

General Assembly Report on Gender Justice:

Submission to the Special
Rapporteur on the right to freedom
of opinion and expression

Input from
IT for Change, India and InternetLab, Brazil

June 2021

This is a joint submission by IT for Change (India) and InternetLab (Brazil). Our submission draws from our IDRC-supported research project *Recognize, Resist, Remedy* which is focused on exploring legal-institutional and socio-cultural responses to online sexism and misogyny, with special attention to the challenges of postcolonial democracies in the Global South.

See <https://itforchange.net/online-gender-based-hate-speech-women-girls-recognise-resist-remedy> and <https://www.internetlab.org.br/pt/projetos/discurso-de-odio/>

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1. Overview

We would like to commend the Office of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for turning the spotlight on the empowerment of women and girls. As the first ever report in the mandate's 27 year history to be devoted exclusively to the challenges that women face in exercising their freedom of opinion and expression, this stocktaking is a momentous milestone. It also holds special significance, as human civilization prepares itself for institutions adequate to the digital turn.

The normalization of sexism and misogyny online has prevented women and non-binary individuals across the globe from meaningfully realizing their right to free expression, an essential precondition of the right to equal public participation. Covid-19 has exacerbated the problem. Research carried out by Mythos Labs for the UN Women Regional Office for India and Pacific demonstrates that there was an overwhelming increase in both the volume of misogynistic Facebook posts and Tweets as well as searches for sexist profanities during the pandemic, as compared to previous years.² As the UN Secretary-General eloquently appealed in his March 2021 address to the Commission on the Status of Women, the pandemic cannot be allowed to roll back the gains in the struggle for gender justice, especially in relation to women's right to equal participation in the public sphere, free from the threat of gender-based

1 This is a joint submission by IT for Change (India) and InternetLab (Brazil). Our submission draws from our research collaboration on addressing gender-based hate speech online, attuned to the challenges of postcolonial democracies in the Global South. See <https://itforchange.net/online-gender-based-hate-speech-women-girls-recognise-resist-remedy> and <https://www.internetlab.org.br/pt/projetos/discurso-de-odio/>

2 UN Women (2020). Social Media Monitoring on COVID-19 and Misogyny in Asia and the Pacific. Available at: <https://asiapacific.unwomen.org/en/digital-library/publications/2020/10/ap-social-media-monitoring-on-covid-19-and-misogyny-in-asia-and-the-pacific>

violence.³ The dream of #GenerationEquality cannot be realized unless the weaponization of the right to free expression by a powerful few to suppress the voices of the underprivileged many is tackled front and centre. From this starting point, we offer the following inputs for consideration with respect to the Special Rapporteur's forthcoming report to the General Assembly.

2. Key elements of a gendered perspective on freedom of expression

Q3. 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?

2.1 Gendering the right to free expression

The right to freedom of expression and the right to equality are often seen in conflict with one another, but, in actuality, they are mutually reinforcing values. The former underlines the place of free and open debate as the cornerstone of liberty and democracy, while the latter concerns itself with the non-discriminatory treatment of all individuals in public life.⁴ Freedom of expression is jeopardized when a part of the population does not enjoy the same access to information or the same opportunities to participate in public debate. States fail their obligations under international human rights law when they do not take action to ensure that all individuals under their jurisdiction are able to make full and meaningful use of their freedom of expression. This is often the case as “women and girls across the world have increasingly voiced their concern at harmful, sexist, misogynistic and violent content and behaviour online”.⁵

3 See UN Secretary-General's Statement on 15 March 2021, UN Secretary-General's remarks at the Opening of the 65th Session of the Commission on the Status of Women. Available at: <https://tinyurl.com/48m54dts>

4 UN General Assembly (2019) Promotion and protection of the right to freedom of opinion and expression. A/74/486, para 4. Available at: <https://undocs.org/A/74/486>

5 UN Human Rights Council (2018) Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective. A/HRC/38/47, para 14, Available at: <https://undocs.org/A/HRC/38/47>

A gendered perspective on the human right to freedom of opinion and expression must begin with an affirmation of its foundational role in enabling women's equal participation in the economic and political realm and the achievement of an equal society, as outlined in the Human Rights Council's *Resolution 23/2: The role of freedom of opinion and expression in women's empowerment*. As *Resolution 23/2* expressly acknowledges, the "discrimination, intimidation, harassment and violence, including in public spaces, that women and girls face" must be recognized as a thwarting of their capabilities to participate fully in "economic, social, cultural and political affairs".⁶

In the digital paradigm, as Frank La Rue, former Special Rapporteur on the freedom of opinion and expression, pointed out in his 2011 Report to the UN General Assembly (A/HRC/17/27), "the Internet has become a key means by which individuals can exercise their right to freedom of opinion and expression".⁷ Online sexism, misogyny, and cultures of cyberviolence inhibit the full enjoyment of this right, undermining women's ability to effectively engage in public debate, as noted by the 2013 *Report of the Working Group on the issue of discrimination against women in law and in practice* to the General Assembly (A/HRC/23/50, para 66).⁸

2.2 Feminist perspectives

A feminist perspective of the human right to freedom of opinion and expression underlines the need for women and non-binary people to have a space of their own – to explore the world on their terms, forge connections, and self-shape their identity and opinion. For the socially marginalized who have been deprived of the legitimacy to belong in public discourse, emancipation is a journey of both critical self-discovery and collective solidarity. The internet provides the affordances for this process of encountering and shaping new meanings and

6 UN Human Rights Council (2013) *The role of freedom of opinion and expression in women's empowerment*. A/HRC/RES/23/2. Available at: <https://www.refworld.org/docid/53bd1c254.html>

7 UN Human Rights Council (2011) *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue. A/HRC/17/27, para 20. Available at: <https://undocs.org/en/A/HRC/17/27>

8 UN Human Rights Council (2013) *Report of the Working Group on the issue of discrimination against women in law and in practice*. A/HRC/23/50, para 66. Available at: <https://undocs.org/A/HRC/23/50>

actions. It is the room that marginalized individuals can make their own for their self-building. These alternative discursive arenas in which members of subaltern groups invent their counter-discourses and formulate oppositional interpretations of their identities, interests, and needs – what feminists have called subaltern counterpublics – enable self-organizing in opposition to mainstream publics.⁹ Today, on social media, feminist counterpublics negotiate with the hegemonic public sphere and other counterpublics, forging solidarity, challenging exclusions, and continuously formulating and asserting feminist demands.

In the context of online hate speech, a gendered perspective on the freedom of expression also recognizes the constitutive nature of speech, and how it shapes social realities, including social and institutional structures of oppression and marginalization.¹⁰ As women and non-binary individuals engage with the public sphere, they must confront the hegemonic values and norms in the very structures of historical social discourse and the manner in which speech co-constitutes power. The structures of digital space present, therefore, a paradox for women: they enable agency, but also perpetuate gendered power structures, normalizing sexualized attacks on women as routine expressions of male power and privilege.

Sexuality has been a central site for the control of women, and it is no different in the online environment. Both in India and in Brazil, and considering the global capitalist platform economy that privileges clickbait and virality, young women face a double bind. Digital space is where they find affirmation and intimacy. But they must continuously strive to balance self-exploration with social approval. What both IT for Change's research with the born-digital generation and InternetLab's research on non-consensual intimate images have found is that women have to negotiate a constantly shifting line of 'just right sexuality' without flouting gender norms. The cost of transgression can be punishingly high. This is particularly true for women in public life, who are seen as 'easy game' to be pushed back against and punished with malicious and sexualized attacks.

9 Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge: MIT, 1992); Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York, London: Routledge, 2000).

10 Matsuda, Mari. Public Response to Racist Speech: Considering the Victim's Story. *Michigan Law Review*, Vol. 87, No. 8, Legal Storytelling (Aug., 1989), pp. 2320-2381.

As was pointed by a feminist lawyer-activist interviewed as part of IT for Change's research:

[Women's online participation] is provoking a lot of male insecurity... something like an uncontrollable desire to punish... So you go back again and again, get your friends to join, and keep increasing the intensity of the attack till you are satisfied, till you feel the woman has been effectively silenced! That is perhaps why these men, young and old, are so intensely violent, so unashamed of using all kinds of tactics, below-the-belt blows, when a woman is at the centre.¹¹

A feminist stocktaking of challenges to freedom of expression demands attention to intimidation, harassment, and violence, not just on the basis of biological sex, but also through the intersecting axes of identity-based discrimination that thwart the free expression rights of women and non-binary individuals. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has observed in his 2019 report how hate speech and violence impede LGBT individuals' claims to public space and freedom of expression and assembly (A/74/181).¹² Further, the Special Rapporteur on minority issues has pointed out in his 2021 report to the UN General Assembly how religious and ethnic minorities, women and lesbian, gay, bisexual, transgender, and intersex communities are especially at risk of violent hate speech on social media platforms (A/HRC/46/57).¹³

A feminist framing of the right to free speech would urge a socio-structural perspective of the chilling effect of gender-based attacks that silence women and non-binary people. The exclusion arising from misogyny on online platforms not only reflects the wide-ranging physical, psychological, and functional harms to individuals, it also signifies the impoverishment and contamination of the public sphere, and a systemic squelching of the aspirational ambitions of those silenced to belong and be heard.

11 IT for Change (2019). Walking on Eggshells: A study on gender justice and women's struggles in Malayali cyberspace. Available at: https://itforchange.net/sites/default/files/1618/Kerala-Report_Righting-Gender-Norms.pdf at 20.

12 UN General Assembly (2019). Protection against violence and discrimination based on sexual orientation and gender identity. A/74/181. Available at: <https://undocs.org/A/74/181>

13 UN Human Rights Council (2021). Report of the Special Rapporteur on minority issues, Fernand de Varennes. A/HRC/46/57. Available at: <https://undocs.org/en/A/HRC/46/57>

3. Evidence from research on the violation of women’s human rights in the online public sphere

Q2. Can you provide examples or information on ways in which freedom of opinion and expression has been abused or appropriated to undermine women’s human rights?

This section summarizes evidence from research studies – including those undertaken by IT for Change and InternetLab – on the various ways in which the freedom of opinion and expression has been weaponized against women in public-political life and the lack of access to justice for women facing such egregious violations of their right to equal public participation.

3.1 Defamation and troll attacks against women journalists

Women journalists are often targeted by sexualized defamation campaigns in online and offline spaces, with their public feminine body conflated narrowly with pornography in contrast to the range of meanings that can append to the public masculine body. Horrific images of women public figures are shared and defended in the name of ‘controversial humor’ that is deserving of free speech protections.

A global research study by UNESCO, in which 714 reporters from 113 countries were interviewed, found that an overwhelming 73% of female journalists have suffered some type of violence related to their job.¹⁴ Such harassment is not just an attack on the free expression rights of the affected journalists, but also a gross violation of citizens’ foundational right to information. Many research studies have concluded that such types of attacks on women in media reinforce gender inequalities and distance women from the public debate.¹⁵

¹⁴ UNESCO (2021). *Violencia en línea contra las mujeres periodistas: instantánea mundial de la incidencia y las repercusiones*. Available at: <https://cutt.ly/qnlRpE0>

¹⁵ Seth C. Lewis, Rodrigo Zamith & Mark Coddington (2020): *Online Harassment and Its Implications for the Journalist–Audience Relationship*, *Digital Journalism*, DOI: 10.1080/21670811.2020.1811743.

In Brazil, research carried out by ABRAJI (Brazilian Association of Investigative Journalism) showed that, in 2020, female journalists were the target of approximately 57% of digital attacks against the press. In addition to online hate networks¹⁶ and judicial harassment,¹⁷ attacks by public authorities are of particular concern. In 2020, the media reported on Jair Bolsonaro's government undertaking a monitoring of journalists and digital influencers on social media networks in order to classify them into three categories: "detractors", "neutral", and "favorable".¹⁸ The "detractors" included journalists and influencers who criticize and oppose the government, including many female journalists.

Similarly, IT for Change's research studies in Karnataka¹⁹ and Tamil Nadu²⁰ reveal that women journalists are often trolled incessantly and concertedly by multiple handles at once, in response to Tweets or messages posted on their social media. Some are even forced to leave online spaces because of threats of violence to close family members. Law enforcement agencies may also not be responsive. In certain cases, the police have refused to register a complaint, asking the journalist not to worry, as the harasser lived in a different state.²¹

16 Investigations conducted by the media and by the Legislative indicate the existence of a "Hate Cabinet", linked to the Presidency of the Republic. According to investigations, the "Cabinet of Hate", formed by people linked to President Bolsonaro, organizes attacks and dissemination of disinformation against all those who criticize the government. See more at: New York Times. Por que os brasileiros deveriam ter medo do gabinete do ódio. August 20, 2020. Available at: <https://cutt.ly/OnIROAQ>.

17 Judicial harassment is a strategy used to silence and intimidate human rights defenders and victims of violence through the judicial system. It can happen through criminal charges, civil lawsuits or administrative proceedings. See more at: Front Line Defenders. #JudicialHarassment. Available at: <https://www.frontlinedefenders.org/en/violation/judicial-harassment>

18 Uol. Relatório do governo separa em grupos jornalistas e influenciadores. December 12, 2020. Available at: <https://cutt.ly/TnIRGFG>

19 IT for Change (2018). Getting it right online: Young women's negotiations in the face of cyberviolence in Karnataka. Available at: https://itforchange.net/sites/default/files/1618/Karnataka_Report_Righting-Gender-Wrongs_1.pdf

20 IT for Change (2018). Towards a safer cyberzone: A study on gender and online violence in Tamil Nadu. Available at: https://itforchange.net/sites/default/files/1618/TamilNadu-Report_Righting-Gender-Wrongs.pdf

21 *supra* note 19, at 33.

Box 1. Patrícia Campos Mello and Tai Nalon in Brazil

In Brazil, the case of a coordinated attack on, and harassment of, the journalist Patrícia Campos Mello has raised grave concerns regarding gender-based violence and the freedom of expression of women journalists.²² During the 2018 presidential elections that brought the current president Jair Bolsonaro to power, Mello reported on a massive and illegal dissemination of content through WhatsApp in Bolsonaro's election campaign.²³ Soon after the article was published, Mello became the target of an intense and coordinated hate campaign. The harassment worsened and became even more intense in 2020, when one of the interviewees from the 2018 article insulted and made sexual insinuations against Mello before the Brazilian National Congress.²⁴ After the false accusations, a new wave of attacks against the journalist started. The harassment extended to both online and offline spaces, and was instigated by public authorities. President Bolsonaro and his sons (who are members of the legislature) made insinuations about sexual misconduct against Mello.²⁵ The case came to court and Bolsonaro was ordered to pay damages to the reporter.²⁶

The harassment against Mello, unfortunately, is not an isolated case. Tai Nalon, journalist and founder of a fact-checking agency, suffered judicial harassment by a public prosecutor after reporting the prosecutor's involvement with the dissemination of disinformation regarding the Covid-19 pandemic.²⁷ The judicial harassment was the trigger for an online hate campaign against Nalon.²⁸

22 Uol. Como Patrícia Campos Mello, jornalistas relatam ataques machistas e sexuais. February 12, 2020. Available at: <https://cutt.ly/dnIRfuA>

23 Folha De São Paulo. Empresários bancam campanha contra o PT pelo WhatsApp. October 18, 2018. Available at: <https://cutt.ly/hnIRkWF>

24 Folha De São Paulo. Ex-funcionário de empresa de disparo em massa mente a CPI e insulta repórter da Folha. February 11, 2020. Available at: <https://cutt.ly/KnIRzR9>

25 Congresso Em Foco. Bolsonaro ataca jornalista da Folha com comentários sexuais. February 18, 2020. Available at: <https://cutt.ly/ZnIRbpF>

26 Jota. Jair Bolsonaro é condenado a indenizar jornalista Patrícia Campos Mello. March 27, 2021. Available at: <https://cutt.ly/TnIRmJT>

27 Abraji. Abraji condena retaliação de procurador da República contra Aos Fatos. November 11, 2020. Available at: <https://cutt.ly/vnIREwh>

28 Congresso Em Foco. Mulheres jornalistas unem-se em favor de Tai Nalon, diretora do Aos Fatos. November 14, 2020. Available at: <https://cutt.ly/5nIRUzQ>

3.2 Online hate against women activists and academics

Online hate is also frequently directed at women activists and academics engaged in public debates. IT for Change's research in India found that women activists from marginal social locations face particularly heinous forms of gender-trolling that disparage them for their social identity. Kiruba Munusamy, an advocate in the Supreme Court of India, writing on caste identity and online violence, observes that unlike upper-caste women, Dalit women encounter caste-based violence along with sexual violence online.²⁹ IT for Change's 2019 research study³⁰ shows that misogynistic vitriol faced by Dalit women is also casteist. Women activists have been targeted for raising their voices in anti-sexual harassment campaigns like #MeToo. As a Dalit activist interviewed for IT for Change's 2019 research study recounted:

Immediately after [my friend] posted comments critical of the #MeToo movement in India, two-three men started piling on, saying things like, "Look at your face; you're so disgusting... nobody would even think of raping you; why are you thinking about #MeToo?"

A series of online public dialogues³¹ on raising awareness about sexism and misogyny online that IT for Change organized in February 2021 discussed how gender-trolling amounts to an attack on women's constitutional right to equal participation in public spaces. Harassment and hate speech online is a form of majoritarian social censorship that has a chilling effect on the free speech of those at the margins. Asha Kowtal from the All India Dalit Mahila Adhikar Manch reflected as part of her intervention in this series, "Caste-laced gender abuse kills us from inside[...] This is an abuse of the democratic right to freedom of speech. The primary intention of such abuse is to silence, threaten and put a cap on those voices of assertion[...] It is poison."³²

29 *supra* note 19, at 8.

30 *supra* note 19, at 7.

31 IT for Change, Edelgive Foundation and IDRC, Canada. Sexism and the Online Publics. 10, 17 & 24 Feb. 2021. webinar series. Available at: <https://itforchange.net/sexism-online-publics-it-for-change-edelgive-idrc-webinar>

32 IT for Change (2021). When Does Free Speech Become Censorship? | Sexism and the Online Publics | Session 1. Timestamp: 22:00-25:00. Available at: <https://youtu.be/dfANUT2spPI>

As part of the same series of dialogues, activist Shehla Rashid highlighted how the problem is compounded by arbitrary enforcement of community standards by platform companies – complaints about images are responded to more promptly than those about text, hate speech standards tend to be Anglo-centric, and hate in Indian languages tends to be difficult to address.³³

The Brazilian case of Debora Diniz, anthropologist, researcher, and professor at the University of Brasilia, illustrates the hate that activist-scholars in academia experience. In 2018, Diniz had to leave Brazil after suffering a series of virtual lynchings and threats, which also targeted her family, students, and even the dean of UnB and the director of the college where Diniz was a professor. The hate attacks began after Diniz was recognized as a defender of women's reproductive rights and ended up becoming a central figure in the fight for the right to abortion, a topic under debate in the Brazilian Federal Supreme Court (STF).

Threatened with death, Diniz and her family left the country on the advice of the government's Protection Program for Human Rights Defenders. Now, Diniz reports living in a legal limbo, without knowing what her condition is: "I am not a dispossessed person. I am not a refugee. What is my condition, not being able to exist without a police escort?"³⁴ Cases like that of Diniz, who continues to receive threats to this day, show that in the country, women who defend feminist agendas, specifically those related to reproductive rights, are also at constant risk.

3.3 Cyberviolence against young women

Young women face intense trolling and major pushback if they so much as attempt to claim their voice and assert their rights to opinion and expression online. IT for Change's 2019 research study³⁵ found that the absence of any checks on online expression has resulted in extreme unfreedoms for women. 881 young women in the age group of 19-23 years were

33 IT for Change (2021). How Can We Hold Social Media Accountable for Misogyny? | Sexism and the Online Publics | Session 2. Timestamp: 9:00-13:00. Available at: <https://youtu.be/OXHiX0hNI5Y>

34 El País. Débora Diniz: "Não sou desterrada. Não sou refugiada. Qual é a minha condição?". June 17, 2019. Available at: https://brasil.elpais.com/brasil/2019/02/22/politica/1550871025_250666.html

surveyed, to map their experiences of the internet and likelihood of experiencing sexism, misogyny, and cyberviolence. An overwhelming 75% of respondents had faced gender-trolling. 31% of respondents who had faced cyberviolence reported being bullied about their body shape; 30%, their weight; 27%, their looks; and 22%, their skin color. Plan International's 2020 survey with over 14,000 girls and young women across 22 countries revealed that 58% of them had personally faced some form of harassment on social media platforms.³⁶ That number rises to 77% among girls and young women in Brazil only.³⁷ Globally, 39% of them report body shaming; 39%, threats of sexual violence; and 29%, racist comments (41% in Brazil). They report having suffered from lower self-esteem or confidence, mental and emotional stress, feelings of being physically unsafe, problems with family, friends, school or finding jobs.

In 2020, IT for Change carried out a participatory action research study³⁸ in the south Indian state of Karnataka to interrogate sexism and misogyny in the local language public sphere. The study revealed that young women withdraw from political forums and pages online because they fear a violent backlash against free expression of their political opinions, especially if it goes against majoritarian views.

InternetLab carried out a similar project³⁹ with a cohort of 15 young men and women from peripheral neighborhoods in the city of São Paulo. In this project, one of the main goals was to understand, through participatory research, youth perceptions to the question "Is hate speech

35 IT for Change (2019). Born digital, Born free? A socio-legal study on young women's experiences of online violence in South India. Available at: https://itforchange.net/sites/default/files/1618/Born-Digital_Born-Free_SynthesisReport.pdf

36 Plan International (2020). Free to be online?. Available at: <https://plan-international.org/publications/freetobeonline>

37 Plan International (2020). Liberdade online? Available at: <https://plan.org.br/wp-content/uploads/2020/10/LIBERDADE-ON-LINE-20201002.pdf>

38 IT for Change (2021). Participatory Action Research on Gender-Based Hate Speech Online with a Karnataka-Based Youth Group. Recognize, Resist, Remedy: Addressing Gender-Based Hate Speech in the Online Public Sphere. Available at: <https://itforchange.net/sites/default/files/1738/PAR-on-gender-based-hatespeech-online-with-a-Karnataka-based-youth-group.pdf>

39 InternetLab. Recognize, Resist, Remedy: hate against women on the internet and youth. December 15, 2020. Available at: <https://www.internetlab.org.br/en/inequalities-and-identities/recognize-resist-remedy-hate-against-women-on-the-internet-and-youth/>

against women seen as acceptable behavior?” This question was answered not just by the youth, but also by participants interviewed by them. It was noted that many interviewees considered it the exclusive responsibility of women to manage their images on social networks to avoid violent situations. Most interviewees were unaware of the hate speech policies of social media platforms such as Facebook, Instagram, YouTube, and Twitter.

3.4 Gendered political violence

In India and Brazil, online violence against women undermines political expression and women’s participation in political life. In 2020, IT for Change studied 30,000 Twitter mentions of 20 women in politics – including women members of parliament, women from opposition parties, and women journalists/political commentators. The initial findings from ongoing research reveal the normalization of gender-based hate against women political figures. From appeals to male authority to discipline women in politics who are seen as crossing the line, to dehumanizing speech and calls to violence against women from minority locations, over 20 different forms of hate speech were observed through the study.

Also in 2020, InternetLab (in partnership with the feminist magazine AzMina) created an observatory of political and electoral violence against candidates on social networks, MonitorA,⁴⁰ that collected comments related to 175 candidates, male and female, for executive and legislative positions during the 2020 municipal elections, on Twitter, YouTube, and Instagram.⁴¹ The main goal was to demonstrate in a concrete way how gendered political violence occurs on social media. The findings show that political violence is recurrent and mostly directed towards female profiles, and alludes to their bodies, their intellectuality, and to

40 AzMina Magazine; InternetLab (2021). Monitora: Report on online political violence on the pages and profiles of candidates in the 2020 municipal elections. Available at:

<https://plan.org.br/wp-content/uploads/2020/10/LIBERDADE-ON-LINE-20201002.pdf>

41 The candidates were chosen observing different identity characteristics (race/ethnicity, sexuality, generation, social class, etc.) and different political-ideological spectra (right, center, and left). The analysis was carried out based on the monitoring of candidates on Twitter, Instagram and YouTube platforms, from September 27 to November 29, 2020, in two phases (first round and second round of voting), using different techniques and data collection platforms. From these collections, we extracted 1,610,932 tweets, 632,170 Instagram posts and 50,361 comments on YouTube.

other moral aspects. They also relate to race, age, and sexuality differences. On the other hand, men are mostly sworn at by users who consider them to be bad managers or ideologically mistaken. This was, however, different, when it came to Tweets directed at transgender, gay, or elderly candidates.

Box 2. Political violence against black and transgender women

Erika Hilton, the first black and transgender woman to be elected as councilor in São Paulo city, and the most voted-for woman for the city council, was the target of racist, misogynistic, and transphobic comments during her campaigning that tried to delegitimize her candidature. Post-elections, taking note of the data brought in by the MonitorA observatory, she decided to sue 50 people that targeted her on social media.⁴² Unfortunately, Hilton was not the only black and transgender candidate to be attacked during and after elections; Carol Dartora from Curitiba (PR), Ana Lúcia Martins from Joinville (Santa Catharina), Benny Briolly from Niterói (Rio de Janeiro), and Duda Salabert from Belo Horizonte (Minas Gerais) also received death threats by e-mail.⁴³ The threats had a lot of similarities: they were aimed at transgender and/or black women who had been elected for the first time by popular vote, and often with large victory margins.

3.5 Negative consequences for survivors who use the internet to call out abuse

Sharing personal stories of sexual violence and publicly calling out sexual harassment on the internet often ends up having negative consequences for victims. Women who share online the experiences of the violence they have faced are targets of civil lawsuits, defamation charges, and charges of falsely reporting a crime.⁴⁴ Such lawsuits are designed to intimidate survivors of sexual violence, preventing them from speaking out.

42 Geledés. Após ser alvo de ataques transfóbicos e racistas, Érika Hilton irá processar 50 pessoas. January 06, 2021. Available at: <https://www.geledes.org.br/apos-ser-alvo-de-ataques-transfobicos-e-racistas-erika-hilton-ira-processar-50-pessoas/>

43 El País. Ameaças de neonazistas a vereadoras negras e trans alarmam e expõem avanço do extremismo no Brasil. January 10, 2021. Available at: <https://brasil.elpais.com/brasil/2021-01-10/ameacas-de-neonazistas-a-vereadoras-negras-e-trans-alarmam-e-expoem-avanco-do-extremismo-no-brasil.html>

44 Folha De São Paulo. Mulheres são processadas após denunciarem casos de estupro. October 25, 2015. Available at: <https://cutt.ly/8nIRLdB>

Take the case of journalist Amanda Audi and the digital influencer Mari Ferrer in Brazil. In November 2020, Amanda Audi spoke out about her experience of rape on her social networks, after formal charges had been filed.⁴⁵ In response to Audi's posts, the accused, Alexandre Andrada – a college professor who was also a columnist at the newspaper where Audi worked – sued Audi. By court decision, Audi was judicially prevented from speaking about her case of sexual violence.⁴⁶ The accused, on the other hand, retained the right to speak about the case.

A similar situation is exemplified by the Mari Ferrer case, in which a 21-year-old digital influencer sued businessman André Aranha, accusing him of rape. The case has been monitored by feminist activists since its beginning, but in 2020, it garnered popular media attention after *The Intercept Brasil* published parts of the court decision that said that “he [the accused] had no way of knowing whether or not the young woman was consenting to the sexual act”. From this point of view, there was no “intention to rape”.⁴⁷ In a research conducted by InternetLab analyzing the reactions to the case on Twitter, we saw that, even though only 0.73% of the Tweets were in favor of the court decision to absolve Aranha, there was also ambivalence about the veracity of Ferrer’s testimony. Some Tweets speculated that there was no clear proof that Ferrer had been raped.⁴⁸ Ferrer’s profiles on social media, which she uses to speak about the case, are constantly a target of threats and harassment.

InternetLab and IT for Change’s ongoing collaboration in Brazil and India has found troubling evidence that criminal defamation charges are often slapped on women who publicly call out sexist and violent behavior, especially against powerful male public figures.

45 Folha De São Paulo. Sem investigação aprofundada, acusação de estupro de jornalista é arquivada. November 27, 2020. Available at: <https://cutt.ly/LnIRX4S>

46 The Intercept Brasil. Meu último texto no Intercept. December 22, 2020. Available at: <https://cutt.ly/InIRMtI>

47 The Intercept Brasil. Julgamento de influencer Mariana Ferrer Termina com tese inédita de "estupro culposo" e advogado humilhando jovem. November 03, 2020. Available at: <https://theintercept.com/2020/11/03/influencer-mariana-ferrer-estupro-culposo/>

48 InternetLab. Caso Mari Ferrer: Menos de 1% dos tuítes sobre julgamento foram a favor da sentença. December 08, 2020. Available at: <https://www.internetlab.org.br/pt/desigualdades-e-identidades/caso-mari-ferrer-menos-de-1-dos-tuites-sobre-julgamento-foram-a-favor-da-sentenca/>

4. Specific issues that would benefit from further analysis

Q4. 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.

Issue 1. Treating misogyny in the online public sphere as a public offense rather than as a private wrong

Research by InternetLab and IT for Change demonstrates that gendered political hate – sexist and misogynistic speech targeted at women in public-political spaces – requires a response that is distinct from private forms of cyberviolence. InternetLab’s case law research⁴⁹ reveals that online attacks against women are seen as domestic violence in Brazil, since these attacks often come from current or former partners of the victims. Law nº 11.340/2006, known as *Maria da Penha’s Law*, which focuses on domestic and family violence, came up with innovative forms of protecting women, beyond the instruments of criminal law. It can be extended to cases of threats made by partners or ex-partners in-person/online. But this tends to individualize aggressions, locating them in the personal sphere.

Misogyny occurring in online spaces should be considered public and analyzed in a more complex way. Such acts are not just a ‘private wrong’ affecting only the individual victim, but also a public offense impacting the social imaginary of how women should be perceived and treated in society at large.

49 Preliminary findings: InternetLab (2020). *Violência contra mulheres online e os tribunais: observações preliminares* Available at: <https://www.internetlab.org.br/pt/desigualdades-e-identidades/violencia-contra-mulheres-online-e-os-tribunais-observacoes-preliminares/>

IT for Change's analysis⁵⁰ reveals that in the absence of specific legal provisions in India for online misogyny, victims have no recourse to justice. The purely geo-spatial understanding of 'public space' in Indian laws addressing sexual harassment, and the general legal ambiguity about online publics, has led to the accused in cases of online sexual harassment being acquitted. Courts in India have not been able to account for the blurring of private and public spaces in new social media and social messaging platforms. This means that they are not able to recognize public forms of harassment that can happen in digitally-mediated interactions (messaging groups, for instance).⁵¹

Case law analysis being undertaken by InternetLab and IT for Change shows how the law responds to online violence in intimate personal/domestic relationships more easily than in public spaces (such as coordinated troll attacks). A major reason for such failure to address misogyny in the public spaces of the online agoras is the inadequacy of hate speech laws in many national contexts.

In Brazil and in India, hate speech legislation does not recognize gender as a grounds for hate speech. Law n° 7.716/1989, which is known in Brazil as the *Anti-racist Law*, in its Article 20, limits discrimination to offensive practices related to an individual's or group race, color, ethnicity, religion, or national origin. The Brazilian Supreme Court recently equated homophobia and transphobia with the crime of racism, thus applying the already existing legislation on the subject. But misogynistic hate is not fully addressed, as discrimination on the basis of biological sex and gender identity are not explicitly named as part of protected characteristics of identity covered by the law. Currently, the *Anti-racist Law* is applied to address hate speech in Brazil in both online and offline environments. As explained above, the protection extended by this law does not address sexist hate.

50 *supra* note 35, at 26 ("Gaps in the law and its application").

51 Bot Populi. What's So Private about Online Sexual Harassment? Reflections on the Madras High Court's interpretation of "Public Place" in cases of sexual harassment in virtual spaces. October 21, 2020. Available at: <https://botpopuli.net/whats-so-private-about-online-sexual-harassment>

In India, prevailing legal provisions on hate speech are grounded in a ‘public tranquility’ rationale rather than the ‘preservation of the right to equality and dignity’. Gender-based hate is not recognized as hate speech. Because of this, women have to often resort to other legal provisions of criminal intimidation and defamation when booking perpetrators. As IT for Change’s research reveals, the high thresholds that are laid down by courts for conviction in these cases render it very difficult for women victims of gender-trolling to obtain justice. On a related note, in Latin America, there is growing concern about the suitability of invoking defamation laws for addressing gendered hate crimes. This is because, historically, such laws are designed to protect an individual’s honor – a legal category that has traditionally been used as a tool to maintain the historical submission of women and other marginalized groups.

Issue 2. The need for a new international benchmark for gender-based hate speech

International law currently lacks a globally accepted definition of hate speech.

The *UN Strategy and Plan of Action on Hate Speech (2019)* defines hate speech as speech “that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”⁵²

In his 2019 report to the UN General Assembly (Para 20, A/74/486),⁵³ David Kaye, former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, observes that:

For content that involves the kind of speech as defined in the United Nations Strategy on Hate Speech, that is, speech that is hateful but does not constitute incitement, article 19(3) of the

52 See UN Strategy and Plan of Action on Hate Speech (2019), available at:

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

53 *supra* note 4, para 20.

Covenant [on Civil and Political Rights] provides appropriate guidance. Its conditions must be applied strictly, such that any restriction – and any action taken against speech – meets the ***conditions of legality, necessity and proportionality, and legitimacy***. Given its vagueness, language similar to that used in the Strategy, if meant to guide prohibitions under law, would be problematic on legality grounds, although it may serve as a basis for political and social action to counter discrimination and hatred. [emphasis added]

In the internet age, gender-based hate online has reached pandemic proportions. Oftentimes, this may not constitute what is deemed ‘direct incitement to violence’ in the law. Yet, such speech directly impacts public participation of women and non-binary individuals, reinforcing social and institutional forms of gender discrimination. It is therefore critical that a new international benchmark for gender-based hate speech is evolved, and the tests of legality, necessity, proportionality, and legitimacy of hate speech laws are recalibrated for the digital age. In the interim, regional instruments such as the *American Convention on Human Rights*⁵⁴ could be invoked as a basis for benchmarking.

Issue 3. The need to hold social media intermediaries accountable for hate speech

Research from InternetLab and IT for Change demonstrates the ubiquity of gender-based hate speech in the digitally-mediated public sphere, especially against individuals who are active in public-political life. InternetLab’s MonitorA project that tracked the online experiences of women candidates in the Brazilian municipal elections of 2020 found that political violence targeting women was significant on social media – ranging from intellectual undermining, criticism of women’s bodies, ageism, and ethnic-racial attacks to transphobia. One of the key findings of IT for Change’s forthcoming report of a study that analyzed Twitter mentions of 20 women in public-political life in India in 2020 is that a wider context of polarized public discourse renders women from minority religious communities at disproportionate risk of

54 American Convention on Human Rights (1969), ratified by Brazil in 1992. Available at: https://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer_conv_human_rights.pdf

political hate. Muslim women leaders and journalists consistently face violent hate speech that targets their religious identity.

Our research, similar to that of other leading global civil society organizations, demonstrates that despite well-publicized announcements about tweaks to community standards, self-regulation by social media platforms has not produced the desired results in addressing online sexism, misogyny, and other forms of identity-based hate. IT for Change's research paper⁵⁵ on addressing gender-based hate speech online in India observes that without the risk of legal penalty, social media platforms have not addressed gender-based hate with the appropriate seriousness that deserves to be accorded to a violation of women's human rights. Amnesty International's 2020 follow-up study on their landmark *Toxic Twitter* also demonstrates how self-regulation by platforms often ends up as a set of empty buzzwords, noting that: "Despite the changes to hateful conduct rules, Twitter is not doing enough to protect women users, leading many women to silence or censor themselves on the platform [...] Women from ethnic or religious minorities, marginalized castes, lesbian, bisexual or transgender women, women with disabilities, as well as non-binary individuals and women with disabilities are disproportionately impacted by abuse on the platform".⁵⁶ A year earlier, Equality Labs, in their 2019 research study on Facebook India⁵⁷, undertaken one year after the updation of community standards to include a three-tier approach to hate speech, found that "93% of all hate speech posts reported to Facebook remain on Facebook. This includes content advocating violence, bullying and use of offensive slurs, and other forms of Tier 1 hate speech".

Social media companies need to be held accountable for their 'duty of care' to preserve online publics that are free from hate. In his 2021 report on online hate, the UN Special Rapporteur on

55 IT for Change (2021). Legislating an Absolute Liability Standard for Intermediaries for Gendered Cyber Abuse. Available at: https://itforchange.net/sites/default/files/1883/Arti-Raghvan-Rethinking-Legal-Institutional-Approaches-to-Sexist-Hate-Speech-ITfC-IT-for-Change_0.pdf

56 Amnesty International. Twitter still failing women over online violence and abuse. September 22, 2020. Available at: <https://www.amnesty.org/en/latest/news/2020/09/twitter-failing-women-over-online-violence-and-abuse/>

57 Equality Labs (2019). Facebook India – Towards a tipping point of violence caste and religious hate speech. Available at: <https://www.equalitylabs.org/facebookindiareport>

minority issues recommends an international treaty to regulate hate speech on social media. The current stocktaking of gender justice and freedom of expression should build on this suggestion, exploring how consensus towards such a treaty can be mobilized within the UN system, with specific obligations for states and platform companies to tackle gender-based hate in particular.

Box 3. Social media community standards on gender-based hate speech

In May 2021, InternetLab compiled a set of community standards on hate speech, in Portuguese, from the main social media platforms in Brazil: Facebook, Instagram, LinkedIn, Snapchat, Twitter, TikTok, and YouTube. Our goal was to understand how these policy guidelines protected women from online gender-based violence.

We then found that all community standards/content governance guidelines directly use the term "hate speech" or "hate promotion", which is commonly characterized as "content that attacks, belittles, intimidates, dehumanizes, incites or threatens with hate, violence, harmful or discriminatory action against individuals or groups". As for the characteristics considered to make one vulnerable to hate speech, platforms provide similar lists, which include: age, race, ethnicity, class, religion, sexual orientation, caste, disability or serious illness status, migratory status, national origin, and gender identity.

Nonetheless, the term 'misogyny' does not appear in any of the guidelines, although all the policies reviewed view gender-based discrimination as propagating hate speech. This situation demonstrates the inability of platforms to deal with gender-based violence online and their failure to acknowledge 'women' as a group victimized by hate speech in a specific way.

In this scenario, we believe there is a need for global and cross-industry cooperation. In the same way that platforms have come together around evolving best practices for child protection, they need to coalesce around the issue of coordinated cross-platform action for safe and gender-inclusive online public spheres.⁵⁸ Platforms need to take urgent action to create stronger, more effective, accessible, and specific content governance policies and reporting mechanisms for gender-based violence online that

58 Word Wide Web Foundation. Readout: First Web Foundation Online Gender-Based Violence Tech Consultation. Available at: <https://docs.google.com/document/d/1zO2hRUUpP90H-AMzUDRFn6EB5D-HUNjIHrPw0JJN8dVs>

hold perpetrators accountable and respond to all of women's needs and experiences, taking into account intersecting identities.⁵⁹

It is also vitally important that platforms collect and publish disaggregated data on gender-based online violence that tracks the scale and size of the problem, and provides insight into the nature of the multiple forms of identity-based discrimination, harassment, and violence against women and girls.⁶⁰

Issue 4. The balance between anonymity and free expression in online platforms

Online anonymity is a double-edged sword for the right to free opinion and expression of women and non-binary individuals. On the one hand, anonymity is integral to the confidentiality that enables women and non-binary individuals historically subjected to bias, discrimination, and marginalization to speak up and voice their opinion. On the other hand, as is manifest on social media platforms, the very same affordance of online anonymity emboldens troll armies to target and censor individuals who challenge the socio-political status quo.

From a gender perspective, therefore, the law needs to tackle anonymous trolling on social media platforms and messaging apps that has a chilling effect on free expression, without unreasonable dilution of the right to privacy. Achieving this balance requires deeper ethical-political engagement with the technical nuances of encryption and affordances of applications that rely on end-to-end encryption, and a rights-based consensus on how the law should engage with encryption protocols, preserving safe communications that are also central to women's rights.

59 Plan International. Free to be online?. Available at: <https://plan-international.org/publications/freetobeonline>

60 *id.*

5. What state parties should do

Q7. What States should do to a) uphold women's human right to freedom of opinion and expression b) protect women from violence, harassment and intimidation online and offline and c) promote women's public participation

- State parties have to take priority measures to address gender-based hate speech online as a women's human rights violation, keeping in line with their obligations under CEDAW to eliminate discrimination against women in the political and public life of the country (General Recommendation 23).
- Benchmarks/legal categories for outlawing gender-based hate speech offline and online must eschew patriarchal constructs such as "outraging modesty", "obscenity" or "honor" – often the unfortunate remnants of colonial perspectives of gender and sexuality in the law. Such standards should not become the source of a new form of censorship that ends up prohibiting the free expression of sexuality or gender identity.
- State parties must amend hate speech legislation so that gender-based hate across the online-offline continuum of social interactions in the digitally-mediated public sphere is seen as a violation of women's right to equality, dignity, and autonomy, and their first-order right to public participation.
- Given the primacy of the digital public sphere in contemporary socio-economic life, there is a need for states to put in place comprehensive and responsive regulatory mechanisms to deal with online gender-based violence on social media platforms, using a combination of compliance- and deterrence-based strategies to deal with varying

levels of problematic or abusive speech.⁶¹ As IT for Change's research paper highlights,⁶² a narrow, targeted legislation (aimed at regulating only gender-based cyberviolence) would potentially avoid the pitfalls of over-regulation that laws such as the NetzDG (using such absolute liability standards) suffers from. As discussed, an internationally accepted standard on hate speech can enable states to evolve definitions of 'violating content' so that limits on free expression are not unreasonable, arbitrary or excessive.

- States must ensure that 'safe harbor' provisions under intermediary liability frameworks do not become an escape route for social media platforms to evade their accountability for preventing the circulation of content that violates human rights. For particularly egregious forms of content that are patently illegal (and defined as such through a targeted legislation on 'violating' content), platforms need to be held liable for strict compliance with content take-down orders. For instance, in India, videos of rape, gangrape, sexual abuse,⁶³ and advertisements for prenatal sex determination,⁶⁴ have been held by the Supreme Court as content that must be prevented from circulation and expeditiously blocked by intermediaries.
- States must allocate resources to educate law enforcement officials as well as members of the judiciary about digital society and principles such as consent, privacy, and dignity from a feminist point of view. Law enforcement officials and members of the legal fraternity must be equipped in responding to public and private forms of gender-based hate from a feminist standpoint.

61 IT for Change (2021). Regulating Sexist Online Harassment: A Model of Online Harassment as a Form of Censorship. Available at: https://itforchange.net/sites/default/files/1883/Amber-Sinha-Rethinking-Legal-Institutional-Approaches-to-Sexist-Hate-Speech-ITfC-IT-for-Change_0.pdf

62 *supra* note 55.

63 In re: Prajwala letter dated 18.12.2015 videos of sexual violence and recommendations & Anr, SMW (CrI.) No. 3/2015.

64 Dr. Sabu Mathew George v Union of India (2018) 3 SCC 229.

6. What internet intermediaries should do

Q9. 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?

- Social media platforms must set up national-level grievance redress mechanisms in all the countries they operate in and publicize the contact details of grievance redress officers and telephone helplines where users can file user complaints about gender-based hate and other forms of cyberviolence.⁶⁵
- Social media platforms must improve the responsiveness of their content moderation systems for user complaints of hate in minority languages in all countries of the Global South. The AI techniques that social media platforms deploy for automated detection of hateful speech should be made transparent and subject to public scrutiny. Platform companies must increase their spending on anti-harassment projects, an area where they slashed funding during the pandemic.⁶⁶
- Social media platforms, as Amnesty International highlighted in relation to Twitter in 2020, must provide “detailed country-level breakdowns of user reports of abuse”, including “data about the number of users reporting specific kinds of abusive language”, for example, abuse based on gender or race.⁶⁷ They must also disclose “detailed information about the number of content moderators employed, including what kind of coverage they provide across different countries and languages”.⁶⁸

65 See IT for Change's Submission to Ministry of Electronics and Information Technology, Government of India, on the draft Information Technology (Intermediary Guidelines) Rules 2018 with special reference to gender-based cyberviolence against women. Dec. 2019. Available at: https://itforchange.net/sites/default/files/add/IT%20for%20Change%20-%20Comments%20on%20Intermediaries%20and%20Gender%20Based%20Violence%20Online_0.pdf

66 Bloomberg. Facebook and Twitter Can't Police What Gets Posted: Neither AI nor humans seem capable of properly moderating content. February 19, 2021. Available at: <https://www.bloomberg.com/opinion/articles/2021-02-19/facebook-and-twitter-content-moderation-is-failing>

67 *supra* note 56.

68 *supra* note 56.