



APC submission on protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly

APC welcomes the opportunity to present this submission in response to the call for inputs issued by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI), who will dedicate his thematic report to the 56th session of the United Nations Human Rights Council to an exploration of the human rights to freedom of expression, freedom of assembly and freedom of association, as they relate to protection against violence and discrimination based on sexual orientation and gender identity.¹

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¹ <https://www.ohchr.org/en/calls-for-input/2024/call-input-protection-against-violence-and-discrimination-based-sexual>

Introduction

This submission was made to highlight and raise alarm about the ongoing violence and discrimination that people of diverse genders and sexualities face, which is a manifestation of historical and structural inequalities in power relations between genders. Violence and discrimination based on sexual orientation and gender identity not only affect the human rights to freedom of expression, association and assembly, but also violate a great part of human rights principles and standards enshrined in international instruments and can constitute violations of international law.

Although digital platforms have provided tools and channels for sexually and gender-diverse people to connect with each other, violence and discrimination can also be committed, abetted or aggravated, in part or fully, by the use of information and communications technologies (ICTs.)² Digital technologies increase the amount of violence and discrimination that people of diverse genders and sexualities face. They limit and compromise the rights to freedom of expression and access to information as well as putting people's privacy and well-being at risk.

This submission aims to bring attention to these serious challenges and issues that people of diverse genders and sexualities face online.

In the reports presented by the IE SOGI as well as in the call for input of this submission, there have been mentions of an urgent need to collect more information on this matter as, over the last few years, some UN member states have amplified their restrictions to the right to freedom of expression in ways that specifically prohibit speech that defends the human rights of lesbian, gay, bisexual, trans and other gender-diverse (LGBTQIA+) persons.

This submission proposes input to questions 1 and 6 in the questionnaire provided, focusing on the human rights to freedom of expression, association and assembly of people of diverse genders and sexualities in the digital sphere.

² APC. (2023). *Feminist Principles of the Internet: Advocacy brief on violence*.
<https://genderit.org/index.php/FPI-paper-on-violence>

Laws, policies or practices that restrict the exercise of freedom of expression and association of civil society organisations or activists advocating for LGBTQIA+ persons' human rights, including laws and policies that regulate the participation of people of diverse genders and sexualities online

The Association for Progressive Communications (APC) is a membership-based network of organisations and activists with the mission of strengthening collective organising towards building a transformative movement to ensure that the internet and digital technologies enable social, gender and environmental justice for all people. APC is comprised of 62 organisational members and 41 associates active in 74 countries, primarily in the global South, and also works closely with various partner organisations.

For this submission, we reached out to our members and partners in order to collect responses and experiences from civil society organisations and individuals that advocate for the rights of people of diverse genders and sexualities. We received input from eight members and partners that reflects the realities of eight countries: India, Paraguay, Uganda, Botswana, Rwanda, South Africa, Indonesia and Türkiye.³

Overall, the information gathered shows that in each country there is a culturally sensitive nature of questions surrounding gender and sexuality.⁴ Spaces for freedom of expression and assembly, especially when there have been efforts to expand conversations around gender and sexuality, have been taken away by people and groups who act arbitrarily in the name of morality and religion. As noted by the UN Special Rapporteur on freedom of expression, in several countries, laws that refer to the protection of public morals as a reason for criminalising content that is considered inappropriate, obscene or indecent have censored and/or censored

³ We received input from member organisations Point of View, TEDIC and Derechos Digitales and partner The Left Out Project, among others.

⁴ Bhandari, V., & Kovacs, A. (2021). *What's Sex Got to Do with It? Mapping the Impact of Questions of Gender and Sexuality on the Evolution of the Digital Rights Landscape in India*. Internet Democracy Project. <https://cdn.internetdemocracy.in/idp/assets/downloads/reports/whats-sex-got-to-do-with-it-mapping-the-impact-of-questions-of-gender-and-sexuality-on-the-evolution-of-the-digital-rights-landscape-in-india/Vrinda-Bhandari-and-Anja-Kovacs-Whats-Sex-Got-To-Do-with-It.pdf>

relevant information related to gender and sexuality.⁵ This has limited access to information on sexual orientation and/or gender identity.

Moreover, violence affecting trans, non-binary and gender-diverse people is widespread through systemic, cultural, religious and political influence.⁶ In their contributions, our partners and members have documented how people of diverse genders and sexualities often face discrimination from health care professionals, being arrested and detained, sexual harassment and violence, online harassment, and being targeted by transphobic groups, to name only a few.⁷

Finally, what is most worrying in terms of freedom of expression in each of these countries is that the majority of LGBTQIA+ persons, especially trans people, cannot safely express themselves entirely, nor express their gender identity, due to the alarming and worrying levels of homophobia and transphobia. For trans persons, transphobic harassment and violence manifest in a number of ways, which can range from verbal abuse to physical abuse, sexual violence and even murder.⁸ Transgender women, in particular, experience the highest rates of violence.⁹

Country by country overview

India

India's Information Technology Act, 2000 (IT Act) is concerned with questions of obscenity, morality and sexuality at the intersection of criminal law and digital rights. Section 67 of the Act criminalises the publication or transmission of "obscene material" in electronic form.¹⁰ Research has demonstrated that section 67 is being used as a catch-all offence along with other provisions of the Indian Penal Code, covering cases that often have very little to do with obscenity but instead relate to, for example, political speech, criminal intimidation, and breach of peace.¹¹

Additionally, existing legislation on sexual violence, harassment, criminal intimidation and other forms of online violence are inadequate, and often people of diverse

5 Derechos Digitales & APC. (2023). *When protection becomes an excuse for criminalisation: Gender considerations on cybercrime frameworks*. https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf

6 McLean, N., & Cicero, T. (2023). *The Left Out Project report: The case for an online gender-based violence framework inclusive of transgender, non-binary and gender-diverse experiences*. Association for Progressive Communications. <https://firn.genderit.org/sites/default/files/2023-08/The-Left-Out-Project-Report.pdf>

7 Ibid.

8 Ibid.

9 Ibid.

10 Bhandari, Vrinda & Kovacs, Anja. (2021). Op. cit.

11 Ibid.

genders and sexualities are hesitant to engage in the lengthy and unreliable process.¹² While there are some sections in the Indian Penal Code and the IT Act that the police and judiciary use to address the different forms of abuse, they are often ad hoc or disconnected. They are either focused on offline gender-based violence or on online fraud, and are not framed within the context of gender and violation of integrity and personal autonomy.¹³ Furthermore, protectionist legal approaches to safety reduce minorities, specifically women, to objects of state control and perpetuate false notions of the ideal or “unsexed” Indian woman, and thereby undermine their digital rights.

Meanwhile, the Transgender Persons (Protection of Rights) Act 2019 was enacted by the Government of India in December 2019 to recognise and protect the rights of transgender persons. This Act has several problematic provisions, including the demand for surgical intervention for transgender persons to change their gender on identification documents, which not only limits the possibility of transgender persons to access public services and to obtain official recognition, but clearly limits their right to freedom of expression and self-determination by failing to recognise their gender identity.¹⁴ Legal resources for gender and sexual minorities are limited for several reasons including shame and stigma, intimidation and fear of punitive actions, challenges in registration of complaint, and lack of sufficient psychosocial support to fight a case in court.¹⁵

Paraguay

In 2023, APC member organisation TEDIC¹⁶ co-authored a report called “Debts and challenges for the full enjoyment of human rights in the digital environment”. According to this report, a lack of personal data protection laws and effective protection for victims of online gender-based violence are just some of the major problems that need to be mitigated.¹⁷

There is still no data protection law at the national level, although negotiations are taking place around it. Without a data protection law, the indiscriminate treatment of

12 Dhapoa, T. (2022, 26 January). Fighting online sexual harassment is a long-drawn battle for women. *The Indian Express*. <https://indianexpress.com/article/technology/tech-news-technology/fighting-online-sexual-harassment-is-a-long-drawn-battle-for-women-774112>

13 Ibid.

14 Brindaalakshmi, K. (2023, 27 November). Gendering of development data in India: Post-Trans Act 2019. *GenderIT.org*. <https://genderit.org/articles/gendering-development-data-india-post-trans-act-2019>

15 IT for Change. (n/d). *Access to Justice Issues in Cases of Online Gender-Based Violence*. <https://projects.itforchange.net/online-violence-gender-and-law-guide/module-3-access-to-justice>

16 <https://www.tedic.org/en>

17 TEDIC & CRI Paraguay. (2023). *Deudas y desafíos para un pleno disfrute de los derechos humanos en el entorno digital*. https://www.tedic.org/wp-content/uploads/2023/12/LIBERTAD-Digitales_Pdf-1.pdf

personal information presents severe risks. Data can be used to profile and harm, as has been done in the past, placing people of diverse genders and sexualities in danger.¹⁸

Moreover, a Paraguayan legislative proposal known as Pyrawebs seeks to oblige internet providers to store the browsing meta-data of all people for six months to prosecute punishable acts such as child pornography and other computer crimes. TEDIC believes that it is essential to recognise that data retention constitutes a measure that limits and impacts the rights to privacy and freedom of expression. Traffic data retention is a measure that involves the collection and storage of information such as phone numbers, call durations, locations, and IP addresses. Despite its use in fighting crime, this practice raises significant concerns regarding invasion of privacy and restriction of freedom of expression, especially for vulnerable communities like women and gender and sexually diverse individuals that are often under increased government and cultural scrutiny.¹⁹

Additionally, the legislative proposal of a national registry of spectators will make it mandatory to carry out the registration of participants who attend events of more than 2,500 people. The registration will include participants' full names, ID document numbers, addresses and digital photographs. This initiative can represent a huge threat to participants' privacy, especially with a lack of a data protection law. In case of data breaches, the risk of misusing information to cause harm is high.

Furthermore, a bill that seeks to place electronic ankle bracelets on victims of domestic violence, which is mostly gender-based violence, may have undesirable effects from a privacy and personal data protection perspective, putting them at risk of being revictimised.²⁰

Uganda

Research conducted by The Left Out Project reports that the new anti-LGBTQIA+ law, titled the Anti-Homosexuality Law, 2023 and signed into effect on 29 May 2023 by President Yoweri Museveni, is aggravating and amplifying violence towards people of diverse genders and sexualities.²¹ Uganda's case is one big example of how politicians use LGBTQIA+ rights as a political weapon in securing votes and their leadership.

Additionally, in August 2022, the government banned the LGBTQIA+ rights organisation Sexual Minorities Uganda (SMUG) from operating. There are no laws

18 Ibid.

19 Ibid.

20 TEDIC. (2023). *Tobilleras electrónicas: ¿más seguridad o una herramienta para la vigilancia?*

<https://www.tedic.org/tobilleras-electronicas-mas-seguridad-o-una-herramienta-para-la-vigilancia>

21 McLean, N., & Cicero, T.(2023). Op. cit.

that outright criminalise transgender, non-binary and gender-diverse people, but they “have been indirectly criminalised under the offences of ‘personation’ (false representation), public indecency and the criminalisation of consensual same-sex sexual acts.”²²

Botswana

According to the Left Out Project Report,²³ in 2019 the High Court of Botswana repealed laws that criminalise and discriminate against LGBT people. In 2017, the High Court ruled that a transgender man was allowed to have official documents that reflected his gender identity. This judgement meant that transgender people in Botswana can now have their identities recognised and affirmed legally.

Rwanda

Rwanda does not outlaw being lesbian, gay, bisexual or transgender, but sexual identity is not frequently discussed or acknowledged. Rwanda is “a signatory to the 2011 United Nations statement condemning violence against LGBT people,” but, like South Africa where LGBT rights are protected, homophobia and transphobia persist socially. Moreover, while the constitution protects citizens from discrimination, protections for sexual orientation and gender identity are not explicitly stated in the same way that protections based on race or sex are.²⁴

South Africa

South Africa is often celebrated, both locally and globally, as a champion of LGBTQIA+ rights, with the country’s post-apartheid constitution being the first in the world to protect people regardless of sexual orientation. However, many LGBTQIA+ South Africans continue to face homophobic and transphobic harassment and violence within their communities.²⁵ In July 2021, the South African Government News Agency, Sanews, reported that “South Africa has recently seen an increase in the number of attacks against lesbians, gays and transgender people,” and that 29 cases of hate crimes against the LGBTQIA+ community had been documented since the start of 2020.” Meanwhile, Gender DynamiX “documented 60 cases of human rights violations perpetrated against trans and gender-diverse persons in the space of three months.”²⁶

22 Ibid.

23 Ibid.

24 Ibid.

25 Ibid.

26 Ibid.

Indonesia

Researchers in Indonesia report that although lesbian, gay and bisexual are no longer classified as mental disorders, LGBT people still have to continue to fight for their rights as citizens. Transgender groups have to risk their lives to show themselves, while queer persons and groups do not get space in a society with a strict gender classification of men and women. The existence of transgender and queer people is considered a threat to the order of life as "normal" human beings. Moreover, the researchers say, gender diversity that was embedded in Indonesian culture and tradition received a "fact reversal": that this diversity comes from the "Western culture".²⁷

In 2016, electronic media and social media became a strategic medium for various institutions expressing their rejection towards LGBT people and limiting access to information about the LGBT community. The Indonesian Broadcasting Commission and Indonesian Child Protection Commission prohibited what were deemed to be promotion of LGBT issues on TV and radio through content blocking so that children and youth would not "imitate LGBT behaviour." The vice president also stopped the UN and foreign donor agencies from funding LGBT-related work in the country because it supposedly encouraged LGBT campaigns and promotions. He also discouraged LGBT people from publishing information on the internet that promotes LGBT movements. This state of moral panic was automatically used by various mass organisations and intolerant groups to increasingly call for the rejection of LGBT people in many places. This situation led to the violent forced closure of the Transgender Islamic Boarding School in Yogyakarta. Throughout 2017, the Ministry of Communication and Information regularly blocked various applications and sites with LGBT content to prevent the spread of "LGBT propaganda on the internet".²⁸

Moreover, the transwomen and transmen communities are increasingly receiving discriminatory treatment and becoming victims of violence. Various eradication efforts have been carried out, ranging from evictions from their homes and raids in gathering rooms to targeting people who were considered movers in the community, causing extreme physical and mental exhaustion. In response, many transgender people decided to reverse their expression into what is perceived as "normal" by the society to feel safer. Some transgender people who were previously part of the trans or LGBT community even labelled themselves as "ex-transgender". Some of those who claimed to be ex-transgender even went further by publicly attacking LGBT persons and communities on social media or just sending direct messages and giving testimonies about being "cured", and claiming that all trans people can be cured.²⁹

27 Rizqy, R., & Andriyanti, Y.D. (2022, 22 March). We Rise, We Heal, We Resist. *GenderIT.org*. <https://genderit.org/feminist-talk/we-rise-we-heal-we-resist>

28 Ibid.

29 Ibid.

Türkiye

Recent research highlights that the absence of legislation in Türkiye that prohibits discrimination against LGBTQIA+ people and promotes equality leaves them legally vulnerable to discrimination in accessing basic human rights such as employment, access to goods and services, education, health, travel and freedom of settlement. State institutions established to ensure equality have no programmes or public policies regarding LGBTQIA+ communities.³⁰

Apart from not legally recognising the civil unions of LGBTQIA+ people, current legal regulations restrict these unions to make them impossible. Non-recognition of such civil unions results in depriving many couples of their social rights. Likewise, lack of regulation of hate crimes that LGBTQIA+ individuals are severely, systematically and constantly exposed to prevents them enjoying their basic human rights, including the right to life. Since public authorities themselves have been engendering hate speech in the last three years, hate crimes and discourse against LGBTQIA+ communities by society and public officials have also increased systematically.

Moreover, when it comes to civil society, the right to assembly and demonstration, and many collective activities and events for LGBTQIA+ communities, have been systematically and unlawfully prevented for many years, and new prohibitions put into effect despite the intervention of courts against these unlawful practices. In this way, even if one ban decision is annulled, new ban decisions are taken and events cannot be organised until the court decides. In this way, events are blocked and a policy of intimidation is put in place.³¹

30 Tar, Y. (2023). *All of a sudden: Research on digital violence against LGBTQI+ communities in Türkiye*. Association for Progressive Communications.
https://firn.genderit.org/sites/default/files/2023-08/All-of-a-sudden_0.pdf

31 Ibid.

Technology-facilitated gender based violence and discrimination based on sexual orientation and gender identity

Looking at the national examples that are mentioned above, there is clear evidence of a differentiated impact that ICTs have on people of diverse genders and sexualities. Online and offline gender-based violence do not happen in vacuums separate from each other, gender-diverse people's lives online intersect frequently and in various complex ways with other areas of their lives, and violence in any one domain can often produce harm across other domains.³² Technology-facilitated gender-based violence (TFGBV) happens across sites and platforms and has diverse expressions, with many emerging concerns for gender justice actors. These can include doxxing and harassment, disinformation campaigns meant to discredit or incite violence against gender justice advocates, and the non-consensual sharing of intimate imagery and videos, particularly targeting young people.³³

“Supporting Safer Digital Spaces” by Suzie Dunn, Tracy Vaillancourt and Heather Brittain

The multi-year research project Supporting a Safer Internet³⁴ was created to explore the prevalence and impacts of TFGBV experienced by women and transgender, gender-non-conforming and gender-diverse people, as well as TFV against LGBTQ+ individuals, through an international survey. The survey examined the influence of gender and sexual orientation on people's experiences with online harms, with a focus on countries in the global South. Data was collected from 18,149 people of all genders in 18 countries.

Some of the key findings of the research conducted for the project are:

- Transgender and gender-diverse people reported the highest proportion of incidents experienced.
- LGBTQ+ people were much more likely to report a serious impact from online harms compared to heterosexual and cisgender people.
- People identifying as lesbian, gay, bisexual and other sexualities (LGB+) reported some of the most negative effects on their mental health (35.8%) (compared to heterosexual people); higher proportions of transgender and

32 APC. (2023). *Feminist Principles of the Internet: Advocacy brief on violence*. <https://genderit.org/index.php/FPI-paper-on-violence>

33 Ibid.

34 <https://www.cigionline.org/activities/supporting-safer-internet>

gender-diverse people (29.8%) and women (29.4%) reported very negative impacts on their mental health as compared to men (21.8%).³⁵

Survey findings by country can be downloaded on the project website.³⁶

Research on TFGBV experienced by transgender, non-binary and gender-diverse people in Botswana, Rwanda, South Africa and Uganda by the Left Out Project

The outcomes from The Left Out Project report³⁷ show that the discourse and realities online and on the ground for transgender, non-binary and gender-diverse (TNBGD) people are becoming more hostile. The research was conducted in September and October 2022 with 29 adult individuals 18 years and older who reside in Botswana, Rwanda, South Africa and Uganda. Researchers selected two countries where LGBTQIA+ rights are legalised, namely Botswana and South Africa, and two countries where LGBTQIA+ rights are not protected, these countries being Rwanda and Uganda. The reasoning behind this would be to explore similarities and differences in TNBGD people's experiences of TFGBV and the common themes that emerge across some or all of the countries. The violence experienced by participants was found to be in four key forms: dismissal of gender identity; sharing of images without permission; hateful comments; and threats of violence and death. Participants spoke of the internet and social media platforms as being largely unsafe for TNBGD people, and how when they posted any content online – be it their pronouns, images, thoughts or experiences – they were almost immediately targeted by transphobic individuals. Some participants also expressed concerns over potential government surveillance. Moreover, participants spoke of using the following strategies to stay safe on online platforms: blocking, avoidance and use of closed groups. Participants reported that platforms did not take their experiences of violence seriously, and some of the participants were not even aware of reporting tools on platforms. Participants also appeared to be resigned to the idea that violence against them was inevitable.

35 Dunn, S., Vaillancourt, T., & Brittain, H. (2023). *Supporting Safer Digital Spaces: Highlights*. Centre for International Governance Innovation.

https://www.cigionline.org/static/documents/OGBV_Highlights_web.pdf

36 <https://www.cigionline.org/activities/supporting-safer-internet>

37 McLean, N., & Cicero, T.(2023). Op. cit.

“All of a sudden: Research on digital violence against LGBTQI+ communities in Türkiye” by Kaos GL Association

In Türkiye, the vast majority of the hate crimes triggered by homophobia and transphobia are committed in schools, homes and neighbourhoods, public transportation or stops, at cafés and bars, and on the streets and other public places. The research conducted by Kaos GL Association also showed that, on average, each victim that was interviewed experienced violation of rights more than two times: 117 respondents cited 267 types of violation of rights. Generally, hate speech based on sexual orientation and sexual identity, and threats of excessive violence (torture) were accompanied by "more severe" violations.³⁸

The study showed that the violence against LGBTQI+ individuals on the internet begins with insults and swearing. It escalates to threats, blackmail, harassment, persistent stalking, using names assigned at birth, sharing personal information and images without consent, restriction of internet access, and hate campaigns. The person is often subject to digital violence more than once. Targeting and hate campaigns that start “all of a sudden” become widespread very rapidly through the common involvement of perpetrators with diverse affiliations, acquiring a dimension that threatens even the physical safety of the target. The most striking result of the research was that nine out of every 10 LGBTQI+ persons are subject to digital violence and they witness hate speech almost on a daily basis on the internet.³⁹

Hate speech

Hate speech is not only defined as the “perpetration of hate through communicative action in the online and offline worlds”, it is also speech that is at the receiving end of hate, an interstitial point that lives in a time when a pronouncement is made and is a consequence of “speaking up”.⁴⁰

In the last years, there has been a sharp increase in hate speech across the world. Social media platforms have been accused of inciting and promoting hate speech as it creates more engagement by platform users. Elon Musk, who took over Twitter (now rebranded as X) in 2022, admitted this openly in one of his interviews. Now that there is proof that platforms actively promote hateful content towards queer people, because of profit, people of diverse genders and sexualities pay a heavy price with little agency to stop it within the mechanisms imposed by Big Tech.⁴¹

38 Tar, Y. (2023). Op. cit.

39 Ibid.

40 Raghunath, P. (2022). *Hated Speech and the Cost of Freedom in India*. Association for Progressive Communications. https://www.apc.org/sites/default/files/final_report_-_hated_speech_and_the_costs_of_freedom_in_india.pdf

41 Moawad, N. (2023, 24 July). Feminists in the Panopticon: How surveillance capitalism captures feminist movements. *GenderIT.org*. <https://genderit.org/articles/feminists-panopticon-how-surveillance-capitalism-captures-feminist-movements>

In Indonesia, public officials, from ministers, to parliaments, to mayors, continuously convey hate speech in various media. They emphasise that LGBT people threaten the country's national security, culture and religious values.⁴² This is also happening in Uganda, where politicians cite how "un-African" homosexuality is as an argument for advocating institutionalised discrimination.⁴³

Hate speech and TFGBV in general have significantly impacted individuals' and organisations' ability in organising and building public awareness about LGBTQIA+ rights. It is not easy to collect strength and affirmation in a situation where hate narratives and accusations of "LGBTQIA+ propaganda and promotion" are carried out by both the state and the society, and perpetrated and aggravated by social media platforms.

Surveillance

The research from our members and partners presented above shows clear evidence that certain countries use technology to monitor and punish people of diverse genders and sexualities for expressing their gender identity and their sexual orientation.

The effects of surveillance are never merely personal; they are structural and political. As politicians are using LGBTQIA+ rights as a political weapon in securing votes and their leadership, surveillance reproduces unequal power relations and status quo in the digital dimension.⁴⁴

With the evolution of technology, the creation of algorithms and the use of AI, which feeds surveillance systems, people of diverse genders and sexualities face an uncertain future in the face of ever more widely deployed and invasive technologies. These have caused numerous harms to queer people, including privacy violations, censoring and down-ranking queer content, exposing queer people and spaces to harassment by making them hyper-visible, dead-naming and outing queer people, which can be fatal and can put their integrity at risk in countries where LGBTQIA+ rights are not recognised.⁴⁵

42 Rizqy, R., & Andriyanti, Y.D. (2022, 22 March). Op. cit.

43 McLean, N., & Cicero, T. (2023, 2 June). LGBTQIA+ rights are not a political plaything. *GenderIT.org*. <https://genderit.org/feminist-talk/lgbtqia-rights-are-not-political-plaything>

44 Kovacs, A., & Ranganathan, N. (2017). *Gendering Surveillance*. Internet Democracy Project. <https://genderingsurveillance.internetdemocracy.in>

45 Queer In AI et al. (2023). Queer In AI: A Case Study in Community-Led Participatory AI. *Proceedings of the 2023 ACM Conference on Fairness, Accountability, and Transparency*. <https://dl.acm.org/doi/abs/10.1145/3593013.3594134>

For example, the impacts of privacy violation in dating apps are significant and far-reaching. It compromises users' safety and makes them vulnerable not only to surveillance but also harassment, abuse, negative professional repercussions, or even physical harm. It is particularly concerning for structurally oppressed gender and sexual identities with lesser or non-existent legal protection.⁴⁶ Transgender users often find their social media/dating app accounts taken down after mass reporting of their content by trolls. This leads to a culture of self-censorship or setting their accounts to private, which prevents their voices and their stories from being amplified. Trolling of gender and sexual minorities also extends to harassing comments and spamming their direct messages (DMs) with abusive messages.⁴⁷

Moreover, there are countries where CCTV surveillance systems are a trend, with the use of algorithms to analyse massive amounts of information to predict and help prevent potential future crimes.⁴⁸ There is convincing evidence that proves predictive policing algorithms are ineffective and that they legitimise discrimination by hiding it behind the façade of mathematical analysis. They highly violate the right to privacy.⁴⁹

46 Meghagark.Work (2023, 6 December). Are Courts Ready for Dating Apps? *Youth Ki Awaaz*. <https://www.youthkiawaaz.com/2023/12/are-courts-ready-for-dating-apps>

47 Bhandari, V., & Kovacs, A. (2021). Op. cit.

48 Murugesan, R. (2021, 16 April). Predictive policing in India: Deterring crime or discriminating minorities? *LSE Human Rights Blog*. <https://blogs.lse.ac.uk/humanrights/2021/04/16/predictive-policing-in-india-deterring-crime-or-discriminating-minorities>

49 Ibid.

Recommendations

Violence and discrimination based on sexual orientation and gender identity must be addressed by holistic and dedicated legal frameworks. These legal frameworks should recognise that the online-offline continuum leads to a situation where violence and discrimination initiated offline can be aggravated and perpetrated online, and vice versa. Any law in this area must foreground rights to bodily autonomy, self-determination, freedom of expression and the right to participate in public debate.⁵⁰ States should therefore ensure that legal frameworks adequately protect freedom of expression (including political, religious and sexual expression), privacy, and freedom from violence.⁵¹

This can be done through the following recommendations:⁵²

Governments

- Take a human rights-based, equity-focused, trauma-informed, survivor-centric and intersectional gender-just approach when addressing violence and discrimination through laws and policies.
- Legally recognise and respect LGBTQIA+ rights, including rights to bodily autonomy, self-determination, freedom of expression, freedom from violence, freedom of association and the right to participate in public debate.
- Take a clear public stance against violence and discrimination, in particular against forms that are disproportionately harmful to equity-seeking groups, including LGBTQIA+ people.
- Ensure that concepts of freedom of expression, sexual autonomy and privacy rights use a human rights-based approach. Take into consideration the silencing effect of violence and discrimination and the rights of equity-seeking groups to express themselves safely and authentically offline and online.
- Meaningfully and regularly consult and collaborate with civil society organisations, researchers, academics and legal practitioners with expertise in violence and discrimination as well as victims/survivors, when developing laws, policies and programmes.
- For laws on violence and discrimination, avoid an over-reliance on criminal law solutions and ensure that there are non-criminal legal, governmental and non-governmental options available to victims/survivors, such as civil laws, privacy/data protection laws, human rights laws, administrative solutions and/or community-based solutions, that address it.
- Ensure that laws do not unjustly restrict sexuality and sexual expression, human rights advocacy and criticism of governments and institutions.

50 Derechos Digitales & APC. (2023). Op. cit.

51 Ibid.

52 All of these recommendations are adapted from the recommendations given in the report *Supporting Safer Digital Spaces*, available here: https://www.cigionline.org/static/documents/SaferInternet_Special_Report.pdf; we strongly recommend following all the recommendations given to address TFGBV.

- Review existing laws, such as morality, anti-pornography and anti-obscenity laws, to ensure intersectionality and that people are not unjustly at risk of surveillance and/or criminalisation or legal penalties for their expression of sexual orientation and gender identity.

Tech companies

- Ensure that platforms and products are compliant with human rights principles by changing business practices in order to prioritise safety and privacy over content views and user engagement.
- Ensure that any algorithmic tools used do not amplify discriminatory content or incite violence or hate against LGBTQIA+ persons.
- Ensure that content moderation policies effectively address TFGBV and discrimination using a human rights-based, equity-focused, trauma-informed, survivor-centric and intersectional gender-just approach.
- Meaningfully engage with civil society organisations, researchers and academics with expertise on TFV, as well as victims/survivors, to improve policies and responses to TFV.
- Continue to develop and improve technical tools that users can use to protect themselves from TFV and provide clear information on how to use them.
- Ensure that content moderation policies are transparent and easy to use. Rules should be clear, and users should be able to determine what content is harmful according to those companies' policies. This should include clear appeal processes to challenge decisions.
- Work collaboratively with civil society organisations and academics who conduct research on TFV prevention by providing access to relevant data that assists their research.
- Collect and publish transparency reports with disaggregated data on the types of violations and number of incidents faced by women, men, LGBTQIA+ people and equity-seeking groups, as well as the responses to those violations, and routinely review the data to assess the effectiveness of policies and practices. Work collaboratively with civil society organisations and academics to review the data and determine best practices.