



**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**

*Association for Progressive Communications (APC)  
November 2018*

## **Table of Contents**

1. Background.....	3
2. Context.....	3
3. Online Gender-based Violence .....	5
3.1 Privacy.....	6
3.2 Transparency .....	7
3.3 Accountability .....	8
4. Sexual Rights .....	9
4.1 Freedom of Expression.....	10
4.2 Right to Online Anonymity .....	11
4.3 Algorithms and Big Data.....	12
5. Recommendations.....	13

## 1. Background

The Association for Progressive Communication (APC) welcomes the opportunity to contribute to the work of the Office of the High Commissioner for Human Rights (OHCHR) and values the focus of the OHCHR on the question of ways to unpack the gender dimensions of the United Nations Guiding Principles on Business and Human Rights (UNGPs). APC is an international network and non-profit organisation founded in 1990 that works to help ensure everyone has access to a free and open internet to improve lives and create a more just world.

The APC Women’s Rights Programme (APC WRP) works to challenge discriminatory norms, structures and practices, that prevent women and LGBTIQI<sup>1</sup> communities from benefiting from information and communication technologies (ICTs). This work includes changing the way society sees the internet, as not merely a tool and an avenue for feminist activism, but also as a space where rules, roles and social norms are created and regulated. A great deal of feminist activism takes place online in corporate platforms, where corporate and private sector interests determine the rules through policy or infrastructure. As such, we have worked to challenge and transform the policy and culture that enables or contributes to making online spaces harmful and hostile towards women and LGBTIQI communities, and support groups and networks in engaging with internet policy as a feminist issue, as well as setting up their own, independent platforms where rules are negotiated to empower queer and feminist expression and activism.<sup>2</sup>

Our work has engaged internet intermediaries<sup>3</sup> – entities which provide services that enable people to use the internet - as key actors in the landscape of internet governance and policy-making, specifically in relation to online gender-based violence (GBV) and sexuality.

This submission draws on this experience to highlight the impact of the policies and practices of internet intermediaries (as business entities) on the ability of women and LGBTIQI communities to access, shape and use ICTs within the context of the full realisation of their human rights. It focuses on two thematic areas: online GBV and sexual rights.

## 2. Context

The internet and other ICTs have become central to our social, economic and political lives. All communication over the internet is facilitated by intermediaries such as internet access providers, social networks, and search engines. A landmark set of guidelines developed by civil society

---

<sup>1</sup> LGBTI stands for Lesbian, Gay, Bisexual, Transgender, and Intersex,

<sup>2</sup> Feminist Principles of the Internet- Resistance. <https://feministinternet.org/en/principle/resistance>.

<sup>3</sup> See ‘Frequently asked questions on intermediary liability’ <https://www.apc.org/en/pubs/apc%E2%80%99s-frequently-asked-questions-internet-intermed>

groups, the Manila Principles guide intermediaries and governments towards implementing standards that protect free expression.<sup>4</sup> The policies govern the legal liability of intermediaries for the content of the communications on their platforms and have an impact on users' rights, including freedom of expression, freedom of association and the right to privacy, among others.

However, internet intermediaries lack transparency on policies and practices affecting freedom of expression and privacy, leading to concerns of governance, security, privacy, and expression. A 2018 study of 22 of the world's most powerful internet, mobile, and telecommunications companies on their policies and protocol, undertaken by Ranking Digital Rights, found that despite having products and services that are used by at least half of the world's 4.2 billion internet users,<sup>5</sup> most still fell short of disclosing basic information to users about the design, management, and governance of the digital platforms and services that affect human rights.<sup>6</sup> It found that companies fail to adequately inform the public about how content flows are policed and shaped through their platforms and services, withhold basic information about data security measures, do not disclose enough about how users' information is handled, or provide meaningful grievance and remedy mechanisms.<sup>7</sup> Even in the absence of legal and policy reform from government, companies can and should be held responsible for all the way that they affect users' rights and make expression and privacy rights a central priority for corporate oversight and risk assessment.

While there has been attention placed on the business and human rights practices of intermediaries, it is imperative to employ a gendered approach to address the underlying context in which women and LGBTQI communities live. This requires integrating a gender perspective in the analysis how businesses may have different, disproportionate, or unanticipated impacts on women, men, trans, gender non-conforming or gender queer persons as a result of different gender-based social, legal, cultural roles and rights.

The role of internet intermediaries has increasingly come under the spotlight in relation to framing access to and use of the internet and other ICTs, as well as the responsibilities of intermediaries in preventing online GBV and protecting defenders of women's and sexual rights online. Several issues in the context of internet's rights, sexual rights and women's rights, including security, privacy, the access to and control of resources, representation and content,

---

<sup>4</sup> Manila Principles, <https://www.manilaprinciples.org/>.

<sup>5</sup> Figures as of December 31, 2017. "World Internet Users Statistics and 2018 World Population Stats," Internet World Stats, <https://www.internetworldstats.com/stats.htm>.

<sup>6</sup> The Ranking Digital Rights 2018 Corporate Accountability Index, <https://rankingdigitalrights.org/index2018/assets/static/download/RDRindex2018report.pdf>.

<sup>7</sup> Ibid.

and intellectual property, are tied up in notions of who owns knowledge, implicated in our ability to realise our human rights, and are increasingly influenced by the power of businesses.<sup>8</sup>

### 3. Online Gender-based Violence

There are multiple terms used to describe the kinds of abuse and harassment experienced by women, girls and LGBTIQI people online. In 2015, APC developed the following definition<sup>9</sup> of technology-related violence<sup>10</sup> against women as encompassing:

*Acts of gender-based violence that are committed, abetted or aggravated, in part or fully, by the use of information and communication technologies (ICTs), such as mobile phones, the Internet, social media platforms, and email.*

Since then, we have employed the term ‘online gender-based violence (online GBV), instead of ‘technology-related violence against women’ to communicate our intersectional understanding of violence against women which considers race, class, sexuality, age, disabilities and other locations.

In June 2018, the Special Rapporteur on Violence Against Women its Causes and Consequences, released a thematic report on online violence and violence facilitated by ICTs against women and girls from a human rights perspective.<sup>11</sup> This report, and the adoption of the first-ever UN resolution on preventing and responding to violence against women and girls in digital contexts<sup>12</sup>, was the culmination of more than a decade of advocacy to draw attention to increasingly high levels of online GBV and state obligations in this regard.

The timing is particularly significant as online environments are increasingly mirroring and amplifying the violence and discrimination that women and girls face offline. Not only are women and girls less likely to benefit from the opportunities that the internet offers for the enjoyment of their human rights, which therefore deepens gender inequality; in addition, online gender-based violence (GBV) extends to offline environments, inflicting psychological,

---

<sup>8</sup> Moolman, J. (2012). Association for Progressive Communications (APC).

<https://www.genderit.org/editorial/Internet-governance-if-we-are-not-table-we-will-be-menu>

<sup>9</sup> Association for Progressive Communications. (2015). *From impunity to justice: Exploring corporate and legal remedies for technology-related violence against women*. <https://www.genderit.org/onlinevaw>

<sup>10</sup> While APC initially used the term “technology-related violence against women” (see <https://www.genderit.org/onlinevaw>), more recently we refer to “online gender-based violence” to communicate our intersectional understanding of violence against women which considers race, class, sexuality, age and other locations, to be able to reflect the findings of research on sexual rights and the internet (see [erotics.apc.org](http://erotics.apc.org)) and also, because the term “online” has become more commonly understood and used.

<sup>11</sup> [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A\\_HRC\\_38\\_47\\_EN.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HRC_38_47_EN.docx)

<sup>12</sup> See [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/38/L.6](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.6)

financial, economic and physical harm. That the focus of the annual Canada-led resolution on accelerating efforts to eliminate violence against women and girls was online GBV, and that it was adopted by consensus with over 50 co-sponsors from every region, establishes that online GBV is a human rights violation in need of urgent attention.

The resolution indicates not just a growing recognition of the risk of violence faced by all women and girls, but also an understanding that there are those who face violence on account of gender and also multiple and intersecting forms of discrimination, and recognises that a multi-pronged approach working with all relevant parties is required. Importantly, the resolution recommends that human rights frameworks guide responses to online GBV, so that they do not further restrict women's human rights, for example, by limiting their use of encryption, or by censoring their own expression.

### 3.1 Privacy

The right to privacy, recognised by article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, is intertwined with the right to live free from gender-based violence. Many forms of online GBV are in fact acts that violate women's and girls' rights to privacy. Examples of this include the publication and dissemination of intimate images without explicit permission for the purposes of extortion, blackmail and/or humiliation, as well as pages, comments, and posts on social media targeting women with gender-based hate.<sup>13</sup> In a recent report, the Special Rapporteur on the right to privacy highlighted the need to examine GBV against the more vulnerable, including domestic violence enabled by digital devices, non-consensual distribution of intimate images, and embedded gender and other biases in algorithms.<sup>14</sup>

The protection of privacy is further critical with data protection norms challenged by the increasingly massive collection and storage of data by intermediaries and other corporations. Most intermediaries, such as social media platforms or companies providing services via websites, require the user to agree to their terms of service (TOS). The TOS contains clauses that prohibit the user from using the company's services for illegal purposes, such as violation of copyright, financial fraud, extortion and child pornography, which can extend to legal protections against the violations of privacy of users. However, the TOS do not specifically mention any human rights abuses, especially those based on gender, sexuality or related issues.<sup>15</sup> This reflects the common reluctance by companies to engage directly with human rights issues and rather only have liability for legal obligations in the country of residence. The

---

<sup>13</sup> See FAQs: <https://www.genderit.org/onlinevaw/faq/>

<sup>14</sup> See Report of the Special Rapporteur on the Right to Privacy to the Human Rights Council (2018). [https://www.ohchr.org/Documents/Issues/Privacy/SR\\_Privacy/A\\_HRC\\_37\\_62\\_EN.docx](https://www.ohchr.org/Documents/Issues/Privacy/SR_Privacy/A_HRC_37_62_EN.docx)

<sup>15</sup> See FAQs: <https://www.genderit.org/onlinevaw/faq/>

disproportionate power of users to negotiate terms of the TOS against their data use by social media platforms or companies that can result in privacy violation, GBV or discrimination and abuse on the basis of gender, sexuality or related issues also render users vulnerable to such rights violation. It is critical to shift the conversation from liability to responsibility as companies that collect and store data should bear the responsibility to protect their users' or customers' personal data.

The policies of intermediaries around anonymity is a significant issue for the privacy and freedom of expression of women and vulnerable communities. Women who use anonymous online profiles, for example to escape an abusive partner, stalkers, repeat harassers and accounts associated with the sharing of non-consensual pornography, can be adversely affected by the policies on anonymity by certain intermediaries. For maintaining anonymity online, women, especially women human rights defenders (WHRDs), are often reported on platforms like Facebook for possessing “fake” profiles by harassers.<sup>16</sup> The policy of intermediaries sometimes require the women concerned to disclose their identity, instead of engaging in actions against the harassers. This policy, which can put women at risk of harm, received severe criticism and has been modified to require complainants to provide some evidence of “fake-ness” of said profile.

In this context, the right to privacy in the digital age is of growing importance and must be protected against arbitrary censorship by intermediaries.

### **3.2 Transparency**

Private intermediaries and corporations have come under greater scrutiny given that online GBV is usually perpetrated on privately-owned platforms, yet there is little to no transparency of the internal decision-making process and the application of human rights standards regarding online GBV. Many intermediaries have now developed mechanisms to respond to complaints of GBV but there is fundamental lack of clarity on how to make a complaint to a corporation and there is little knowledge of the effectiveness of the available complaint mechanisms.

While intermediaries, specifically social media platforms, are increasingly publishing their content restriction policies online, there is a need for greater transparency in terms of how they are being implemented. There exists a corporate stonewalling of access to basic information such as how many complaints are received annually, statistics on how they are dealt with, or the kind of training on gender, sexuality, and human rights received by the staff. It has been seen that intermediaries often take action without compliance with their own complaint procedures and end up violating the right to expression of survivors of online GBV, or women and others who

---

<sup>16</sup> Association for Progressive Communications (2015). <https://www.genderit.org/resources/hrc29-joint-statement-importance-encryption-and-anonymity-people-facing-discrimination-and>

are vulnerable. For example, Instagram’s response of removing images of women on their period from their platform, restored after a public outcry and extensive media coverage, revealed the mechanisms of censorship to be more harmful to women than beneficial.<sup>17</sup>

The lack of transparency of complaint mechanisms is most harmful to women and vulnerable communities in the global South. With the headquarters of most multinational enterprises being in the global North, it is difficult for residents of other countries to access the available grievance mechanisms. Even on platforms and websites that support other languages, there remains an English language bias in reporting mechanisms. This means that non-English complaints take a longer period to be addressed and are sometimes wrongly understood.<sup>18</sup>

As various intermediaries continue to regulate and censor online content via opaque internal mechanisms, usually outside scope of any internationally-recognized legitimate limitations on freedom of expression, it is vital to combat the risks that the presently widespread regime of liability pose to the exercise of human rights online.<sup>19</sup>

### 3.3 Accountability

Most intermediaries shift the burden of addressing online GBV to the justice systems of the country where their operations are located or to the victims of harassment on their platform. Greater attention is needed to ensure that policies are upholding the international human rights principles of non-discrimination and equality, and are taking into account contextual factors, such as language, culture, and power dynamics. It is clear that increased transparency is needed in a number of areas to better safeguard freedom of expression against arbitrary content removals and to better understand how the content viewed online is being moderated.

APC’s in-depth research in seven countries<sup>20</sup> explored corporate remedies for technology-related violence against women and found that existing measures are insufficient and fail to recognize the continuum of violence that women experience offline and online. The study, which covered Facebook, Twitter, and YouTube, among others, revealed that:

---

<sup>17</sup> Valenti, Jessica. (2015). “Social media is protecting men from periods, breast milk, and body hair.” <https://www.theguardian.com/commentisfree/2015/mar/30/social-media-protecting-men-periods-breast-milk-body-hair>

<sup>18</sup> See FAQs: <https://www.genderit.org/onlinevaw/faq/>

<sup>19</sup> Article 19 (2013). [https://www.article19.org/data/files/Intermediaries\\_ENGLISH.pdf](https://www.article19.org/data/files/Intermediaries_ENGLISH.pdf)

<sup>20</sup> The research consisted of mapping corporate and domestic legal remedies through literature review and conducting in-depth interviews to gather women’s and girls’ experiences of accessing justice and compiling case studies in Bosnia and Herzegovina, Colombia, the Democratic Republic of Congo, Kenya, Mexico, Pakistan and the Philippines. See: [https://www.genderit.org/sites/default/files/impunity\\_athar\\_dig\\_1.pdf](https://www.genderit.org/sites/default/files/impunity_athar_dig_1.pdf)



- (1) the studied corporations had no public records of how their customer service departments operates
- (2) there is no clear, easy-to-access and transparent procedure to deal with complaints of violations by users vis-à-vis other users on the website or platform.

Greater attention is needed to ensure that policies are upholding the international human rights principles of non-discrimination and equality, and are taking into account contextual factors, such as language, culture, and power dynamics. It is clear that increased transparency is needed in a number of areas to better safeguard freedom of expression against arbitrary content removals and to better understand how the content viewed online is being moderated.

#### 4. Sexual Rights

The Internet is widely recognized as critical for feminist and LGBTQI advocacy. In 2017, APC published the third EROTICS<sup>21</sup> Global Survey on Sexuality, Rights, and Internet Regulations.<sup>22</sup> The survey reached out to respondents who broadly self-identified as working on LGBTQI, women's and sexual rights issues, which potentially included activists, scholars, experts and supporters. Among other findings, a majority (88%) of respondents consider that the internet enables and increases the power, visibility, communication and organisation of women and minorities and a significant 66% of the sample said that the internet is considered an "important" or "very important" medium of sexual expression. As one respondent expressed:

"The internet has been fundamental because for LGBTQI activism, and also for feminists, Facebook allows the building of networks that would be very difficult to build in another way. It also allows the exchange of information in an efficient way, that would be very difficult in an-other way. The LGBTQI population is small and is distributed everywhere and it would not be possible to have a face-to-face network." (Trans pansexual woman, 35 years old, from Mexico)

However, LGBTQI, women's, and sexual rights activists suffer from particular stigma in the context of structural inequality, discrimination, and patriarchy. The activists are often victimized online through harmful and negative gender stereotypes, which are prohibited by international human rights law, and must handle a myriad of legal and technical issues when using the Internet. From negotiating censorship to dealing with situations of surveillance, activists also

---

<sup>21</sup> EROTICS is a global network of activists, academics and organisations working on sexuality issues including LGBTI rights, sex work and sex education, among others. See: <https://www.apc.org/en/project/erotics-exploratory-research-project-sexuality-and-internet>

<sup>22</sup> Association for Progressive Communications. (2017). *EROTICS Global Survey 2017: Sexuality, rights and internet regulations*. [https://www.apc.org/sites/default/files/Erotics\\_2\\_FIND-2.pdf](https://www.apc.org/sites/default/files/Erotics_2_FIND-2.pdf)

face the proliferation of text and images that are racist, transphobic, homophobic, and portray acts of physical violence against transgender and gender non-conforming people.<sup>23</sup>

The Internet is still considered by many a space that reproduces societal discrimination, violence and inequalities based on sexuality, gender, class, and race, and where internet corporations manipulate information, content, opinions and trends, and critically, influence policy decisions.

#### 4.1 Freedom of Expression

Sexual rights activists frequently utilize digital platforms such as social networks, instant messaging and emails, other web sites, blogs, and hosting services to access, produce and/or share content regarding sexuality or sexual rights.<sup>24</sup> The ICT innovations offered by intermediaries allow for the easy and rapid dissemination of digital material across multiple platforms, and over various networks. However, this widespread reach also comes with control over content regulation and censorship, which can lead to violations of the right to the freedom of expression, specifically the right to sexual expression.

This is over-broad censorship is clearly evident with the policies of intermediaries, specifically those of social media platforms such as Facebook and Twitter, which restrict image and video content of women's bodies. For example, there exists an odd divide on social media about when, where, and what kind of female nipples are allowed to exist in photos.<sup>25</sup> A long-standing societal debate, where men are allowed to appear topless in public while women are considered vulgar for doing the same, this has become a major struggle for online platforms in setting community guidelines.

Known for aggressively enforcing its nudity policy, Facebook came under criticism when it censored a news article on mammograms due to an image of a woman's exposed breast.<sup>26</sup> In response, the social media giant recently made its 27-page community standards public, stating that the company's policies on nudity have become "more nuanced over time."<sup>27</sup> The guidelines read, "While we restrict some images of female breasts that include the nipple, we allow other images, including those depicting acts of protest, women actively engaged in breastfeeding, and

---

<sup>23</sup> Witness Media Lab. (2016). *Capturing Hate: Eyewitness Videos Provide New Source of Data on Prevalence of Transphobic Violence*. <https://www.issuelab.org/resources/25865/25865.pdf>; Shepherd, Nicole. Association for Progressive Communications. (2016). "Big Data and Sexual Surveillance." [https://www.apc.org/sites/default/files/BigDataSexualSurveillance\\_0\\_0.pdf](https://www.apc.org/sites/default/files/BigDataSexualSurveillance_0_0.pdf)

<sup>24</sup> Association for Progressive Communications. (2017). *EROTICS Global Survey 2017: Sexuality, rights and internet regulations*. [https://www.apc.org/sites/default/files/Erotics\\_2\\_FIND-2.pdf](https://www.apc.org/sites/default/files/Erotics_2_FIND-2.pdf)

<sup>25</sup> Farokhmanesh, Megan. (2018). "Facebook sure has been thinking a lot about nipples."

<https://www.theverge.com/2018/4/24/17275114/facebook-community-guidelines-nipples-nudity>

<sup>26</sup> Bhattacharya, Ananya. (2016). "Facebook is under fire for censorship again, this time for blocking an image of a mammogram." <https://qz.com/807427/facebook-fb-is-under-fire-for-censorship-again-this-time-for-blocking-an-image-of-a-mammogram/>

<sup>27</sup> <https://www.facebook.com/communitystandards/>

photos of post-mastectomy scarring.” Facebook’s newfound “nuance” on nipple imagery is a welcome step towards the normalization – rather than sexualization- of the female body, but it still reveals the inherent double standards that women face when utilizing their right to sexual expression on the Internet.

This case reveals the challenges of giving intermediaries full jurisdiction to determine obscenity on their platforms, when they reinforce patriarchal standards of the real world into the online space and obstruct freedom of expression. This is particularly problematic when the field of technology has a persistent gender disparity issue with men dominating decision-making positions. In his 2011 report to the Human Rights Council, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression stated, “Holding intermediaries liable for the content disseminated or created by their users severely undermines the enjoyment of the right to freedom of opinion and expression, because it leads to self-protective and over-broad private censorship, often without transparency and the due process of the law.”

Consent is crucial to differentiating lawful from unlawful behavior, especially in arbitrating matters of morality or immorality, and in assessing whether there has been a violation of the right to expression with regard to dissemination of private data.<sup>28</sup> Often complicated and difficult to define in the online space, consent is thus crucial to address in any relevant mechanisms. Present guidelines to define consent by intermediaries do not go far enough.<sup>29</sup> Intermediaries should recognize that users’ have the right to sexual expression, such that there is nothing unlawful or immoral about expressing oneself sexually via digital images. Rather, it is the non-consensual spreading of private images, videos, or other data that is unlawful or immoral. It is the role of internet intermediaries to emphasize the importance of consent in the dissemination of content and comply with international human rights standards in determining whether a violation of the right to expression has been committed.

## **4.2 Right to Online Anonymity**

While it would be simplistic to not recognize the threat of anonymity, when it provides particular challenges in identifying perpetrators of violent and harmful content online, the right to anonymity is an essential facet of privacy in the online context, especially for feminist and LGBTQI activists. The enhanced anonymity offered by digital and virtual spaces, via encryption and privacy protocols, creates an essential zone of privacy to protect the right to freedom of expression. The Special Rapporteur on Freedom of Opinion and Expression’s 2015 report found

---

<sup>28</sup> Ibid.

<sup>29</sup> Facebook and the Cyber Civil Rights Initiative. “Not Without My Consent: Consent: A guide to reporting and removing intimate images shared without your consent.” [https://fbnewsroomus.files.wordpress.com/2017/03/not-without-my-consent.pdf?fbclid=IwAR2a-K13H2a1M9a8DpuA0BqPfp2zyZ-GZkm\\_xRtHipHN0628Q5dS7d495fs](https://fbnewsroomus.files.wordpress.com/2017/03/not-without-my-consent.pdf?fbclid=IwAR2a-K13H2a1M9a8DpuA0BqPfp2zyZ-GZkm_xRtHipHN0628Q5dS7d495fs)

that digital anonymity is particularly important for LGBTQI, sexual, and women's rights defenders in that it allows them to seek information, find solidarity and support and share opinions without fear of being identified.<sup>30</sup>

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.<sup>31</sup> To maintain anonymity, sexual minorities have adopted strategies such as having dual accounts on Facebook, a 'straight' profile using their real name and a queer account under an adopted name where they connect with others in the LGBTQI community.<sup>32</sup> This has come into conflict with Facebook's real name policy, which has been critiqued for its negative impact on trans and queer individuals.<sup>33</sup> The requirement to disclose official state-sanctioned identity documents has also resulted in discrimination and harassment towards trans people, particularly those whose anonymity is critical for their safety in conservative contexts, and/or whose chosen names are central to their dignity and autonomy. In some cases, bullies and harassers have reported names of their targets forcing them to hand over personal documents to social media platforms or companies, reverting to their legal names or disconnect from their often critical and life-saving social networks by leaving the platform entirely.<sup>34</sup> The politics of real-name policies not only reinforces heteronormative logics in social data, it enables the involuntary "outing" and direct sexual surveillance of queer individuals.<sup>35</sup> For example, Tanzania recently formed a surveillance squad to track down and arrest people in same-sex relationships via social media.<sup>36</sup> This case illustrates that the protection of anonymity and encryption of private data via intermediaries can be a matter of life and death for users.

### 4.3 Algorithms and Big Data

In the digitised world of big data, what is personal and what is public data is blurred. Internet intermediaries hold increasing power to monitor, regulate, and commoditise data, often without

---

<sup>30</sup> [https://www.ohchr.org/EN/HRbodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32\\_AEV.doc](https://www.ohchr.org/EN/HRbodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc)

<sup>31</sup> Shepherd, Nicole. (2016). "Big Data and Sexual Surveillance."

[https://www.apc.org/sites/default/files/BigDataSexualSurveillance\\_0\\_0.pdf](https://www.apc.org/sites/default/files/BigDataSexualSurveillance_0_0.pdf)

<sup>32</sup> Ganesh, M. I., Deutch, J., & Schulte, J. (2016). Privacy, anonymity, visibility: dilemmas in tech use by marginalised communities. <https://opendocs.ids.ac.uk/opendocs/handle/123456789/12110>

<sup>33</sup> Shepherd, Nicole. (2016) Big Data and Sexual Surveillance

[https://www.apc.org/sites/default/files/BigDataSexualSurveillance\\_0\\_0.pdf](https://www.apc.org/sites/default/files/BigDataSexualSurveillance_0_0.pdf)

<sup>34</sup> Booyesen, T. (2016). "Facebook's Real Name Policy: Does It Actually Help To Keep The Online Community Safe?" <https://www.genderit.org/feminist-talk/facebooks-real-name-policy-does-it-actually-help-keep-online-community-safe>

<sup>35</sup> Levin, Sam. (2018). The Guardian. <https://www.theguardian.com/world/2017/jun/29/facebook-real-name-trans-drag-queen-dottie-lux>

<sup>36</sup> BBC News. (2018). "Tanzania: Anti-gay crackdown in Dar es Salaam." <https://www.bbc.com/news/world-africa-46048804>

user consent.<sup>37</sup> Surveillance has historically functioned as an oppressive tool to control the bodies of women, LGBTQI communities, and other marginalized populations, and is closely aligned with colonial and patriarchal inequities. The big data, meta data, technologies, and algorithms used to record this information comes with their own biases and are not neutral by any stretch.<sup>38</sup> The understanding that this data never emerges in isolation but are contingent on context, technologies, humans and their algorithms which collect, sort, and analyse them, as well as on the power relations that all of the above are imbued with, is critical. This is evident in the use of algorithms by intermediaries to shape the news feeds or search results that users receive and direct specific advertising content has been called into question for implicit biases and discrimination. The trend towards opaque algorithmic decision-making in content moderation and aggregation of user data for sale to corporations and state agencies means that internet companies and social media platforms can act to exacerbate existing heteronormative bias that then creates a feedback loop of discrimination.<sup>39</sup>

A 2016 investigation by The Guardian found that “Google’s search algorithm appears to be systematically promoting information that is either false or slanted with an extreme right wing bias on subjects as varied as climate change and homosexuality” and similar observations have been made about Google’s autocomplete function.<sup>40</sup> This is not intentional, and Google does try to fix specific instances when they are brought to their attention. However, as the authors of the Guardian article point out, these fixes are made quietly by humans at Google through “manual adjustments in a process that’s neither transparent nor accountable.” This demonstrates the need for the implementation of frameworks for algorithmic transparency by internet intermediaries with the technical knowledge and understanding, as well as resources to do so.

## 5. Recommendations

It is clear that eliminating online violence and upholding sexual rights requires the intercession of internet intermediaries, including corporations serving the role of internet intermediaries.

The above discussions should be seen in context of a larger, ongoing conversation given that the scope of corporate actions in upholding human rights will continue to change and be shaped by

---

<sup>37</sup> Personal data means any information relating to an identified or identifiable individual; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number (e.g. social security number) or one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity (e.g. name and first name, date of birth, biometrics data, fingerprints and DNA).

<sup>38</sup> Shepherd, Nicole. (2016) Big Data and Sexual Surveillance  
[https://www.apc.org/sites/default/files/BigDataSexualSurveillance\\_0\\_0.pdf](https://www.apc.org/sites/default/files/BigDataSexualSurveillance_0_0.pdf)

<sup>39</sup> Ibid.

<sup>40</sup> Levin, Sam & Solon, Olivia. (2016). The Guardian. “How Google's search algorithm spreads false information with a rightwing bias.” <https://www.theguardian.com/technology/2016/dec/16/google-autocomplete-rightwing-bias-algorithm-political-propaganda>

technological advances (e.g. in access, connectivity, design and infrastructure) as well as emerging laws and standards regulating ICT companies internationally and locally. To ensure that the digital ecosystem can promote gender equality, Internet intermediaries must work in line with the United Nations Guiding Principles on Business and Human Rights.

It is the responsibility of intermediaries to ensure that the internet is a space that empowers, rather than subjugates, women.