this concern is often raised in the context of disinformation, it may also impact women public figures who are the target of smear campaigns.

Related to this and as previously stated, gendered disinformation represents a much understudied aspect of online gender-based violence. Increased research must be conducted into this area.

Non-Mainstream Platforms: The current report focuses on women are already public figures and who often experience gender-based violence on the main social media platforms, such as Facebook and Twitter. There are separate and very complex questions about exploitation of women and girls on more specialised platforms that cater to more prurient interests, some which operate illegally but others which, at least in some jurisdictions, operate legally. Discussions of intermediary liability and platform responsibility do not always distinguish carefully between how these concepts may apply for social media giants, who essentially operate as public forums, and more specialised platforms that have been found to have high

levels of harmful online content, such as explicit images of children on websites like OnlyFans.^{xi} It may be worthwhile to acknowledge these distinctions in the report and that specialised standards may be needed to address the protection of women and girls on these platforms.

ⁱ Emma Heywood (2020) Radio Journalism and Women's Empowerment in Niger, *Journalism Studies*, 21:10, 1344-1362, DOI: [10.1080/1461670X.2020.1745668](https://doi.org/10.1080/1461670X.2020.1745668)

ⁱⁱ Emma Heywood & Beatrice Ivey (2021) Radio as an empowering environment: how does radio broadcasting in Mali represent women's "web of relations"?, *Feminist Media Studies*, DOI: [10.1080/14680777.2021.1877768](https://doi.org/10.1080/14680777.2021.1877768)

ⁱⁱⁱ This point is also made at American Bar Association, USAID and Riwi, *Global Perceptions of Gender-Based Violence Online*, September 2019, p. 36, <https://www.americanbar.org/content/dam/aba/directories/roli/misc/study-global-perceptions-of-gbv-online-2019.pdf>.

^{iv} Uganda, Computer Misuse Act 2011, Section 24, <https://ict.go.ug/wp-content/uploads/2019/12/UGANDA-Computer-Misuse-Act-No.-2-of-2011-1.pdf>

^v As described by the U.N. Working Group on Arbitrary Detention, finding her detention arbitrary because (among other reasons) it was based on her exercise of her right to freedom of expression. U.N. Working Group on Arbitrary Detention, Opinion No. 57/2017, 11 October 2017, https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/04/A_HRC_WGAD_2017_57.pdf.

^{vi} Most of the powers of the Commissioner are regulated by the Enhancing Online Safety Act, 2015, <https://www.legislation.gov.au/Details/C2018C00356>. They are summarized by the Commissioner on their website at <https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>.

^{vii} Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No.35, para. 24, 26 July 2017, undocs.org/CEDAW/C/GC/35.

^{viii} Inter-American Commission of Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Women Journalists and Freedom of Expression*, para. 9, <http://www.oas.org/en/iachr/expression/docs/reports/WomenJournalists.pdf#>

^{ix} This is also discussed in Article 19, *Online Harassment and Abuse against Women Journalists and Major Social Media Platforms*, 2020, p. 15, <https://www.article19.org/wp-content/uploads/2020/10/Gender-Paper-Brief-2.pdf>.

^x Julie Posetti et al., *Online Violence against Women Journalists*, UNESCO, <https://unesdoc.unesco.org/ark:/48223/pf0000375136/PDF/375136eng.pdf.multi>.

^{xi} See, e.g., <https://www.bbc.com/news/uk-57429900>