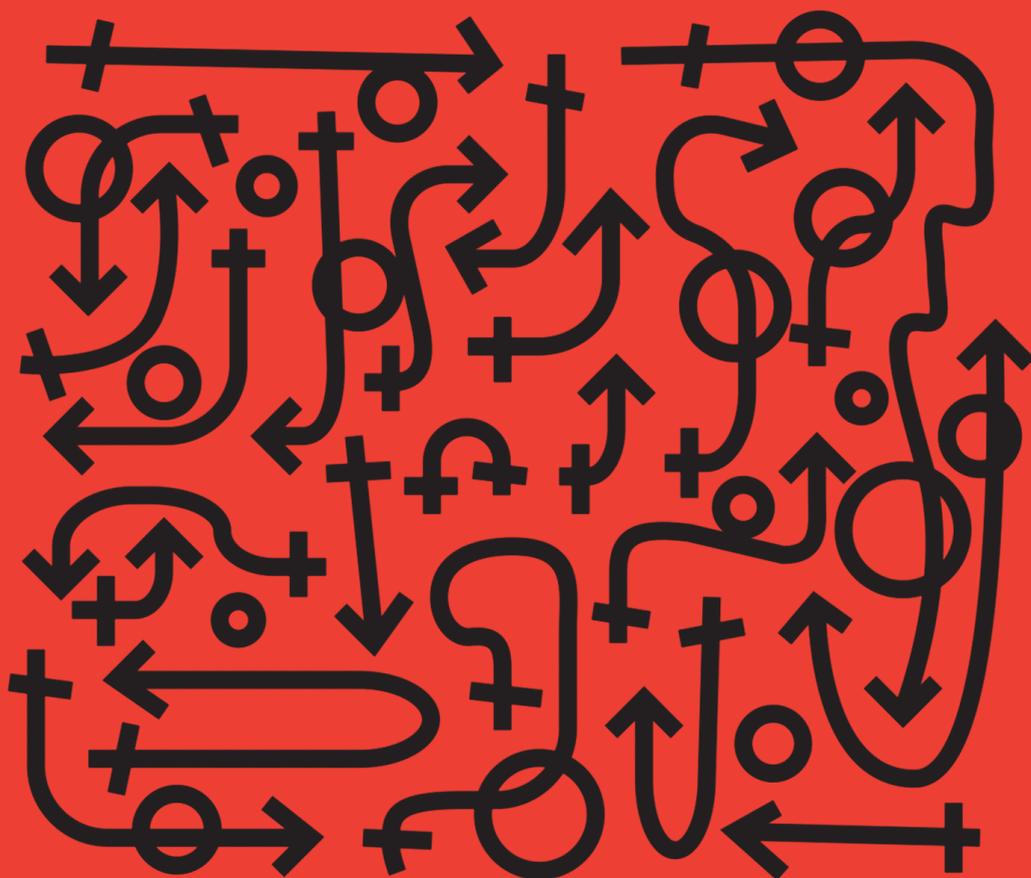


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

Sexual rights and the internet

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Table of contents

| | |
|--|---|
| Preface | 5 |
| Anriette Esterhuysen and Will Janssen | |

THEMATIC REPORTS

| | |
|---|----|
| Kanaga's choices: Queer and transgender identity in the digital age | 9 |
| Mark Gevisser | |
| The democratisation of authority in the Middle East and North Africa | 13 |
| Amina Wadud | |
| A policy landscape of sexual orientation, gender identity and the internet | 17 |
| Sheherezade Kara | |
| Feminist autonomous infrastructures | 22 |
| Sophie Toupin and Alexandra Hache | |
| Privatising censorship online | 26 |
| Jillian York | |
| Problematising the dominant discourse around children, youth and the internet | 30 |
| Mitali Thakor | |
| Porn. Panic. Ban..... | 35 |
| Bishakha Datta | |
| Click "I agree": Consent and feminism in commercial pornography | 40 |
| Jiz Lee | |

COUNTRY REPORTS

| | |
|--|-----|
| "Be obedient, be normal, do not stand out..." | 47 |
| Alan Finlay | |
| Albania..... | 49 |
| Civil Rights Defenders and One World Platform | |
| Argentina | 53 |
| Nodo TAU | |
| Australia | 58 |
| Wombat Crossing Consulting | |
| Bangladesh..... | 62 |
| Bytes for All | |
| Bolivia..... | 66 |
| REDES Foundation | |
| Bosnia and Herzegovina | 69 |
| Okvir and One World Platform | |
| Brazil..... | 74 |
| InternetLab – Law and Technology Research Center | |
| Bulgaria | 79 |
| BlueLink Foundation | |
| Canada..... | 84 |
| Alternatives | |
| Chile..... | 88 |
| Derechos Digitales | |
| China..... | 92 |
| Pink Space China | |
| Colombia..... | 96 |
| Colnodo | |
| Costa Rica | 101 |
| Sulá Batsú | |
| Croatia | 104 |
| Prostor rodne i medijska culture K-zona, Vox Feminae and One World Platform | |
| Democratic Republic of Congo | 109 |
| Si Jeunesse Savaît (SJS) | |
| Dominican Republic | 112 |
| Laura Breton | |

| | | | |
|--|-----|---|-----|
| Ecuador..... | 116 | Nigeria | 207 |
| Red Diversidad LGBTI Ecuador | | Fantsuam Foundation | |
| Egypt..... | 120 | Palestine..... | 211 |
| Uprising of Women in the Arab World | | Maan Network | |
| Ethiopia | 126 | Panama..... | 215 |
| EFOSSNET | | IPANDETEC | |
| Gambia, The..... | 130 | Paraguay..... | 217 |
| Front Page International | | Asociación Trinidad | |
| Iceland..... | 134 | Peru | 221 |
| Kvenréttindafélag Íslands/Icelandic Women's Rights Association | | Departamento de Comunicaciones, Pontificia Universidad Católica del Perú | |
| India..... | 138 | Philippines..... | 225 |
| SPACE | | Foundation for Media Alternatives (FMA) | |
| Indonesia..... | 143 | Romania..... | 231 |
| Center for Civic Engagement Studies | | Strawberrynet Foundation and Sapientia Hungarian University of Transylvania | |
| Iraq | 147 | Russia | 235 |
| Richmond, the American International University in London | | Oliver Poole | |
| Italy..... | 152 | Rwanda..... | 239 |
| Eurovisioni | | Emmanuel Habumuremyi and Sylvère Ntirampeba | |
| Jamaica | 156 | Serbia | 243 |
| Institute for Gender and Development Studies (IGDS), University of the West Indies (UWI), Caribbean Institute for Media and Communication (CARIMAC), UWI | | Share Foundation | |
| Japan..... | 160 | Seychelles | 246 |
| University of Sussex | | Janick Bru | |
| Kazakhstan | 164 | Spain | 250 |
| KIMEP University | | Cooperativa Eines | |
| Kenya..... | 169 | Sudan | 254 |
| Tactical Technology Collective | | Liemia Abubkr | |
| Korea, Republic of..... | 174 | Switzerland..... | 257 |
| Korean Progressive Network Jinbonet | | Comunica-ch | |
| Kosovo | 178 | Thailand..... | 261 |
| Hana Marku | | Thai Netizen Network | |
| Lebanon | 184 | Turkey..... | 264 |
| Mireille Raad | | Hun Consulting | |
| Macedonia | 187 | Ukraine | 268 |
| One World Platform Foundation | | Maria M. Pasholok | |
| Malawi | 191 | United Kingdom..... | 272 |
| Levi Kabwato | | Open Rights Group | |
| Montenegro | 195 | Uruguay | 278 |
| Queer Montenegro and One World Platform | | ObservaTIC, Facultad de Ciencias Sociales, Universidad de la República | |
| Morocco..... | 199 | Yemen | 281 |
| Institut International de la Recherche Scientifique | | Internet Society Yemen Chapter (ISOC-YE) | |
| Netherlands..... | 202 | | |
| NETSHEILA | | | |

Preface

When the Association for Progressive Communications (APC) first raised the issue of internet content regulation and how it impacts on sexuality, in internet governance and policy spaces, we focused on building understanding that sexuality is a critical component of freedom of expression. APC, along with Hivos and our respective partners, challenged the assumption that sex was always about porn, and that porn was always bad. We began digging deeper into what was understood as pornographic content in internet policy, legislation and use, and how this term was being used as a blunt instrument and moral trump card for demanding regulation of the internet. What we found was that the sophisticated analysis of the nuanced relationship between sexuality, sexual and reproductive health, sexual expression, discrimination and rights, already present in the sexual rights, women's rights and feminist movements that APC and Hivos had been working with, was completely absent in internet policy and internet rights discourse.

The connection between the internet and sexuality, sexual expression, sexual identity, sex education and sexual and reproductive health has only recently received the recognition it deserves. In the early days of the internet, sexual content was viewed largely with alarm. While the internet's potential for free flow of information and worldwide connections between people, ideas and institutions was celebrated, the rapid increase in the use of the internet for exchanging pornographic content provoked anxiety among some of the early developers and adopters. In APC's own history, in 1998 when APC members were still all internet service providers, some members of the network felt that the APC member in Russia should be expelled from the network because its web hosting services were being used by a group of female sex workers to advertise their services, and that APC's member in Australia should be sanctioned for some of its users hosting images of nude women on the webspace that was part of a subscription package that users paid for. APC members opted then already to not make "intermediaries" liable and the majority voted against these members being sanctioned. Nevertheless, this incident demonstrates the polarising effect that sexuality can have even in a like-minded network of social justice and peace advocates like APC.

A decade later, we see a very different landscape. While some of the tensions still exist, there is increasing recognition of the value of the internet for the advancement of sexual rights. In particular, there is understanding of how the internet can ensure that muted voices are heard, that connections can be made with relative safety thanks to the capacity to determine the lines between what

is private and what is public online, and that the internet still provides an open space for imagining and constructing alternative ways of relating, living and being.

This recognition is, in part, due to the increasing engagement by sexual rights and women's rights advocates and people of diverse sexualities and gender identities in internet rights discussions and spaces. And in part, due to the increasing awareness among internet rights advocates of the different entry points that different groups have in exercising their human rights online, and how this intimately reflects their existing rights offline. It also speaks to the evolution and maturing of human rights advocacy in relation to the internet. Where once freedom of expression dominated the conversation, the full spectrum of human rights is now being included, interrogated, and articulated through the priorities and perspectives of a diversity of actors.

This edition of GISWatch aims to add to the conversation, by providing insights and case studies by activists, thinkers and advocates from a range of movements and contexts. From how the internet has augmented sex education, to the contentious relationship between young people and sexuality online. From the real violence and discrimination that takes place through the interlinked interactions between online and offline, to the multiple ways in which creativity, activism and collective mobilising have expanded the space for women and people of diverse sexualities and gender identities to live with their rights intact. From the emerging threats of privatisation of online social networking, of surveillance, and of commodification of people as sources of personal data gathered and valued for its market value, to the exploration of autonomous infrastructure and alternative economies.

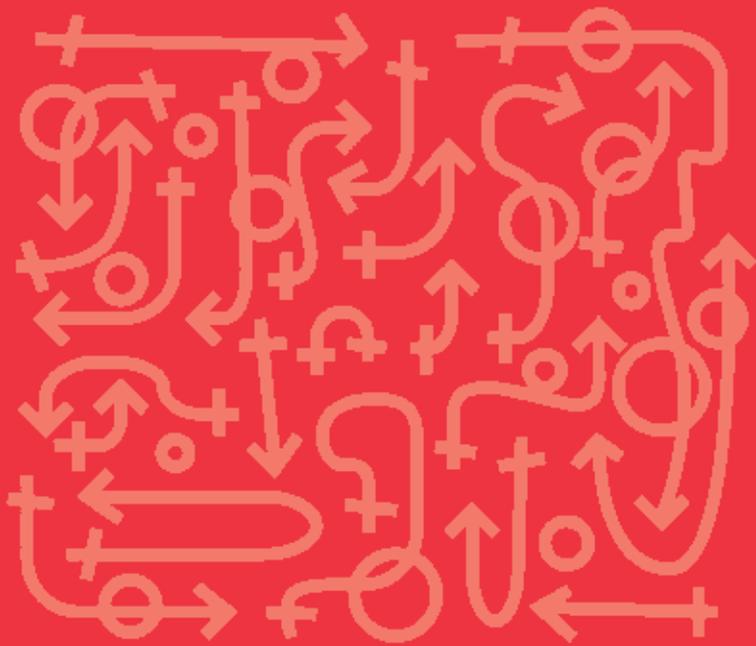
We want to mention the invaluable contribution to this report of the APC Women's Rights Programme team, and of the APC Sexual Rights Project's partners all over the world.

We hope that this edition will provide a space that can contribute towards an expansive internet that is able to hold a cacophony of voices and perspectives, with the human rights of all people threaded throughout.

Anriette Esterhuysen
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Will Janssen
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THEMATIC REPORTS



Kanaga's choices: Queer and transgender identity in the digital age

Mark Gevisser

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Kanaga is a 27-year-old software engineer from Chennai, one of the IT boom cities of southern India, where she works as a consultant for a major multinational corporation. She met her fiancé Raghav online, via a mutual Facebook friend. Raghav lives in Delhi, at the other end of India, but over an intense four-month period they chatted every night, online or on the phone, and met twice. Then, in January this year, Kanaga flew north to Delhi for a formal Hindu engagement ceremony.

The ceremony was unusual. This was not only because the betrothed have made a love match in a society in which marriages are still overwhelmingly arranged by families. It was also because both the bride-to-be and groom-to-be are transgender. Kanaga, assigned the male gender at birth, was draped in a celebratory saree generously stitched with gold, and was wearing colourful costume jewellery. Raghav, assigned female at birth, had his short hair in a fringe, and was wearing a simple cotton men's kurta over black pyjama pants.

The ceremony was at the home of one of Raghav's friends. Only a few carefully selected people were present, as neither Kanaga nor Raghav are out to their families yet. But the couple has a plan, Kanaga explained to me when I met her in Chennai in early 2015: "We want to get married, as a boy and a girl. I'm going to be the boy, and Raghav the girl. In India marriage is a complicated thing. So we need to satisfy parents, and then start life together, and think about how we are going to transition into our true genders."

If she were from an older generation or from a poorer social class, Kanaga's destiny might well have been that of generations of effeminate Indian men before her: she would probably have been cast out of her family – or would have fled it – and joined the parallel society of *hijras*, or eunuchs, who undergo ritual castration and earn their living begging or doing sex work, and live with other members of this "caste" in relationships that are often feudal and oppressive. Her journey has been different

because of two factors: she is educated and self-sufficient, and she is active online. Both have opened her horizons. But both present a whole new set of challenges too.

When it comes to sexual orientation and gender identity, the world is changing faster than anyone could have imagined: not only because of the global rights movement, or because of the advances in biomedical technology which make gender transition increasingly accessible, but because of the digital and information revolutions too. Researching a book about this, I have met young people in countries all over the world who are finding community – and new identity, and a sense of personal autonomy – online, and then needing to square it with the often-more-challenging environments of their offline lives.

Mona, from Cairo, has three Facebook profiles: a straight heterosexual male one for her family and school friends who only know her as Abdul; a straight female one through which she can explore being a woman; and a transgender one, through which she can interact with the online community she has found of people like her. She found a black market source online for estrogen and began taking it. Her changing appearance was beginning to attract negative responses on the streets of the city, however, and some elders in the lesbian, gay, bisexual and transgender (LGBT) community prevailed upon her to limit her transgender explorations to her room and her webcam.

Charlotte, a young transgender woman from Ann Arbor, Michigan, came to terms with her female self by using female avatars in MMO (massively multiplayer online) role-playing games. Liam, an 18-year-old freshman at the University of Michigan, researched transgenderism by watching YouTube videos online since the age of 12, and now assiduously posts bulletins of his own transition online. In China, tens of thousands of young people have signed up to matrimonial websites which link gay men and lesbians so that they can meet potential opposite-sex marital partners and provide their families with heirs: they are only children, of course, due to China's one-child policy. Meanwhile, they find their same-sex romantic or sexual partners

on huge hookup sites like Blued.¹ In the West, the cultural significance of gay bars has declined dramatically, as people hook up, instead, in the virtual space that is both safer and more convenient.

But the web, of course, presents new security challenges, even as it creates a sense of online community, particularly for isolated people, or people who need to conceal some part of their identity. In Syria, the Assad government stands accused of monitoring the gay websites and routinely uses the intelligence it gathers in its interrogations of suspected insurgents; Israel similarly attempts to blackmail gay Palestinians into being collaborators even as it claims to be an oasis of tolerance in a tough neighbourhood. In Egypt, the el Sisi regime has used hook-up apps to entrap homosexuals and charge them with debauchery in trials that seem designed to show supporters of the ousted Muslim Brotherhood that the military government has a moral code.

The bigger threats are the personal ones. Taylor, a young Nigerian man from the city of Ibadan, was forced into a brutal programme of deliverance at his family's church when his sexuality was disclosed after he mistakenly confused his cell phones: he had one with a "straight" profile on the 2Go mobile app, and one with his gay profile. Michael, a teenager who had to flee his home in western Uganda at the age of 15 when he was discovered with another boy, used Facebook to find other gay people: this is how he met the older man who took him in, but it was also how he was entrapped by a gang that kidnapped, tortured and extorted him. Michael fled to Kenya, where he is now a refugee. A significant amount of the tiny monthly grant he gets from the United Nations High Commission for Refugees goes towards purchasing data access for his phone. By being online he can remain connected to the gay individuals in the United States who provide him with moral and political – and sometimes financial – support.

Beyonce is a teenager from a provincial Egyptian town. When his parents discovered his double life, his punishments included having his head shaven and being dragged through town behind a horse cart before being locked in his room for a month and beaten every day. He kept himself alive by posting "It Gets Better" videos on YouTube advising other youth in a similar situation. Elena Klimova, a young journalist on the far side of the Urals, has set up a social media platform called Deti-404²

which does the same thing for Russian youth whom LGBT organisations can no longer reach because of the country's anti-gay propaganda legislation. The authorities have been attempting to shut her down: Klimova runs pages on Facebook and its Russian equivalent, VKontakte, and was fined 50,000 roubles (USD760) in July 2015 for distributing "propaganda of non-traditional sexual relations among minors".³

Kanaga is a little older than Mona and Beyonce, than Michael and Taylor or Charlotte and Liam. The arrival of Yahoo chat rooms – the first wave of massive digital social networking – coincided exactly with her coming into adolescence in the early noughties, and for this reason she provides a particularly illuminating case study of the way digital technology has, in a generation, changed the lives of LGBT people with access to it.

In 2006, in her final year of high school, Kanaga went to an internet café in her provincial hometown, to print out some documents from a friend. There were no computers in her home, despite the fact that her father was a fairly well-off clothing manufacturer. But she was taking computer science at school, and she was intrigued, and so paid to go online, and – because Yahoo was the homepage – she signed up, and found herself in a chat room before she knew it.

She was then of course – as she is now – a male in the "real" world, despite how she feels inside. But she made the impetuous decision to give herself a female ID rather than a male one. "It was great," she remembers. "If you go into a chat room with a girl's ID, *everyone* pings you!" She saved up to be able to do this about once a month, and lived for these visits to the café, where she started surfing, too, and found a site which she remembers being called "Nearly-She", targeted at cross-dressing men.

She had, for years already, been secretly wearing women's clothes at home: her father made women's underwear, and her mother sold sarees. Without the website, she acknowledges, she might well have come to understand herself as a *hijra* because of these desires; with it, she found a temporary haven in the online world of cross-dressing men. So enraptured was she by this world that she flunked her final high school exams. When she did pass, and got into college to study first software

1 www.blued.cn

2 www.deti-404.com

3 Luhn, A. (2015, 29 July). LGBT website founder fined under Russia's gay propaganda laws. *The Guardian*. <http://www.theguardian.com/world/2015/jul/29/lgbt-yelena-klimova-fined-russia-gay-propaganda-laws>

engineering and then business administration, she carried on her secret online life. Through Orkut, the original Google social networking app, she began to make individual online friendships, including one with a cross-dresser who went every year to a religious festival at Kollam in the province of Kerala, where men were expected to show their devotion by dressing in sarees. She went to Kollam, but did not like it. The way she and the others looked, she says, was too “draggy”, and she instinctively bridled against the hyperfemininity of both men in drag and *hijras*: “I’m not very glossy as a person.”

Shortly after she moved to Chennai to take her first job, Kanaga found a message on her Facebook timeline from a friend and followed the thread: it led her to a rooftop room in one of North Chennai’s sprawling working-class suburbs, called the Mermaid Studio. I had been to the Mermaid Studio myself on one of my visits to Chennai. Here the transgender activist Lalitha Yogi runs a lucrative enterprise. Cross-dressing men and transgender women come to see her, from all over India, to be dressed in female attire, to have their photographs taken, and to be helped to establish profiles in their female selves online: “At Mermaid they can be themselves,” Lalitha Yogi told me, showing me her closets full of sarees and her drawers of jewellery, wigs and makeup. “They can explore their femininity and even engage with others, online, as female or trans. I help them set up fake profiles on Facebook, or on the trans sites, and we upload the pics.”

Lalitha Yogi herself is never offline, both as an entrepreneur (she is also a sex worker) and as an activist. As an outreach worker for an AIDS awareness NGO in Chennai, she goes onto hook-up sites and initiates chats: she draws her interlocutors into discussions about their sexual practice and gives them safe-sex information if she thinks it is necessary.

“Lalitha played a very significant role in helping me realise I was transgender rather than a cross-dresser,” Kanaga told me. “She charged me some bucks, quite a sum for me even now, 5000 rupees (USD 75), she dressed me up, and after we made a profile for me, we went to a fundraiser programme for transwomen in a community hall. It was the first time I’d been in public since Kollam, but at Kollam you are a male dressing as a female for religious reasons. Here I was going out as transgender! The day was so happy and so beautiful for me. We took pictures in road. Some gay men were also there, two guys interested in me, making one liners and pick-up lines.”

Kanaga could not afford Lalitha Yogi more than once, but found another outlet through social media: an apartment where cross-dressers kept their things and which was open for use by members. She went for a while, but felt ostracised because of her effeminacy, which seemed to threaten the security of the other more normative men. She feels equally ill-at-ease among *hijras*, though, because she cannot relate to their exuberance or to their hyperfemininity.

Kanaga’s sense of not fitting in anywhere points to the central challenge facing transgender people of Kanaga’s class and generation in this first epoch of the digital age. If she were of an earlier generation, or if she were poorer and on the wrong side of the digital divide, she would have had two choices. Either she would have suppressed her female self and become a married man according to her family’s wishes. Or she would have been forced to conform to the *hijra* codes, becoming a sex worker or beggar, and adhering to an aggressively feminine gender stereotype that is as uncomfortable for her as masculinity is.

Instead, she has individuated, in the way that people do in liberal societies where they have access to an ethos of personal autonomy, through her own singular journey online: a journey which has intersected with groups, of course, but on which she has plotted her own path, left her own traces. As an individual, too, she has become part of a global online community where people are free to be who they feel themselves to be. Such is the power of smartphone technology: Kanaga does not even have to close a door and open her laptop to enter this world – all she needs is a quiet corner with no one looking over her shoulder. Here she can read the Facebook posts of transwomen from America or Western Europe, or scroll through transgender peoples’ albums on Instagram or data-dumps on Tumblr, and imagine how life might be for her. Here, too, she can “go stealth” and live as a woman, if she wants to, or explore what it means to be “trans”, without having to put her actual body at risk.

Recently, I told Kanaga about another transgender woman at her company, who worked out of Bangalore. This person – let me call her Neela – had previously been at a rival company, which she had quit because she had decided to transition medically and socially, and she wanted a fresh start. She approached the new company – the company Kanaga now works for too – and negotiated a package that not only included sick leave for the surgery but a medical policy that would pay for the surgery, and for hormone treatments too.

This did not happen in the Bay Area, or in Northern Europe, but in India, in 2013. It is a sign of how dramatically mores are changing in this era – and the role, particularly, that the LGBT-friendly multinational tech companies are playing in the process. I told Kanaga about this, in an attempt to cheer her up, during an inevitable bout of depression, given her double life. She had, in fact, recently left her old job for a position at this company because she was beginning to find the teasing about her long hair and long fingernails intolerable. “That’s amazing, Mark,” she said, in response to Neela’s story. “Something for me to look forward to one day. But

what you must understand is that even if my company is ready for me to transition, *I’m* not ready for me to transition. Not because of me inside, but because of the society I live in.”

When Kanaga goes offline, or closes the booklet outlining her multinational corporation’s diversity and inclusion policies, she has to deal with the gossip around the water cooler. And in the street. And, most of all, from her family. She has to switch back into an identity that she has already shucked. It is like expecting a lizard to crawl back into last season’s skin: it will never quite fit again.

The democratisation of authority in the Middle East and North Africa

Amina Wadud

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The recent revolution in the Middle East and North Africa (MENA) region known as the Arab Spring could not have happened in the way that we know it without the internet and the powerful new forms of social media. Organisers of major protest rallies used social media to pull them together. Eventually their efforts led to toppling long-term tyrannical leaders and a push for more democratic reforms. It was first and foremost through social media that many of us outside of the MENA region got our most enduring images of those protests. The Arab Spring caught standard news agencies off guard. Even policy makers in the West would second-guess whether it was a real revolution or not. It was.

I dare say: the Arab Spring will go down in history as the first of its kind – a revolution that owes more to the internet, including social media, than any before it. Through social media we also caught in full view the grotesque acts of sexual harassment and exploitation of mainly female protesters, both by juntas of the military in Egypt and other pro-government forces, as well as by the usual chauvinist opportunists. So social media brings us the good and the bad, often with little or no censor. Certainly all governments seek to control the tide of information projected in these media, from different degrees of censoring certain images through maturity rating, to “security” issues, even as far as attempts to completely block access.

Technical details about the internet and social media are not my area of expertise. In fact, I can scarcely keep up the content of my web page.¹ So let me locate myself in this topic. I am a 62-year-old, retired humanities professor – not the most likely social media geek. I manage a modest amount of social media – a personal page and a public figure page on Facebook,² a Twitter account,³ and recently

I’ve ventured onto Instagram. So this is not about my spectacular personal presence on social media.

I built my academic reputation upon the nuances of language, linguistics, rhetoric and hermeneutics. In my line of work, *words* matter; and that’s NOT just word count. What makes me a perfect Ph.D. also makes me a not-so-exciting Twitter personality. Most of what I do requires more than 140 characters. I’m too long-winded for the fast pace of social media. However, in the past five years I have come to appreciate its merits and impact in my areas of interest: Islam, justice and gender (that’s what my Twitter avatar says, coincidentally).

I took up social activism more than a quarter of a century ago, because I could see that good ideas or theory needed to be made into policy in order to really benefit those who have experienced oppression due to narrow interpretations of texts. It took time before I felt I should keep up with social media; but clearly it makes a difference – not just in revolutions, like the Arab Spring and Black Lives Matter,⁴ but also in everyday transformations for users. With access to the internet, anyone can harness its power – from crowd funding independent projects, to movement building towards equality and justice in the Muslim family like www.Musawah.org.⁵

Using social media allows all sides to have equal access. While active social media can challenge the odds over exertions of power and authority in Islam, as it stands, neo-conservatism and patriarchy still seem to have the most say. With the rise of violent extremist groups like the self-proclaimed Islamic State (ISIS) we can see how effective use of social media evens out the playing field – between the good and the bad. In the context of Islam and issues of social justice, one of the most important questions of our time centres on who has the power to assert their definition of “Islam” to control the lives of others, be it the rule of law, cultural pressure, or even spiritual manipulation.

Everything I do – and therefore everything I do on social media – engages the intersection of systems of oppression. Although my focus is mostly on

1 www.aminawadud.com

2 <https://www.facebook.com/pages/Dr-Amina-Wadud/1542191152675401>

3 <https://twitter.com/aminawadud>

4 blacklivesmatter.com

5 www.musawah.org

Islamic thought and praxis, I engage in the discourse over all matters that impact the deep and enduring experience of justice. Therefore, I reflect on power exploitations or coercion, on the logistics of asymmetrical relationships, and on social, political, racial, economic, spiritual and cultural hegemonies over race, class, gender, sexuality, ablism and the environment. (I did say I was long-winded, right?) On any one day I may tweet, retweet, post, or re-post about each one of these intersecting factors. I've also blogged on several sites related to these issues.

I am interested in Islamic reformation, by which I mean radically rethinking and critical engagement with the Ultimate Sacred sources of Islamic thought and practice – from its sacred text, its Prophet Muhammad (upon him be peace) and the vast and variegated intellectual history for more than 14 centuries. While I believe Islamic intellectual history is still evolving, the need for a reformation considers the current realities as pivotal to achieving the over-arching principles of Islam: justice, peace and human dignity.

This reformation includes Islamic feminism.

In particular, I propose that the construction of new knowledge in Islamic thought must be ongoing. In Islamic feminism this started with one simple and yet strategic question: What is the role of gender in this discourse? For several centuries after the advent of Islam this idea of “reading for gender” did not exist. Of course people lived and functioned in certain culturally constructed and time-specific gender roles. However, few would reflect critically upon the implications of these roles relative to the ultimate objectives of Islam.

This was due in part to the many radical changes in the lives of women integral to Islam's beginning, like granting women the right to own property, the right to education, the right for marriage choices and for divorce, a share of inheritance, and a role as credible witness. Alas, the trajectory was not sustained, with great loss to women's agency and intellectual contributions as early as one century after the Prophet. Meanwhile other trends went unchallenged, like what it means to be human and gendered, including certain unnecessary binaries, ascribing certain roles exclusively to men and reinscribing male privilege – since patriarchy was pervasive, and not just amongst Muslims.

Islam is a religion focused on “right practices”⁶ and these are encoded into elaborate legal formu-

las. Over time certain functionary asymmetrical gender roles would be encoded in the law as if they genuinely reflected the spiritual, philosophical and theological objectives of Islam. When a faith system is dependent upon this interchange between praxis and orthodoxy, it may take some time to unravel which came first: the praxis or the ideology. Over time unexamined gender roles become conflated with ideas about the “natural order” or are seen as a divine mandate. It is a simple logic, really: for example, if women do almost all the caretaking, that must mean women are “natural” caretakers and men are exempt, although this role is vital to human existence and to the environment.

In theory, both men and women were encouraged to participate in Islam's intellectual development and there are historical examples of women as intellectual contributors. However, they did not play a major role in establishing the basic paradigms of Islamic practice and world view. So when right behaviour became encoded in the law, women's experiences or women's ways of knowing and believing would be filtered through the lens of male commentators, philosophers, theologian and jurists.

In our time, we interrogate the ways in which patriarchal norms and biases controlled women's behaviour by collapsing the link between men's ways of knowing and believing with the natural or divine order. Whatever men thought was soon equated with what God/Allah thought. All faith paradigms are constructs. When they are constructed only or primarily on the basis of what men experience or perceive, and the connection to these sacred ideas and their human origin is forgotten, then male bias creates notions of authority linked to those constructs as though actually authorised by God. So what men think becomes what God thinks; and the only legitimate way to practise Islam.

While there have always been a few who question the (il)logic of patriarchy, in the 21st century we have reached a critical mass. In every country, every city, every town, every group – no matter how small – Muslim women are questioning what it means to be full agents of our own lives, contrary to patriarchal assertions. We have looked at the consequences of patriarchal interpretations on what it means to be Muslim. Now we are facing an epistemological crisis, where certain ideas – once held sacred and integral to Islam as a universal faith system – are shown to be merely inflections of time-specific, place-specific and gender-specific logic; not sacred at all. Furthermore, certain constructs are no longer tenable or sustainable given the realities of the world we now live in.

⁶ “Right practices” refers to two aspects of what it takes to live a good life according to traditional sources: the right faith and right actions; in other words, not by faith alone, nor just by being a good person who does good things.

This is part of the comprehensive change formulated and projected under a new wave of Islamic feminism. My early work on the Qur'an, Islam's sacred text, forms one of the cornerstones to these challenges. It centres on one simple question: Does it make a difference if the person reading the text identifies as a man or as a woman? The answer was yes. Reading is always impacted by location, including gender identification. Yet, until this last century, we had no record of women's responses to the text and no formal exegesis. We know that women read, memorised, recited and used the text as part of their general belief and practice, but we can find no written record of what they thought about its meanings. Meanwhile during that same history men left elaborate exegesis using multiple methods of interpretation.

Reading for gender affects questions of authority in laws made from the perspective of textual interpreters. Now Muslim women have reached a critical mass seeking change. We are diverse and not always mutually supportive in our methods, but despite inner contestation we all demand justice. This critical mass is due largely to a general rise in levels of education. However, there is also a clear link to new forms of communication due to the internet and social media allowing for a dissemination of ideas as sought after by the better-educated populist. This flow of ideas is untainted by constraints of particular institutions, or institutional requirements, and free of patriarchal control.

Knowledge is power. The more ways people have equal access to information, the more they are able to construct informed opinions about any matter. The more pervasive information is, the less control the old-guard authorities will have over the masses. The flow of information in the media is second only to the increased levels of education for all, allowing women, men and children to construct change, challenge injustice and form new trends in authority, more democratic ones. Although we still have a long way to go – considering that access is not nearly equal or universal – at least we see the unfolding of what I call the democratisation of authority. The internet is an important tool for change. It increases access to knowledge and contributes to meaningful exchange in knowledge.

In the particular context of Muslims, the internet gives voice to those who were previously unrepresented and silenced. In the context of gender constructions, and Muslim women's lived realities, sometimes actual physical mobility is still limited by cultural and legal constraints. However, access to the internet can thwart this lack of mobility,

bringing women out of the confines of patriarchal control.

Even if only from the privacy of their homes, Muslim women can venture all over the world, form alliances, support each others' work, and gain greater insights into the limitlessness of possibilities. Once they get to that world, they can have their say. Once they have their say, they can have an impact. Once they have an impact, they become agents of change.

Exposure to the vast diversity of ideas and ideals across the planet gives greater clarity over the assertions that there is only one way to do things, one "true" Islam – the patriarchal one. For example, in working with www.Musawah.org we use online resources to expose the ways that Muslim Personal Status Law varies from country to country. So if believing Muslims in Jordan do something totally different from what believing Muslims do in Indonesia over the same matter, then clearly the laws are not divine but completely human-made. Since Muslim women are human, we can construct new laws, advocate for reform in existing laws, and challenge those laws imbued with patriarchy to reach more egalitarian policies, laws and experiences. When this diversity is observed through facts presented, it is impossible to say, "This is God's law and you cannot do anything about it, if you are a believer" – a tactic too often used to silence women's justice movements.

Another merit of the internet is raising the equality of voices. No one voice is above another voice. This is a great equaliser: no matter how insignificant one internet user may be in the scheme of things, his or her voice can become well known, widespread and persuasive. All that is needed is to have a message that gains momentum through social media. Inadvertently this increases the space for diversity. The argument itself becomes the measure – not the clout of the one speaking. Didn't the Arab Spring bring down tyrannical rulers? Social media gives greater importance to voices that might have gone unrecognised.

While the internet is a powerful equalising tool, allowing ALL voices to speak, creating forums for people to meet across the globe and share concerns, there are certain challenges to it as well.

I use social media because I agree with its powerful potential for liberation, justice and equality. Since my primary interest is in gender, of course this means I have to discuss issues about sex and sexuality. These seem to gain the most attention when I post. Meanwhile, among the world's 1.6 billion Muslims, honest and open conversation about

sex and sexuality is still primarily missing – despite our sex-affirmative intellectual legacy. For example, in Islam there is no particular virtue in or privileging of celibacy. Details of sexual pleasure have long been celebrated and elaborated. Medical research was so advanced that Muslim doctors were among the first to approve and perform sex-change operations, indicating a deep understanding of sexual diversity. Today's Muslim cultures have a tendency towards prudishness, silence and shame. Because of this, many conversations I initiate about sex and sexuality receive the greatest negative reactions.

For example, people feel free to question the level of my personal faith because I am open about lesbian, gay, bisexual, transgender and queer (LG-BTQ) issues. The tactic is almost always the same: they assert their homophobia and THEN project that I am NOT a Muslim and could not possibly be a

scholar because I do not share their interpretations of certain verses in the Qur'an that talk about the story of Lot. Since ALL passages of the Qur'an are subject to multiple interpretations, as part of the rich legacy of Islamic thought and textual analysis, why the literal reading of any one verse should hold sway over another reading is a matter of power, politics and public pressure. This pressure is rampant in social media.

My observations about social media, Islam and sexuality indicate how social media is an indispensable tool. So while I have every intention of keeping up my use of it, I will never have the following of even some untalented Hollywood or Bollywood personalities. That's okay by me. Instead, I recommend for everyone a balance between the utility of the medium and the random harassment it might bring.

A policy landscape of sexual orientation, gender identity and the internet

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Introduction

Two groundbreaking advances in international human rights have been made in the last half decade, with recognition by intergovernmental bodies that human rights law applies equally to all persons regardless of their sexual orientation or gender identity (SOGI), and that human rights law is equally applicable online as offline. However, these achievements have not been without significant advocacy efforts by civil society. While internet rights are being increasingly integrated and addressed across the international human rights system, developments on SOGI have been laboured, politicised and isolated, with no state consensus. This report considers the trends, shifts and convergences in international policy making, using a geopolitical analysis.

A brief history

Sexual orientation and gender identity

Activists have been advocating for international recognition of SOGI-related rights as far back as the Beijing World Conference on Women in 1995,¹ with concerted efforts to develop state awareness and recognition of the issues since a failed resolution on human rights and sexual orientation in 2003.² Brazil's introduction, and later withdrawal, of a draft text was a catalyst for a number of civil society groups and activists working on sexuality and gender issues to communicate and coordinate more consistently to develop strategies to engage the UN human rights

system on these issues.³ This collective organising led to states delivering a series of joint statements at the UN General Assembly and Human Rights Council (HRC) between 2005 and 2011;⁴ increasing support for SOGI rights from a handful of countries to nearly half of the UN member states; and finally the adoption by the HRC of the first ever UN resolution on "human rights, sexual orientation and gender identity" in June 2011,⁵ and the second in September 2014.⁶

Internet rights

Although civil society has been involved in internet policy and governance spaces since the internet was created, the internet has only recently featured in international human rights policy development arenas. The impact of the internet on human rights was first recognised at the international level by an HRC resolution on freedom of expression in 2009.⁷ Since then, the UN has adopted a number of resolutions developing international policy on this theme. In particular, the HRC adopted a resolution on "The promotion, protection and enjoyment of human rights on the Internet"⁸ in June 2012 with 85 state co-sponsors, which affirmed that the same human rights apply online as offline. The following year in November 2013, the General Assembly adopted a resolution on the right to privacy in the digital age,⁹ which was followed up by the HRC in March 2015 with a procedural resolution of the same title, creating a UN expert mechanism on the right to privacy.¹⁰

- 1 See, for example, Ditsie, P. B. (1995). Statement delivered by Palesa Beverley Ditsie of South Africa, International Gay and Lesbian Human Rights Commission, at the United Nations Fourth World Conference on Women, Beijing, China, 13 September. www.un.org/esa/gopher-data/conf/fwcw/conf/ngo/13123944.txt and Wilson, A. (1996). Lesbian Visibility and Sexual Rights at Beijing. *Signs*, 22(1). fds.duke.edu/db/attachment/409
- 2 In 2003 Brazil unexpectedly introduced a draft text on sexual orientation to the former UN Commission on Human Rights. The resolution faced strong opposition, which led to it being deferred for a year and later withdrawn from consideration.

- 3 ARC International. (2004). *International Dialogue on Gender, Sexuality & Human Rights: Final report*. Geneva: ARC International. arc-international.net/wp-content/uploads/2011/08/International-Dialogue-Report-Geneva-2004.doc
- 4 ARC International. (2011). *LGBT Rights at the UN: A brief overview*. Geneva: ARC International. arc-international.net/wp-content/uploads/2011/08/LGBT-Rights-at-the-UN.pdf
- 5 A/HRC/RES/17/19. (2011). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19
- 6 A/HRC/RES/27/32. (2014). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/32
- 7 A/HRC/RES/12/16. (2009). ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=100&t=11
- 8 A/HRC/RES/20/8. (2012). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/8
- 9 A/RES/68/167. (2013). www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/167
- 10 A/HRC/RES/28/16. (2015). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/16

Since the 2009 resolution on freedom of expression, a number of thematic UN resolutions have addressed internet rights.¹¹

Comparing intersectional recognition

While internet rights concerns have effectively been mainstreamed into initiatives dealing with other human rights issues, sexual orientation and gender identity remain isolated from relevant state-negotiated human rights documents.¹²

Internet rights have been recognised by consensus in a number of intergovernmental policy documents, such as resolutions on freedom of opinion and expression, freedom of association and assembly, and the safety of journalists.¹³ The use of the internet and other forms of technology in propagating harassment and violence against women has been acknowledged by the Commission on the Status of Women¹⁴ – the primary UN political body tasked with women’s rights issues – and by the General Assembly in a resolution on protecting women human rights defenders.¹⁵

Conversely, there is a huge struggle to include any language that might be associated with SOGI in any government-negotiated documents at the international level, with such language overwhelmingly negotiated out of draft texts or put to a vote. For example, even the word “gender” has become controversial because some governments insist that gender can only denote biological sex, refusing to accept the

concept of gender as a social construct or to recognise identities beyond the male-female binary.¹⁶

As a result, where SOGI language has been included in negotiated documents, it has been so virtually in isolation from intersecting fields, such as violence or discrimination against women or the protection of human rights defenders. The only UN human rights resolution to date referencing SOGI, apart from the HRC SOGI resolution itself, is the biennial General Assembly resolution on extrajudicial, summary or arbitrary executions. While the strong opposition to recognising SOGI-related rights means the discussion is reduced to violence and discrimination (the areas that have a possibility of gaining consensus), the reference in the “killings” resolution is nonetheless hotly contested each time, with attempts to vote the language out of the resolution during the final adoption process.¹⁷

Despite the fact that a broad number of thematic and country-specific UN human rights experts regularly report a vast array of infringements of the rights of LGBTI persons,¹⁸ in social and economic rights as well as civil and political rights, the political bodies have so far failed to take the intersectional approach that has been an attribute of developments on internet rights.

Politics of sexual orientation and gender identity rights

International intergovernmental debate on SOGI is a delicate matter, and unfortunately plays out in ways that are politically divisive and strategically counterproductive. Although there is a slow but steady increase in support for these issues from states from all regions, they are still perceived as primarily Western priorities despite the fact that the first UN SOGI resolution was tabled by South Africa and Brazil, and the second by Brazil, Chile, Colombia and Uruguay.

11 See, for example, A/HRC/RES/21/16, The rights to freedom of peaceful assembly and of association (2012). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/21/16; A/HRC/RES/23/2, The role of freedom of opinion and expression in women’s empowerment. (2013). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/23/2; A/HRC/RES/24/5, The rights to freedom of peaceful assembly and of association. (2013). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/5; A/RES/68/163, The safety of journalists and the issue of impunity. (2013). www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/163; A/RES/68/181, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders. (2013). www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181; and A/RES/69/166, The right to privacy in the digital age. (2014). www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/166

12 While this paper examines how these issues have progressed in intergovernmental spaces, it is important to note that infringements on the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are consistently raised by UN human rights expert mechanisms, such as the Special Procedures, treaty monitoring bodies, and the Office of the High Commissioner for Human Rights, across a broad number of thematic and country specific reports. See for example: www.icj.org/sogi-un-database

13 See footnote 10.

14 CSW agreed conclusions on the elimination and prevention of all forms of violence against women and girls. (2013). Para. 34(wv). www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_%28CSW_report_excerpt%29.pdf

15 A/RES/68/181. (2013). www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181

16 See, for example, Adolphe, J. (2012). ‘Gender’ Wars at the United Nations. *Ave Maria Law Review*, 11(1). papers.ssrn.com/sol3/papers.cfm?abstract_id=2232495

17 ISHR et al. (2012, 22 November). Governments Condemn Extrajudicial Executions in Seminal UN Vote. *International Service for Human Rights*. www.ishr.ch/news/governments-condemn-extrajudicial-executions-seminal-un-vote; ISHR. (2012, 20 November). UN General Assembly: Rights groups welcome condemnation of killing of LGBT persons. *International Service for Human Rights*. www.ishr.ch/news/un-general-assembly-rights-groups-welcome-condemnation-killing-lgbt-persons

18 This report primarily uses the language of “sexual orientation” and “gender identity”, which have been acknowledged by the intergovernmental bodies, but also refers to lesbian, gay, bisexual, transgender, intersex and queer persons using the relevant acronyms LGBT, LGBTI or LGBTIQ, depending on the particular context. For example, while activists and human rights defenders might use the language of Queer rights, this term has not been taken up by the UN, but the UN does recognise and use L,G,B,T and I. Other language yet to be referenced in UN negotiated documents includes “gender expression” and “bodily integrity”.

This is partly because Western states have styled themselves as international leaders on SOGI, critiquing discriminatory laws and practices outside of their regional group, and is compounded by certain Western states using aid conditionality to apply pressure on ex-colonies to repeal colonial-era criminal provisions on same-sex relations.¹⁹

These practices have created a “West versus the rest” dynamic which contributes to the geopolitical polarisation on gender and sexuality-related rights that is reflected at the international level, and alienates potential support from those states that are open to discussing SOGI-related rights, but are opposed to Western hegemony on the international stage.

The politicisation of SOGI plays out in intergovernmental human rights policy development spaces such as the HRC in divisive and regressive ways. Firstly we have seen a division of state positions, generally along lines of regional and political blocs.²⁰ Traditionally this has been Western and most Latin American states supporting SOGI issues, opposed by Russia, the Vatican, most of the African Group and members of the Organisation of Islamic Cooperation (OIC). States within these groups that have dared to support SOGI issues have faced harsh censure from their peers.²¹

Secondly, concepts such as cultural relativity, traditional values and protection of the family have been introduced and manipulated in these spaces, primarily by the religious right wing – the OIC, the Vatican, Russia, and conservative groups such as the UN Family Rights Caucus.²² Since 2009 the HRC has adopted various documents undermining the universality of rights, including three resolutions on “traditional values” and two on “protection of the family”.²³ In general, the support and opposition for these initiatives has been in line with positions against and for SOGI-related language respectively.

The politicisation of sexuality rights in international forums means that foreign policy is often at odds with national-level standards and developments, particularly on rights relating to gender identity. For example, some Western states, such as Belgium, France, Norway and Switzerland, present themselves as champions of LGBT rights in international debates while requiring transgender people to undergo sterilisation in order to legally change their gender,²⁴ a policy that the European Court of Human Rights has ruled to be a violation of the rights to privacy and family life.²⁵ Conversely, some states that have culturally established and documented forms of gender diversity²⁶ – and in the case of Pakistan leading case law recognising the rights of *hijras*²⁷ – claim that such diversity is contrary to their cultural, moral or religious values when it comes to international debate.²⁸ This is a terrible contradiction of domestic reality and foreign policy.

State positions on SOGI in the international bodies have almost become a symbolic representation of one side versus another in the greater struggle for a new world order that replaces Western hegemony. Sadly, this positioning is to the detriment of human rights, including through the development of international legal norms and standards that exclude LGBTIQ persons.

19 Abolafia Anguita, L. (2012, 9 March). Aid conditionality and respect for LGBT people rights. *Sexuality Policy Watch*. sxpolicy.org/we-recommend-134/7369

20 UN member states are divided into five regional groups: the African Group, Asia-Pacific Group, Eastern European Group, Latin America and the Caribbean Group, and Western European and Others Group. There are also a number of additional political blocs and affiliations of states and sub-regional blocs that form collective positions on issues, such as the Arab Group, the Association of Southeast Asian Nations (ASEAN), the Organisation of Islamic Cooperation (OIC), Mercosur, the Non-Aligned Movement (NAM), the European Union (EU), etc.

21 For example, South Africa and Mauritius were publicly denigrated by Nigeria, the then coordinator of the African Group, for their leadership on and support for the first UN resolution on human rights, sexual orientation and gender identity in 2011.

22 www.unfamilyrightscaucus.org/un-initiatives/statements-activities

23 Resolutions on “traditional values”: A/HRC/RES/12/21 (2009); A/HRC/RES/16/3 (2011); A/HRC/RES/21/3 (2012); on “protection of the family”: A/HRC/RES/26/11 (2014); A/HRC/RES/29/22 (2015).

24 Transrespect versus Transphobia Worldwide (Tvt), Legal and Social Mapping: www.transrespect-transphobia.org/en_US/mapping.htm

25 European Court of Human Rights. (2015, 10 March). Refusal to authorise transsexual to have access to gender reassignment surgery breached right to respect for private life. (Press release.) hudoc.echr.coe.int/webservices/content/pdf/003-5032376-6183620

26 See, for example, Jain, D., & Rhoten, K. (2013, 28 December). A Comparison of the Legal Rights of Gender Non-Conforming Persons in South Asia. *Economic & Political Weekly*. www.academia.edu/11810587/A_Comparison_of_the_Legal_Rights_of_Gender_Non-Conforming_Persons_in_South_Asia

27 Khaki v. Rawalpindi, Supreme Court of Pakistan (12 December 2009).

28 See, for example: United Nations Office at Geneva (UNOG). (2011, 17 June). Council establishes mandate on Côte d'Ivoire, adopts protocol to child rights treaty, requests study on discrimination and sexual orientation. unog.ch/unog/website/news_media_archive.nsf/%28httpNewsByYear_en%29/C125763C00590FD6C12578B2004B0A50?OpenDocument; UNOG. (2012, 7 March). Human Rights Council holds panel discussion on discrimination and violence based on sexual orientation and gender identity. unog.ch/unog/website/news_media_archive.nsf/%28httpNewsByYear_en%29/C125763C00590FD6C12579BA004DFE81?OpenDocument; UNOG. (2014, 26 September). Human Rights Council adopts resolution on sexual orientation and gender identity and concludes twenty-seventh session. unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/24F74BA2FCAB79CDC1257D5F0063A227?OpenDocument; UNOG. (2015, 22 June). Human Rights Council holds general debate on the promotion and protection of all human rights. unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/C85AF94F13C23F94C1257E6C0059B456?OpenDocument

Politics of internet rights

In comparison to the tumultuous international debates on SOGI, internet rights policy has been developing relatively smoothly, with consensus resolutions and references in the UN General Assembly, the HRC and the Commission on the Status of Women. This is not to suggest that states unanimously respect or support internet-related rights, but that opposition is more nuanced and complex than the open hostility that some governments express on SOGI.

While there does indeed appear to be international consensus on the issue of access to technology, a customary division of state positions on other issues such as freedom of expression remains unchanged in how states see their validity online or offline. During the HRC plenary panel on freedom of expression on the internet in 2012, China called on the international community to promote internet access in developing countries while also stating that freedom of expression could undermine social stability and national security.²⁹ Cuba has both expressed concern about issues of access to information and communications technology (ICT) and lamented the United States (US) monopoly of the internet.³⁰

Furthermore, the geopolitical divide over internet rights is not as clear-cut as it is on SOGI issues. When Edward Snowden leaked classified information from the US National Security Agency (NSA) in 2013, the US was in the unusual position of being criticised by many of its peers in the West.³¹

Indeed, states from all regions have relished the opportunity to criticise the US in the wake of the Snowden revelations. Although not explicitly critical of US policy, pre-existing anti-US sentiment meant that the resolutions on the right to privacy in the digital age quickly garnered support amongst states such as North Korea,³² Russia, Cuba and China.³³ Consequently, it could be argued that a

politicisation of internet rights issues has been to the benefit of consensus-building on international human rights policy development on these issues.

SOGI versus internet rights policy

As SOGI language is a notorious key to destroying consensus in government negotiations, states have used sexual orientation references as a bargaining chip to block or undermine developments that they oppose.

For example, sexual orientation language was used by Western states to bargain against references to the “defamation of religions” in international discussions on racism, racial discrimination, xenophobia and related intolerance, both during the Durban Review Conference in 2009 and in follow-up meetings and negotiations.³⁴

This highly questionable tactic arose in discussions on internet rights in negotiations on a resolution on the right to privacy in the digital age at the UN General Assembly in 2013, when a key ally of the US proposed including a reference to sexual orientation. Some of the Five Eyes³⁵ countries readily supported the proposed language, while other states that were supportive of the resolution theme objected, knowing they would not be able to join a consensus on a text that contained sexual orientation language. This was understood to be a strategy to break consensus on an issue that those states implicated in the revelations of deep breaches of privacy rights could not otherwise break without admitting that they did not support the key message of the resolution.

As the Five Eyes countries were openly attempting to water down the text of the privacy resolution,³⁶ it seemed likely that sexual orientation language was actually being introduced in order to polarise state positions on the text as a whole, and potentially lead to a vote. In effect, the US and its allies pitted sexual orientation against the right to privacy in a failed attempt to undermine international condemnation of and action on the infringement of rights that is mass surveillance.

29 UNOG. (2012, 29 February). Human Rights Council holds panel discussion on the promotion and protection of freedom of expression on the internet. unog.ch/unog/website/news_media_archive.nsf/%28httpNewsByYear_en%29/C125763C00590FD6C12579B300535CC6?OpenDocument

30 Ibid.

31 MacAskill, E., & Borger, J. (2013, 30 June). New NSA leaks show how US is bugging its European allies. *The Guardian*. www.theguardian.com/world/2013/jun/30/nsa-leaks-us-bugging-european-allies

32 United Nations. (2013, 26 November). Third Committee Approves Text Titled ‘Right to Privacy in the Digital Age’, as It Takes Action on 18 Draft Resolutions. www.un.org/press/en/2013/gashc4094.doc.htm

33 UNOG. (2015, 26 March). Human Rights Council creates mandate of Special Rapporteur on the Right to Privacy. unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/4CA5769DF702CoCC1257E14005F5F4B?OpenDocument

34 See, for example, ISHR. (2009, 4 November). Stalemate at the Ad Hoc Committee on complementary standards. *International Service for Human Rights*. www.ishr.ch/news/stalemate-ad-hoc-committee-complementary-standards

35 https://en.wikipedia.org/wiki/Five_Eyes

36 MacAskill, E., & Ball, J. (2013, 21 November). UN surveillance resolution goes ahead despite attempts to dilute language. *The Guardian*. www.theguardian.com/world/2013/nov/21/un-surveillance-resolution-us-uk-dilute-language

Moving towards an intersectional approach

Although SOGI and internet rights have developed independently from one another at the international level, the slow increase in state support for SOGI-related rights in international human rights bodies, and the increasing attention being given to internet rights in a number of different thematic resolutions, means that the UN could constructively address their intersection in the near future.

The prevailing geopolitical divide is likely to continue to obstruct the inclusion of SOGI in UN resolutions. However, with internet rights being addressed in a number of negotiated thematic texts, it is not unreasonable to suggest that relevant issues could be included in a future substantive resolution on SOGI.

Furthermore, the HRC resolution on the right to privacy in the digital age mandated the appointment of a UN Special Rapporteur on the right to privacy. The Special Procedures mechanisms³⁷ have been key allies in raising violations of the rights of LGBTIQ persons across a broad section of thematic and country-specific mandates. A recent report of the Special Rapporteur on the right to freedom of opinion and expression to the HRC highlighted how encryption and anonymity in digital communications enable persons persecuted because of sexual orientation or gender identity to exercise the right to freedom of opinion and expression, as well as providing, for some, the only way to securely explore basic aspects of identity such as one's gender or sexuality.³⁸

The new Special Procedures mandate has been tasked to look at the right to privacy, "including in connection with" (i.e. but not limited to) the challenges arising from new technologies. Many SOGI rights issues clearly fall under the mandate focus on privacy. It will remain to be seen whether the Rapporteur chooses to address human rights concerns relating to LGBTIQ persons in the execution of the mandate.

Conclusion

With a number of consensus resolutions and documents addressing internet rights, and the creation of an expert mandate on the right to privacy, it is safe to conclude that these issues are now firmly on the UN agenda, and will continue to be mainstreamed into the work of the HRC. Meanwhile, SOGI rights remain segregated with no regular or institutionalised attention to ongoing violations. It will likely remain extremely difficult to get states to consider the human rights of LGBTIQ persons on their substantial merit as long as SOGI continues to be politicised and manipulated by both supportive states and the opposition. The new expert mechanism on the right to privacy could see these two issues being addressed concurrently and with an intersectional analysis for the first time. It remains to be seen whether intergovernmental debate will mature beyond political strife to welcome such an analysis.

³⁷ The UN Special Procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. Special procedures are either an individual (called "Special Rapporteur" or "Independent Expert") or a working group composed of five members.

³⁸ A/HRC/29/32. (2015). Paras 1 & 12. www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc

Feminist autonomous infrastructures

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Introduction

Women, feminists, and gay, lesbian, bisexual, trans*, queer and intersex (GLBTQI) individuals share common experiences online: they can easily become targets of online harassment, discrimination or censorship, be it by government, private actors or corporations. When trying to understand the relationship between gender, violence and technology, one should keep in mind that online violence is intrinsically linked with real-life situations. When bigotry, sexism and homophobic attitudes exist in societies, they will almost inevitably be amplified in the online world.

“Real” name policies, data mining, tracking and surveillance technologies have become so intertwined that the days when no one knew if you were a dog or a cyborg on the internet are largely over. In fact, the creation of an industry around the profiling of users, coupled with the centralisation and contraction of the internet, have led to a situation where it is not a safe space (if it ever was). In 1996 the Declaration of the Independence of Cyberspace announced the creation of “a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.”¹ But nowadays it is all too common to see the work and voices of women, feminists and GLBTQI being deleted, censored and/or prevented from being seen, heard or read.

Much of this gender-based online violence happens on corporate social media platforms such as Facebook, Twitter, Reddit and the blogosphere, in addition to other non-profit online spaces such as Wikipedia. All of them involve large communities, which are led by a set of practices and policies. Despite the existence of certain rules that govern these spaces and because of certain practices, silencing, intimidation and/or discrimination

continue. So far, responses from GLBTQI to violence have involved organised public shaming, doxxing of harassers,² feminist counter-speech, active research and documentation, awareness raising around privacy and security, advocacy for amendments to corporate terms of service, and lobbying of institutions contributing to the governance of the internet, among others. While these tactics are paramount to the embodiment of everyday forms of online resistance,³ there is also a need to think about adopting strategies that are not only reactive, but also project us into the future we want. In other words, it is about dreaming and pre-figuring our technologies actively.

Proactive practices involve understanding what it means to take back the command and control of technologies by using, creating and maintaining our own ones and shaping our communication and technological infrastructures. Using corporate services such as Facebook or Twitter may be very convenient, and at times strategic because they are generally provided for free and because this is where the so-called critical masses are. But using them also means accepting their terms of service, which are primarily shaped by profit, and in which human rights and gender social justice still remain of negligible importance. When using these online services, we and our networks are at their mercy, which means we cannot fully control our data, social networks and historical memories (or traces) on the internet.

While the future of the internet often looks bleak, it is paramount to not only continue to investigate into the processes and governance structure of the internet, but to continue to build a communication and technological ecology that puts human well-being front and centre, rather than profit. What will happen when big data has its proper algorithms? What will be the combined relationships

1 Barlow, J. P. (1996). A Declaration of the Independence of Cyberspace. <https://projects.eff.org/~barlow/Declaration-Final.html>

2 Doxxing of harassers means searching for and publishing private information about a harasser on the internet with the aim of shaming the individual.

3 An example of the embodiment of everyday forms of resistance is that of feminist social media practices that resist rape culture by hijacking Twitter feeds and hashtags that blame victims and perpetuate myths and stereotypes.

between these algorithms and the Facebook project internet.org or the “Internet of Things”, to name only two of the upcoming situations that will again redefine people’s rights to privacy and free expression? When our data remain under corporate control, they can be sold or given to third parties to exploit, or they can be deleted or shut down. Ultimately, they become our digital shadows,⁴ enabling others to track, profile and control our voices, opinions and expressions.

Part of the answer lies in developing, supporting and using not-for-profit, independent, privacy-aware and secure alternatives to corporate online services. Collectives such as Riseup, Nadir and Autistici/Inventati have been powered by hacktivist collectives for almost two decades now.⁵ They have provided – through volunteer work and community contributions – valuable and basic online services such as email, mailing list servers, wikis, pads,⁶ blogs and virtual private networks (VPN)⁷ to activists all around the world. But where are the feminist tech collectives that design and maintain feminist autonomous infrastructures for feminists, queer and trans* people and activists at large? We also need to ask ourselves, why are those feminist tech collectives still so embryonic? And what does this tell us about the discrimination and violence happening when women and feminists do not control, own and manage the technological infrastructure they need to express themselves and act online?

Shaping autonomy within our technologies

One of the main constitutive elements of feminist autonomous infrastructures lies in the concept of self-organisation already practised by many social movements that understand the question of autonomy as a desire for freedom, self-valorisation and mutual aid. In addition, we understand the term technological infrastructure in an expansive way, encompassing hardware, software and applications, but also participatory design, safe spaces and social solidarities. Concrete examples of feminist autonomous infrastructures include the Geek Feminism Wiki,⁸ developing specific technologies

that tackle gender-based online violence, such as bots against trolls, and building feminist online libraries and feminist servers, but also enabling offline safe spaces such as feminist hackerspaces which allow feminist, queer and trans* hackers, makers and geeks to gather and learn with others.

When talking about these examples of feminist autonomous infrastructures, we recognise that none of them can be fully autonomous, but rather relative in their autonomy, as they still depend, for instance, on already existing communication networks and technologies designed by mainstream companies (such as computers, servers and access devices). Having said that, their autonomy is based on different governance models, the values they embrace and the principles they promote. If feminist autonomous infrastructures are diverse in scope and in shape, they do share in common a desire to proactively create the conditions for their autonomy while following an ethic of care⁹ which is embedded into the active practice of social solidarities. Caring and recognising the importance of such infrastructures are two aspects that are central to attempt to address the cycle of technology that is rife with inequality from the production of technology, to its access, uptake, development and governance, until its end cycle. This intersectional and integrated approach to technology goes hand in hand with a feminist posture that does not shy away from addressing all forms of violence, whether it be online violence or the violence that is intrinsic in resource extraction or the factory and assembly line work that is gendered and raced.¹⁰

Recently, momentum has gathered around the building of feminist autonomous infrastructures. These initiatives are still in their embryonic stage, mainly representing a set of scattered and fragmented initiatives. Below we highlight two different examples – one addressing the need for physical safe spaces enabling women and feminists to gather and uplift their skills, and another addressing the slow-politics around the creation of feminist servers.

Breaking the circle of isolation by learning together

The Gender and Technology Institute¹¹ was organised by the Tactical Technology Collective and the Association for Progressive Communications (APC)

4 See “My shadow” by the Tactical Technology Collective: <https://myshadow.org/>

5 For a more extensive list of autonomous servers visit: <https://help.riseup.net/en/radical-servers> and <http://backbone409.calafou.org/participants/index.en.html>

6 The following is a great activists etherpads that can be used: <https://pad.riseup.net/>

7 Riseup.net offers VPN to know more visit: <https://help.riseup.net/en/vpn>

8 To go to the Geek Feminism Wiki visit: http://geekfeminism.wikia.com/wiki/Geek_Feminism_Wiki

9 Adam, A. (2003). Hacking into Hacking: Gender and the Hacker Phenomenon. *ACM SIGCAS Computers and Society*, 33(4).

10 Nakamura, L. (2014). Indigenous Circuits: Navajo Women and the Racialization of Early Electronic Manufacture. *American Quarterly*, 66(4), 919-941.

11 To know more visit: <https://tacticaltech.org/gender-tech-institute>

at the end of 2014. The event brought together almost 80 participants and facilitators, mostly from the global South, to focus on some of the issues faced daily by women and trans* persons on the internet, to share strategies and tools for better protecting our privacy and security online, and to discuss how to spread knowledge and skills in our communities and organisations. Since then, the network has expanded, with different outcomes ranging from the creation of a collaborative online space enabling the documentation of the activities around privacy and digital security delivered by its members on the ground, to the production of a manual specifically addressing gender-related issues which also offers various strategies and tools for taking control of our online identities and learning how to shape safe spaces.

All these outcomes are informed by the stories and creative practices of women and feminist grassroots activists, located in 22 different countries, who are actively and creatively using and making technology to tackle gender-based online violence. Meanwhile they become digital security trainers, and privacy advocates, and they are helping others to understand how they can adopt safer and more joyful practices when engaging online and offline.

Eight months after its realisation, the Gender and Technology Institute has become an international informal network of support, a friendly resource space based on social solidarities that helps to break the circle of isolation.¹² This contributes to strengthening the technological autonomy of its participants and, by extension, women, feminists and LGBTQI individuals and organisations, in order to face the challenges and threats derivative of their use of the internet.

Feminist servers

A server can be defined as a computer connected to a network that provides services such as hosting files, websites and online services. Because all online resources are hosted on servers, they constitute a base for the internet as we know it. All servers are ruled by different terms of service, governance models and national legislation in relation to privacy and access to data by third actor parties (or “trackers”) and are dependent on a variety of business models. This somewhat technical definition can obscure the possibilities for understanding the political aspect behind the setting up and management of a server.

In that sense, what would be the purposes¹³ and principles¹⁴ of a feminist server? Can feminist servers support women, feminists and LGBTQI in their fight for having their rights such as freedom of expression and opinion respected? Can we create trust among us to develop cooperative approaches to the management of those spaces of resistance and transformation? These were more or less the questions that a group of people interested in gender asked themselves during the first Feminist Server Summit¹⁵ in December 2013 and at the first TransHackFeminist (THF!) Convergence¹⁶ held in August 2014.

The discussions that emerged out of those meetings recognised that we do not yet have feminist tech collectives that design feminist autonomous infrastructures for the feminist, queer and trans* movement(s) and that this should become a priority.¹⁷

For example, two feminist servers that were dormant re-emerged during the THF! Convergence:

- The Systemserver project, which was originally launched in early 2000 by the Genderchangers¹⁸ and the Eclectic Tech Carnival (/etc), and focuses on hosting online services such as etherpads and a voice over internet protocol (VoIP) application.
- The Anarcha server,¹⁹ started by the TransHackFeminists from Calafou, an eco-industrial post-capitalist colony located in Catalonia. It hosts a mediawiki, a WordPress farm and a media publishing platform.

These feminist servers are composed of a loose coalition of women, queer and trans* from around the world, with some explicitly interested in hacking heteronormativity and patriarchy. They are also about demonstrating that it is possible to create safe spaces where the harassment of women, feminists and LGBTQI is not allowed and where all can learn about technology in a non-hierarchical and

12 One example is the International Feminist Hackathon Day (a.k.a. FemHack) held on 23 May 2015. To know more about this initiative see: www.f3mhack.org

13 For a history of where the desire for feminist servers arose read: Alarcon, S. et al. (2015, 30 April). Exquisite Corpse. *New Criticals*. www.newcriticals.com/exquisite-corpse/page-8

14 Following discussions at the Feminist Server Summit, Femke Snelting came up with a list that defines what a feminist server is, available here: <http://esc.mur.at/en/werk/feminist-server>

15 v14.constantvzw.org

16 transhackfeminist.noblogs.org/post/2015/01/25/transhackfeminist-thf-convergence-report and anarchaserver.org/mediawiki/index.php/Main_Page

17 The theme of the second edition of the TransHackFeminist (THF!) Convergence is aptly titled “Error 404. Dissent Technologies Not Found”: transhackfeminist.noblogs.org

18 A video about the GenderChangers is available at: <https://vimeo.com/4090016>

19 anarchaserver.org

non-meritocratic way. However, even if these server initiatives are inspiring to many, they still remain at the embryonic stage. Moreover, they do not consider themselves service providers; neither have they clearly decided to become stable and sustainable tech collectives providing hosting and online services to women, feminists and GLBTQI groups. In any case, they show that feminist servers are possible and that they should become a political aim for any organisations working in the field of gender social justice and GLBTQI rights – which should be concerned about achieving autonomy in communication and technological infrastructures, in addition to securing their data, social networks and historical memories on the web.

Conclusion

The targeting, silencing and censorship of women, feminists and GLBTQI people online has been and is being challenged in multiple ways. Women, feminists and GLBTQI people have been particularly creative in their everyday forms of resistance and their solidarities and care towards one another. While the initiatives outlined above are exciting, they do remain at an embryonic stage where only a few are able to participate. The reasons why so few initiatives exist ought to be at the core of a feminist analysis to understand how gendered technology actually is. Who is encouraged at a young age to tinker with technology? What kind of division of labour exists when it comes to technology? Why is the level of attrition so high for women in the tech industry?

While seriously considering the above, it remains that if we want to see the Feminist Principles of the Internet as formulated by APC become a reality, we need our own feminist autonomous infrastructures. To do so, we need to have feminist tech collectives that focus on providing these services. We need to be active in developing our expertise and that of the younger generation. But for that to happen we need the feminist and GLBTQI movement(s) to pay more attention to these issues, create more safe spaces to learn collectively, stop fearing technologies and decide collectively that we need to change gears to reshape our own communication and technological infrastructure. After all, freedom of expression is part of the feminist struggle and women, feminists and GLBTQI people can contribute by providing collectively the knowledge and means to ensure that their right to speak up remains accessible online, offline, and wherever and in any format where expression emerges.

Privatising censorship online

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Introduction

It is an undeniable truth that the internet has provided opportunities for access to information in places where information has, historically, been restricted. For those living in conservative societies or households, the internet opens new doors to traditionally restricted or censored information, including information about sexuality and sexual health. However, online information is also restricted by governments, schools, libraries and other institutions using a variety of means. These include simple commercial filtering software that crudely blocks content by category, as is the case in many public libraries in the United States, as well as more pervasive methods of blocking content, such as internet protocol (IP) blocking or domain name system (DNS) tampering.¹

The internet can be a particularly helpful resource for youth seeking information about sexuality and sexual health, particularly in cases where information about such topics can be difficult or embarrassing to obtain.² The United States, a somewhat conservative country in which access to information online is rarely restricted at the government level, serves as an illustrative case study as to how sexual health information is sought online by youth.

According to one study, 17% of US youths report using the internet to look for “sensitive” sexual health information.³ Another study, with significant-

ly different methodology, puts the number of youth seeking sexual health information at 89%.⁴ A further study indicates that lesbian, gay, bisexual and transgender (LGBT) youth may be more likely to look for sexual health information online because they do not have anyone else in their lives to ask.⁵ While there is virtually no overt state-level interference in access to online information in the US, there may be significant restrictions placed on the internet by parents, schools, or other institutions, often resulting in censorship of sexual health information.

A 2010 study by the Association for Progressive Communications’ (APC) EROTICS⁶ project found that access to sexual information in US public libraries is often heavily restricted. As the authors report:

Methods [of censorship] used include blocking particular websites, blocking particular words in internet searches, using commercially marketed content filters and/or requiring users to agree to terms of services that included not seeking inappropriate material. Terms and sites blocked seemed unpredictable and included instances of overblocking, or denying access to information that is clearly not “harmful to minors” including websites of service organizations and websites designed for teenagers. In many instances, access to information was restricted for all users and not merely for people under 17 or 18 years of age. Depending on the library, a user may not be able to find information about anal cancer or contacts for lawyers at the Sex Workers Project.⁷

1 Murdoch, S.J., & Anderson, R. (2008). Tools and Technology of Internet Filtering. In Deibert, R. et al (Ed.), *Access Denied: The Practice and Policy of Global Internet Filtering*. Cambridge: MIT Press. access.opennet.net/denied

2 Harvey, K. J., Brown, B., Crawford, P., Macfarlane, A., & McPherson, A. (2007). ‘Am I Normal?’ Teenagers, sexual health and the internet. *Social Science & Medicine*, 65(4), 771-781.

3 Lenhart, A., Purcell, K., Smith, A., & Zickuhr, K. (2010). *Part 4: The internet as an information and economic appliance in the lives of teens and young adults*. Washington, D.C.: Pew Research Center. www.pewinternet.org/2010/02/03/part-4-the-internet-as-an-information-and-economic-appliance-in-the-lives-of-teens-and-young-adults

4 Boyar, R., Levine, D., & Zensius, N. (2011). *TECHsex USA: Youth Sexuality and Reproductive Health in the Digital Age*. New York: Ford Foundation. www.yth.org/wp-content/uploads/YTH-youth-health-digital-age.pdf

5 Mitchell, K. J., Ybarra, M.L., Korchmaros, J.D., & Kosciw, J.G. (2013). Accessing sexual health information online: use, motivations and consequences for youth with different sexual orientations. *Health Education Research*, 30(3), 1-11. her.oxfordjournals.org/content/early/2013/07/16/her.cyo71.full.pdf+html

6 erotics.apc.org

7 Ditmore, M., & Echols, K. (2010). Unequal access to information: Youth, sex and the law – content regulation in US publicly funded libraries. In J. Kee (Ed.), *EROTICS: Exploratory Research on Sexuality and the Internet*. Johannesburg: APC. https://www.apc.org/en/system/files/Erotics_Exec_Summary.pdf

Furthermore, claim the authors, “A library that buys filtering software to block pornography may not be aware that the software developers have included personal or political biases in their decision to include ‘controversial’ topics such as abortion or homosexuality under the heading of offensive content,”⁸ a fact that is evidenced by the blocking of LGBT content from websites of mainstream organisations such as the National Organization for Women⁹ or Planned Parenthood.¹⁰

Though little research is available about the use of the internet for seeking sexual health information in the Middle East and North Africa (MENA), one 2006 survey – conducted on an Arabic-language website dedicated to information about emergency contraception – found that 55% of respondents cited the internet as an important source of health information, while 26% cited magazines, 24% newspapers, and nearly 20% cited physicians as important sources. Survey respondents also identified female sexuality, male sexuality, contraception, pregnancy, violence, and LGBT health issues as “priority areas” for additional online health information.¹¹

In addition to technical solutions imposed by authorities, corporations operating online may be complicit in – or even instigatory of – censorship. Social media companies such as Facebook or Twitter comprise billions of diverse users around the world and, as such, seek to create inclusive spaces. Facebook, for example, has explicitly stated that it seeks to provide a “respectful experience” for its “global and culturally diverse community”.¹² While these platforms allow for sharing on a scale previously unknown, the rules imposed by their leadership have led to a new form of censorship.

Across the MENA region, restrictions on access to information are fairly common, both online and offline, but vary considerably in severity from country to country. In Lebanon, for example, “[c]ensorship is very strong ... [but the] internet enables us to navigate this restrictive environment,” according to researcher Nadine Moawad.¹³ In that country,

online restrictions are less severe than those placed on information offline, including books, and when they do occur often focus on defamation or pornography.¹⁴ At the other end of the spectrum, Saudi Arabia is known to heavily restrict access to a range of information online, including sexual health information, LGBT content, and even certain media publications,¹⁵ which is consistent with restrictions placed on offline content.

The role of business in censoring sexual content

The degree to which software and hardware corporations play a role in government and other institutional restrictions on content varies. While in some cases – such as the use of off-the-shelf filtering hardware by libraries – the use of commercial products is virtually inevitable, in other cases, corporations are directly complicit. For example, the governments of Saudi Arabia, Kuwait, Bahrain, Oman and Tunisia, to name only a few, have all purchased software or hardware from US or European companies for the implementation of government-level censorship.¹⁶

Online service providers – social media companies, web hosts, and other platforms – also play a role in restricting speech, by way of their “terms of service”. “[D]espite their good intentions and their claims to a free-speech-friendly philosophy,” wrote scholar Marjorie Heins in 2014, “these companies employ ‘terms of service’ that censor a broad range of [U.S.] constitutionally protected speech.”¹⁷

Online service and access providers such as social media platforms or search engines may restrict access to content for one or more of the following reasons: a government may request the corporation to do so through the use of a legal order or similar means (Google, Facebook, and Twitter all issue reports demonstrating their government-requested takedowns);¹⁸ the corporation itself may divide

8 Ibid.

9 <https://now.org>

10 www.plannedparenthood.org

11 Foster, A. M., Wynn, L., Rouhana, A., Polis, C., & Trussell, J. (2006). Disseminating On-line Reproductive Health Information in Arabic: Results from a Survey of Users of an Emergency Contraception Website. *CyberOrient*, 1(1). www.cyberorient.net/article.do?articleId=3695.

12 Larson, S. (2015, 3 May). Why Facebook Still Has a Problem With Breasts. *The Kernel*. kernelmag.dailydot.com/issue-sections/features-issue-sections/12796/facebook-nudity-breasts-advertising

13 Cabrera-Balleza, M. (2011, 22 June). Lebanon and USA: Where is the line for sex on the internet? *GenderIT.org*. www.genderit.org/articles/lebanon-and-usa-where-line-sex-internet

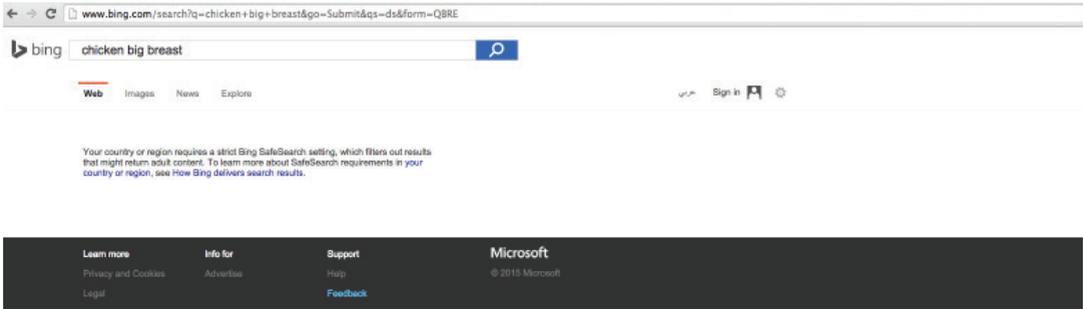
14 Moawad, N., & Qjblawi, T. (2011). Lebanon: Who's Afraid of the Big Bad Internet? In J. Kee (Ed.), *EROTICS: Sex, rights and the internet – An exploratory research study*. Johannesburg: APC. www.genderit.org/sites/default/upload/erotics_finalresearch_apcwnsp.pdf#lebanon

15 OpenNet Initiative. (2009). *Saudi Arabia*. Cambridge: ONI. <https://opennet.net/research/profiles/saudi-arabia>

16 Noman, H., & York, J. (2011). *West Censoring East: The Use of Western Technologies by Middle East Censors, 2010-2011*. Cambridge: ONI. <https://opennet.net/west-censoring-east-the-use-western-technologies-middle-east-censors-2010-2011>

17 Heins, M. (2014). The Brave New World of Social Media Censorship. *Harvard Law Review*, 127(8), 725. harvardlawreview.org/2014/06/the-brave-new-world-of-social-media-censorship

18 Google transparency report: <https://www.google.com/transparencyreport/>; Facebook government requests report: <https://govtrequests.facebook.com/about/>; Twitter transparency report: <https://transparency.twitter.com/>



Screenshot: Bing's SafeSearch setting.

countries into markets, resulting in policies predicated on the most restrictive country in said market; or a corporation and its employees may place restrictions on content based on their own sense of morality or appropriateness or their perception of what users in a given market want. The impetus behind such content restrictions can be difficult to ascertain, and may involve a combination of the above.

Microsoft Bing

In 2009, at its launch, search engine Microsoft Bing was found to be enforcing “safe search” – a filtered version of its search results – in a number of countries; that is, users in those countries were unable to turn off the search tool, resulting in heavy restrictions on access to information. Specifically, testing of the search engine from inside various countries in the MENA region revealed that “Microsoft filters Arabic and English keywords that could yield sex- or LGBT-related images and content.”¹⁹

Specifically, users who attempted to use a filtered keyword in their search received a message that reads: “Your country or region requires a strict Bing SafeSearch setting, which filters out results that might return adult content. To learn more about SafeSearch requirements in your country or region, see How Bing Delivers Search Results.”

The latter link then leads to a page stating:²⁰

Bing categorizes certain countries as strict markets. In these strict markets, we might restrict the display of adult content (as locally defined), and because of the local customs, norms, and laws, we might limit SafeSearch settings only to “strict”. Set to “strict”, SafeSearch filters the display of explicit search results in images, videos, and text.

The statement is followed by a list of countries or regions that are limited to “strict” search: China, India, Indonesia, Korea, Malaysia, the Middle East, Singapore, Thailand and Turkey. While most of the locales where restrictions have been placed are treated as individual countries, the “Middle East” is treated as a single entity with a single set of customs, norms and laws. Furthermore, the “Middle East” is left undefined; recent testing demonstrates that it is inclusive of Egypt but not of Tunisia or Morocco, while its southern and eastern boundaries are unclear.

Promoted Tweets

Twitter offers a form of native advertising called “Promoted Tweets”, through which targeted advertising, in the form of a 140-character tweet, is displayed directly on a user’s Twitter timeline.²¹ Twitter’s advertising policy includes a number of restrictions: advertisements containing hate speech, drugs or drug paraphernalia, weapons, and political campaigning are, among others, banned.²² Also prohibited is “the promotion of adult or sexual products and services globally.”²³

Although Twitter makes exceptions for sexual health-related content, such content must still not contain or link to “adult or sexual products or services”.²⁴ As such, sexual health information providers have routinely found their advertisements banned or not approved for the site. The National Campaign to Prevent Teen and Unplanned Pregnancy,²⁵ a US-based organisation, found itself banned from using promoted tweets after tweeting a campaign that stated, “If you think condoms aren’t for you, you just haven’t found the right one

19 Noman, H. (2010) *Sex, Social Mores and Keyword Filtering: Microsoft Bing in “Arabian Countries.”* Cambridge: ONI. https://opennet.net/sites/opennet.net/files/bing_arabiancountries.pdf

20 Bing Help: How Bing Delivers Search Results. onlinehelp.microsoft.com/en-us/bing/ff808447.aspx

21 <https://business.twitter.com/help/what-are-promoted-tweets>

22 https://support.twitter.com/groups/58-advertising#topic_249

23 <https://support.twitter.com/groups/58-advertising/topics/249-advertiser-policies/articles/20170427-adult-or-sexual-products-and-services>

24 *Ibid.*

25 <https://thenationalcampaign.org>

yet. See how good safer sex can feel”, and linked back to [bedsider.org](#), an “online birth control support network for women 18-29”, sponsored by the organisation. It was the link, rather than the text, that resulted in the ban; according to a Twitter account strategist, even though the text was about safer sex, “[it] still paints sex in a recreational/positive light versus being neutral and dry.”²⁶

Similar advertising censorship has been enacted by Facebook²⁷ and Google.²⁸ As sex therapist Amber Madison writes, “Social media’s strict policies wouldn’t be such an issue if teens (and adults) didn’t use technology as one of their primary sources of sexual-health information. But in fact, 89 percent of teens say they learn about a variety of sexual-health issues online.”²⁹

Deciding what’s acceptable

As the online “public sphere” becomes increasingly privatised – with companies like those mentioned earlier creating and enforcing their own rules above the law – access to sexual health information will be increasingly under threat, unless significant policy changes are made. The current landscape for enacting change is, unfortunately, rather weak.

The UN Guiding Principles on Business and Human Rights (also referred to as the “Ruggie Principles” after their primary author) state: “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.”³⁰ The Principles are often invoked when referring to the responsibilities of corporations in responding to government requests for censorship. However, they have not often been invoked in broad reference to corporate responsibility to protect free expression.

Previous attempts at holding corporations accountable on privacy and freedom of expression have primarily come from the multistakeholder approach; most notable is the Global Network Initiative,³¹ which was founded in 2008 by a group of companies, academics, NGOs and investment firms. While the initiative has been successful in

monitoring companies’ responses to government censorship requests, it has done little to hold companies more generally to the principle of freedom of expression.

Legally, Google, Twitter, Facebook and the like are not required to protect free expression on their platforms, and yet the decisions they make impact the public discourse perhaps more than the courts in some countries. As Professor Jeffrey Rosen has been quoted as saying, Google’s lawyers and executives “exercise far more power over speech than does the [U.S.] Supreme Court.”³²

As corporations based in the US, these companies are entitled to free speech protections as well, meaning that they can restrict access to whomever and whatever types of content they wish. Specifically, providers cannot be held liable for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³³

Therefore any attempt to sway corporations to a greater responsibility toward free expression and access to information must be made outside of, or in parallel to, the law. The Manila Principles on Intermediary Liability³⁴ suggest that content restrictions enforced by either law or practice should be necessary and proportionate in a democratic society and that any restriction of content should be limited to the issue at hand. The Principles offer a basis on which an argument can be made to these corporations that any censorship of sexual health or other lawful information is unnecessarily restrictive.

For businesses that wish to protect free expression on their platforms, the UN Guiding Principles, Manila Principles, and other resources provide excellent, easy-to-implement guidance. But ultimately, the decisions on what constitutes acceptable speech around the world are being made by corporate lawyers, paralegals, and executives, most of whom are based in Washington DC. While there are countless resources to help them get there, the decision to protect speech must come from them.

26 Madison, A. (2015, 4 March). When Social Media Companies Censor Sex Education. *The Atlantic*. www.theatlantic.com/health/archive/2015/03/when-social-media-censors-sex-education/385576

27 “Take a Stand Against Censorship.” American Sexual Health Association. www.ashsexualhealth.org/take-stand-censorship

28 Madison, A. (2015, 4 March). Op. cit.

29 Ibid.

30 United Nations Office of the High Commissioner for Human Rights. (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. New York: United Nations. www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

31 globalnetworkinitiative.org

32 Ammori, M. (2014). The “New” New York Times: Free Speech Lawyering in the Age of Google and Twitter. *Harvard Law Review*, 127(8), 2259. harvardlawreview.org/2014/06/the-new-new-york-times-free-speech-lawyering-in-the-age-of-google-and-twitter

33 Protection for private blocking and screening of offensive material. 47 U.S.C. § 230. <https://www.law.cornell.edu/uscode/text/47/230>

34 <https://www.manilaprinciples.org>

Problematizing the dominant discourse around children, youth and the internet

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Introduction

This report is framed as a challenge to the dominant discourse on children online – a discourse that characterises children in online spaces as vulnerable victims rather than people with agency and risk-management capacity. The current discourse on child victimisation draws from 21st century human trafficking policy, which has generally taken an enforcement- and prosecution-driven approach to problems of exploitation. Global agendas against child exploitation have predominantly replicated anti-trafficking discourse, making assumptions about violence, risk and vulnerability online.

In this report, I will describe the dominant discourse on children online as one of victimisation, and then describe three common digital methods being used against child exploitation: text detection, image detection, and online sting operations. I argue that the discourse of victimisation does not actually uphold victim *rights*, and that in fact many predominant anti-exploitation methods threaten the privacy rights and sexuality rights of young people. Rights to privacy are in jeopardy as the dominant anti-exploitation approach relies on state enforcement and policing, following in the footsteps of older surveillance techniques by monitoring citizens' internet behaviour and increasing government regulation of online traffic. Additionally, the sexuality rights of young people, while perhaps a controversial subject, are also fundamentally threatened by a dominant discourse that positions all children as victims and does not recognise the sexual agency of young people. Under the supposed goal of safety, many anti-exploitation measures by states have veered toward censorship, limiting young people's access to all forms of sexual content online, including sexual identity, sexuality and reproductive health resources.

Recognising that problems of violence, sexual exploitation, misogyny and harassment online are very real, I conclude by imagining what a more

feminist and sustainable approach to address these issues might look like. Dominant anti-exploitation efforts centralise technocratic expertise in the hands of states and large technology companies. I suggest an alternative approach that uses participatory ethnographic research and youth input to influence technology design that honours young people's lived experiences and supports their already ongoing practices of risk management.

The dominant discourse of victimisation

Who gets to be a victim? Are children automatically assumed to be victims by dominant legislative agendas? Which children, and where? Such questions help us understand and critique the current global discourse on child exploitation and victimisation, which takes its cues from the soaring rise in attention to “trafficking” in the past few decades. Much of the language and ideology of the current anti-trafficking movement is rooted in the drafting process for what would become the UN protocol on human trafficking. Human trafficking is defined under the 2000 United Nations Office on Drugs and Crime (UNODC) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception (...),” and expressly prohibits the trafficking of children for the purposes of commercial sexual exploitation.¹ Feminist scholars² have noted that the protocol drafting process brought together

1 United Nations General Assembly. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. UN Doc. A/55/383 at 25. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en%7Ctitle=UNTC%7Cwork=un.org-title=UNTC-work=un.org

2 See, for example, Soderlund, G. (2005). Running from the rescuers: New U.S. crusades against sex trafficking and the rhetoric of abolition. *NWSA Journal*, 17(3), 64-87; Musto, J. (2009). What's in a name? Conflations and contradictions in contemporary U.S. discourses of human trafficking. *Women's Studies International Forum*, 32, 281-287; Bernstein, E. (2007). The Sexual Politics of the “New Abolitionism”. *Differences: Journal of Feminist Cultural Studies*, 18(3), 128-151.

a peculiar constellation of religious advocates, anti-prostitution feminist activists, bureaucrats, and law enforcement; the rubrics under which they found common agreement have resonance for current child exploitation policy. It is telling that the UN protocol on trafficking, one that had been suggested and discussed for years in various UN agencies, was eventually pushed through by the agency handling transnational drugs and crime control.

Perhaps the most striking point for agreement between these disparate advocacy groups is a shared ideology of punishment for trafficking as a crime. Bernstein³ argues that, in constructing legislation for the criminalisation of trafficking, a conservative Christian sense of penalty and retribution met a second-wave feminist aim to prosecute perpetrators of sexual violence and exploitation of women and girls. This shared ideology of “carceral feminism” advocates for state- and law enforcement-based solutions for addressing crimes of interpersonal violence and exploitation, and glosses over how many marginalised people are in fact often subjected to violence at the hands of the state itself, through structures of policing, environmental law, and economic policy. This point on structural violence and state violence is replicated, I argue, with online policies as well.

Many countries have used the protocol to model their own laws on trafficking, forced migration, labour exploitation and sexual exploitation, including vague definitions of “trafficking victim”, consent and migration. The United States’ (US) domestic commitment, especially, to carceral paradigms of justice has expanded into similar policies abroad with state-based interventions into cases of trafficking, through practices of what Bernstein calls “militarized humanitarianism” – the US financing of enforcement-heavy policing and raids of brothels, settlements and urban spaces where cases of exploitation and trafficking have been purported. This point is perhaps best exemplified by the US State Department’s Trafficking In Persons Report, a country-by-country ranking of the US’s assessment of governmental efforts to prevent and prosecute trafficking. As Pardis Mahdavi notes, lower rankings correspond to sanctions or reductions in foreign aid.⁴ Additionally, “anti-trafficking” has become a hugely marketable and profitable

awareness campaign for numerous activist groups, which use the images and metaphor of “modern-day slavery” to generate millions of dollars in foreign aid and donations. I argue, along with other feminist scholars,⁵ that this new “abolitionist” movement has become another rationale for the neo-imperialist rescue of people in the global South, especially those identified as “prostitutes”, replicating a pattern of humanitarian intervention that has frequently been critiqued by post-colonial activists. The UN protocol title, for example, explicitly calls attention to “Especially Women and Children”, a phrasing that feminist activists have criticised as contributing to the assumption of the feminising of victimhood and the masculinising of rescue. Agustín⁶ suggests that the specific focus on sex trafficking (as opposed to, for example, issues of education, poverty or environmental justice) in global South countries has produced its own veritable “rescue industry” of professionalised humanitarians, journalists, bureaucrats and corporate representatives seeking to stake their claim on anti-trafficking turf. Children’s charities, especially, many of which have been working on issues of youth education, nutrition, sexual health and child labour for decades, have begun switching their primary focus to trafficking and exploitation as a signal of their commitment to this latest humanitarian agenda.

Digital strategies against child exploitation

Additionally, most trafficking and exploitation policies do not explicitly deal with technology, and in this current moment software development far outpaces legislative policy. Abuses online have their parallels online, and children’s advocacy organisations have taken to digital methods for finding and preventing child exploitation, including digital forensics, biometric software, and image detection technologies. In recent years, an unprecedented level of alliances have been forged between technology companies, researchers, activists and law enforcement strategising to detect cyber crime and to collect digital data as evidence. In addition, we have seen a rise in cross-border police partnerships, as virtual crimes often implicate multiple countries or anonymous locations in law enforcement attempts to locate victims, abusers and downloaders alike.

3 Bernstein, E. (2010). Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns. *Signs: Journal of Women in Culture and Society*, 36(1), 45-71.

4 Mahdavi, P. (2011). *Gridlock: Labor, Migration, and Human Trafficking in Dubai*. Stanford: Stanford University Press.

5 See, for example, Kempadoo, K., & Doezema, J. (1998). *Global Sex Workers: Rights, Resistance, and Redefinition*. New York: Psychology Press; Desyllas, M. C. (2007). A Critique of the Global Trafficking Discourse and U.S. Policy. *Journal of Sociology and Social Welfare*, 34(4), 57-79.

6 Augustin, L. (2007). *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. London: Zed Books.

Three strategies for countering trafficking and exploitation online that I would like to highlight are:

- *Text and financial transaction detection:* Data mining algorithms are designed and used in criminal investigations to rapidly search large databases. Text analysis can assist with analysing language patterns in online advertisements, for example to detect advertisements suggesting the offer of sexual services by under-age minors. Text detection can also assist police working with social media companies on existing investigations, to trawl through data for key phrases, dates and locations; and with financial transaction analysis, detecting potentially fraudulent transactions, as well as other indicators that may serve as evidence for prosecutions.
- *Image and video detection:* Image analysis – the detection, filtering, categorisation and recognition of digital photos – is a common tool in conducting anti-exploitation cases. Digital forensics tools automate the process of searching through photo data collected from computers and hard drives confiscated by police during investigations. Interpol manages the International Child Sexual Exploitation image database,⁷ which can be used for image-matching with photos of missing children, victims, abusers and geographic locales. Other technologies can determine if images have been digitally altered or tampered with – for instance, converting an innocent image of a child edited into sexually explicit content. Image analysis can also identify images from surveillance systems.
- *Digital sting operations:* In the US, as well as other countries, undercover law enforcement “stings” have long been used to entrap potential child exploiters. However, in many parts of the world, stings are unlawful, and the data produced by sting operations are considered null evidence in courts. Recently, NGO Terre Des Hommes, based in the Netherlands, took the unprecedented step of designing a photo-realistic video avatar of a child to conduct video chats with potential exploiters on chat room sites. Dubbing the operation “Project Sweetie”,⁸ the NGO claimed that over six

months they collected the names and emails of 1,000 people who solicited the avatar. The campaign has been controversially received, with some lauding it as the innovative next step in preventing sexual exploitation of young people, and others raising alarms over privacy infringement issues.

Rights to privacy

My concern with these digital methods’ infringements on privacy rights echoes the protests by groups like the American Civil Liberties Union (ACLU) and Electronic Frontier Foundation,⁹ on the grounds of protecting free speech online and protecting online identities. Many of the innovative techniques that law enforcement must use for thorough digital investigations involve biometric surveillance and identification techniques on proprietary websites. Personal privacy online can be absolutely critical for political dissidents and lesbian, gay, bisexual, transgender and queer (LGBTQ) activists, for example, seeking anonymity to avoid discrimination, harassment or punishment from repressive governments. These groups may see the denial of privacy as a form of political control, and use encrypted websites and email and other dark-web technologies for their own personal safety.

In addition, current digital strategies echo the dominant discourse on victimisation by failing to acknowledge and uphold children’s rights. Many have argued that the UN Convention on the Rights of the Child applies to the internet space: children “shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.”¹⁰ Unfortunately, in the name of child safety, internet governance legislation and advocates in many countries have chosen to move in the direction of censoring children’s access to social media. While online censorship models vary between countries (e.g. the censorship of “adult pornography” websites where illegal), sometimes censorship may veer too far and limit children’s access to educational and communication sites.

7 www.interpol.int/Crime-areas/Crimes-against-children/Internet-crimes

8 International Federation Terre Des Hommes. (2013). Stop Webcam Child Sex Tourism. www.terredeshommes.org/webcam-child-sex-tourism

9 For example, the Electronic Frontier Foundation, ACLU, and seven other privacy advocacy organisations issued a joint statement in June 2015 expressing concern with governmental facial recognition and face databases. Lynch, J. (2015, 16 June). EFF and Eight Other Privacy Organizations Back Out of NTIA Face Recognition Multi-Stakeholder Process. *Electronic Frontier Foundation*. <https://www.eff.org/deeplinks/2015/06/eff-and-eight-other-privacy-organizations-back-out-ntia-face-recognition-multi>

10 United Nations Convention on the Rights of the Child. www.ohchr.org/en/professionalinterest/pages/crc.aspx

Sexuality rights

Concerns over privacy rights and surveillance have strong implications for the upholding of sexual rights. As many ethnographic studies have demonstrated, young people already constantly experiment with new internet platforms for expressing sexuality and desire and conducting relationships. To deny these cultural practices in internet safety education is to deny the reality of healthy youth sexuality and forces sexual practices to become more “invisible” and out of the oversight of guardian communities. Heather Horst¹¹ describes how both US youth in the Digital Youth Project,¹² for example, and Indonesian teenagers in Barendregt¹³ and Boellstorff’s¹⁴ research, experimented and played with their online profile photos and identities in ways that they deemed sexy for their intended audiences, but expressed surprise and bewilderment that these photos could be accessed by people outside their peer groups. Horst indicates that what would be needed in these contexts would be greater education around privacy settings and filters so that youth can better conceptualise that internet sites are potentially permanent and accessible by multiple publics.

Rather than filter and block all content related to sex, sexuality and sexual interactions, internet safety measures must encourage age-appropriate explorations of sexuality for teenaged youth. Especially in countries where state policies limit access to resources and public spaces for LGBT youth, it is imperative that young people have access to digital chat rooms, forums and sites that ensure their safety, community building, and interpersonal growth. Research studies by both Hasinoff¹⁵ and Gray¹⁶ illustrate the perils of sexually repressive policies seeping into moral panics that limit the networking and relationship-building of marginalised youth. A victimisation model furthers the policing of youth sexuality, as young people are literally

punished and criminalised for the distribution of sexually suggestive images. Panics over “sexting” stem from long-standing moral panics over youth sexuality – online or offline – and further the false narrative that young people are innocent, always already victims. A protective model is unsustainable, and ultimately furthers a culture of policing and repression.

Conclusion: Feminist technology design and resisting techno-panics

I am intrigued by the rapid and unprecedented rise in global alliances between law enforcement agencies and technology companies, as well as the forging of cross-border police partnerships, to design cyber crime detection software and to share data. But I am deeply concerned that the current model for anti-trafficking design centres technocratic expertise in the hands of wealthy states and multinational tech companies, at the exclusion of grassroots-level NGOs, activists and youth who have long been organising on issues of exploitation.

A feminist approach means moving toward youth-centric technologies that recognise different forms of expertise in producing sustainable models of safety. For example, Streetwise and Safe’s path-breaking research report¹⁷ on youth engaged in the sex trades provides deeply nuanced insight into young people’s own experiences with safety, consent, victimisation, empowerment and the police. The report is an exemplary resource for a feminist anti-trafficking technology able to recognise young people’s ongoing negotiations of risk and safety. The approach would use this knowledge to create technologies that can more sustainably and accurately – and powerfully – end abuse and exploitation.

A feminist design approach values all relevant forms of expertise and input in understanding what “sex trafficking” and “technology” mean in the lived experiences of young people; child protection services; sex workers aiming to end exploitation without punishing prostitution itself; survivors of trafficking, forced migration and human smuggling; and advocates for free speech and network neutrality and against censorship. A feminist design approach, emphasising harm reduction rather than policing, would be more effective because it takes into account the forms of structural violence

11 Horst, H. (n/d). Commentary on Bart Barendregt’s *Between m-governance and mobile anarchies: Pornoaksi and the fear of new media in present day Indonesia*. www.media-anthropology.net/horst_comment.pdf

12 Ito, M., et al. (2008). *Living and Learning with New Media: Summary of Findings from the Digital Youth Project*. Chicago: MacArthur Foundation.

13 Barendregt, B. (2006). *Between m-governance and mobile anarchies: Pornoaksi and the fear of new media in present day Indonesia*. www.media-anthropology.net/barendregt_mgovernance.pdf.

14 Boellstorff, T. (2005). *The Gay Archipelago: Sexuality and Nation in Indonesia*. Princeton: Princeton University Press.

15 Hasinoff, A. A. (2014). *Sexting Panic: Rethinking Criminalisation, Privacy, and Consent*. Champagne, IL: University of Illinois Press.

16 Gray, M. (2009). *Out in the Country: Youth, Media, and Queer Visibility in Rural America*. New York: NYU Press.

17 Dank, M., et al. (2015). *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSW Engaged in Survival Sex*. New York: Urban Institute, with Streetwise and Safe NYC.

– global poverty, rape culture, racism, labour exploitation, restrictive and dangerous immigration policies – that make online child exploitation and trafficking a reality in the first place.

The common narrative spun by many children’s advocacy organisations about child exploitation online frames the internet as a space of risk, vulnerability, harm and entrapment. The narrative usually goes like this: exploiters can use various digital platforms to locate, communicate with and groom victims; send text messages and email to conduct their affairs; use various financial transaction sites to conduct monetary exchanges; and trade and distribute photos and videos of trafficked or exploited victims. Such a narrative frames young people as the passive recipients of harm, rather than active agents who already engage in risk mitigation

and rely on each other for support networks online. I urge child safety specialists to think through online safety in a pragmatic manner that respects the vast benefits and opportunities of internet connectivity and to avoid “techno-panics” by focusing instead on harm-reduction approaches to youth safety. Many global feminist internet activists have organised against misogynistic, homophobic and racist harassment online; government interpretations of these issues could certainly take note from this legacy of grassroots organising in addressing sexual exploitation and violence in the digital space. In a sense, online sex trafficking and exploitation only magnify existing structural violence and social inequities. Sustainable problem solving therefore means resisting a “quick-fix” technological solution to a problem that is so much more than digital.

Porn. Panic. Ban.

Bishakha Datta

Point of View

www.pointofview.org

#PornBan. It's like a rash, this impulse to ban porn all over the world – despite protests that are going viral. The Twitter hashtag #pornban sprung up in July 2015 as the Indian government blocked 857 porn sites,¹ and then backtracked a bit,² asking internet service providers (ISPs) to unblock those that don't contain child pornography. Which makes service providers the arbiters of our constitutionally guaranteed right to freedom of expression, deciding what we may or may not see. Seriously?

The United Kingdom recently banned a number of sex acts online,³ including female ejaculation, even while there were almost 250,000 hits on porn sites from IP addresses in the buildings housing parliament.⁴ The UK government is now asking porn sites to collect proof⁵ that their visitors are adults. Will this data be stored privately and not used for other purposes? A valid question in an age of mass surveillance, hacks on “cheating” sites⁶ and hacker releases of private information, including sexual preferences.⁷

1 Government of India, Ministry of Communication & IT, Department of Telecommunications. (2015). *DOT Order Blocking 857 Websites on Grounds of Decency and Morality*. cis-india.org/internet-governance/resources/dot-morality-block-order-2015-07-31/view

2 Reuters. (2015, 5 August). India withdraws order to block pornography sites. *Reuters*. in.reuters.com/article/2015/08/05/india-porn-ban-idINKCNoQAoKK20150805

3 Saul, H. (2015, 13 September). UK porn legislation: What is now banned under new government laws. *The Independent*. www.independent.co.uk/news/uk/home-news/uk-porn-legislation-what-is-now-banned-under-new-government-laws-9898541.html

4 Withnall, A. (2015, 27 July). Porn in Parliament: Palace of Westminster computers made 250,000 attempts to 'access pornography last year'. *The Independent*. www.independent.co.uk/news/uk/politics/parliament-computers-made-250000-attempts-to-access-pornography-at-palace-of-westminster-10418449.html

5 Doctorow, C. (2015, 3 August). David Cameron will publish the financial details and viewing habits of all UK porn watchers. *BoingBoing*. boingboing.net/2015/08/03/david-cameron-will-publish-the.html

6 Elgot, J, Hern, A, & Weaver, M. (2015, 21 July). Ashley Madison adultery site hack: Will I be found out? *The Guardian*. www.theguardian.com/world/2015/jul/21/ashley-madison-adultery-site-hack-will-i-be-found-out-what-you-need-to-know

7 Fox-Brewster, T. (2015, 19 August). Location, Sexual Preference, Weight: Embarrassing Ashley Madison customer data published by hackers. *Forbes*. www.forbes.com/sites/thomasbrewster/2015/08/19/ashley-madison-breach-is-awful

Iceland⁸ has been threatening to ban “violent” online porn since 2013. Indonesia⁹ and Turkey¹⁰ have blocked lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) content in the name of banning porn. The Philippines¹¹ has outlawed cybersex and cam girls, while a religious lobby in Australia¹² is pushing for anti-piracy laws to be extended to porn. Porn possession is illegal in Botswana,¹³ Egypt¹⁴ and Uganda.¹⁵ And even as the Israel-Palestine conflict escalated in 2012, Hamas managed to ban “full” internet porn in the Gaza Strip.¹⁶ Whatever that means.

Porn. Panic. Ban. That's pretty much the policy response in many parts of the world.

But what is it about porn that terrifies so many governments, derails feminist sensibilities, offends the religious right, and attracts so many users? How can we change the way we “see” porn?

8 The Economist. (2013, 23 April). Why does liberal Iceland want to ban pornography? *The Economist*. www.economist.com/blogs/economist-explains/2013/04/economist-explains-why-iceland-ban-pornography

9 Institut Pelangi Perempuan. (2014). *Queering Internet Governance in Indonesia*. erotics.apc.org/research/queering-internet-governance-indonesia

10 Tremblay, P. (2015, 27 April). 'Unnatural' porn becomes ticket to jail in Turkey. *US News & World Report*. www.usnews.com/news/articles/2015/04/27/unnatural-porn-becomes-ticket-to-jail-in-turkey

11 BBC News. (2012, 20 September). Philippines outlaws cybersex and 'cam girls'. *BBC News*. www.bbc.com/news/technology-19659801

12 Turner, A. (2015, 24 June). Porn will be next on Australia's website blocking agenda. *Sydney Morning Herald*. www.smh.com.au/digital-life/computers/gadgets-on-the-go/porn-will-be-next-on-australias-websiteblocking-agenda-20150624-ghw6ow.html

13 APA. (2015, 13 March). Botswana: Three arrested for cyber porn material. *Star Africa*. en.starafrika.com/news/botswana-three-arrested-for-cyber-porn-material.html

14 RT. (2015, 20 May). Egypt's top court bans porn sites, demands enforcement. *RT Question More Live*. www.rt.com/news/260609-egypt-ban-porn-websites

15 Strategic Initiative for Women in the Horn of Africa. (2015). Anti-pornography Act: Human rights activists and civil society organisations challenge the legality of the act in Constitutional Court, Uganda. www.sihanet.org/news/anti-pornography-act-human-rights-activists-and-civil-society-organisations-challenge-legality

16 Daily Mail. (2012, 3 September). Hamas bans internet porn in Gaza Strip as Islamic hardliners crack down on Palestinian freedoms. www.dailymail.co.uk/news/article-2197876/Hamas-bans-internet-porn-Gaza-Strip-Islamic-hardliners-crackdown-Palestinian-freedoms.html

* * *

Lesbian. Threesome. Squirt. Change the words and you change the lens. From the user's perspective, porn leads to pleasure, not panic. That's what porn has always been about, from ancient times, when it found its first mention in the word *porneia*.¹⁷ This Greek word was variously defined as fornication, whoredom, promiscuity and adultery, all of which have two things in common: sex and pleasure. For most users, that's what porn is really about: sexual pleasure. (Dirty, dirty.) Arousal. (Dirty, dirty.) Orgasm. (Dirty, dirty.) Problem is that in the parental gaze called policy, sex is kinda dirty. (Dirty, dirty.)

Problem is that in this global policy gaze, the sexual pleasure-seeker aka Porn User is always a man. Even though globally a quarter of porn viewers are women.¹⁸ Make that 35% in Brazil and the Philippines, 24% in France, 23% in India and Argentina, and come on, Japanese women, you 17% laggards.¹⁹ A 2015 survey of Pornhub and Redtube,²⁰ which gets 40 million viewers each month, shows that women like watching women. (And Kim Kardashian, James Deen, pussy-licking and rough sex.) "What immediately jumps out is that ladies prefer to take their time, with their average visits to the site lasting a lavish 10 minutes and 10 seconds, compared to men who go for just 9:22," notes the cocky analysis. "Treat yourselves, ladies!"

So one gender gap is slowly closing as porn moves indoors from the publicness of peepshows and DVD parlours to the relative privacy of one's own home. (We should be celebrating, not lamenting this "normalisation" of porn, no?) And don't forget how notions of privacy shape behaviour here. No Peeping Toms. No looking over one's shoulder. No idea of what we get off on so long as porn sites don't start matching individual viewers to their viewing habits. Which means that even though "lesbian", "threesome" and "squirt" are the top three terms that women searched for on Pornhub and RedTube in 2015, the data is anonymised and secure. (Hopefully.) No one's going to land up at their doorsteps to blackmail them. (Hopefully.) They're not going to be branded with the scarlet letter P, the digital equivalent of Nathaniel Hawthorne's analog

adulteress,²¹ forced to wear the letter A in the 17th century.

Yes. Porn is becoming a bit of a Scarlet Letter – a private act portrayed as a public menace. Privacy is the right to be let alone, wrote Justices Warren and Brandeis of the United States (US) Supreme Court in their iconic 1890 essay.²² That too was in a context when new media technologies – "instantaneous photographs", "newspaper enterprises", "mechanical devices" – were producing panic. Technological change has, of course, always given rise to panic: even the sewing machine was once thought to create deviant desires in women, as they rhythmically moved their legs up and down to its gentle whirr. And women, of course, have always been subjected to moral panics and moralistic privacy²³ when it comes to sexuality, notes law professor Anita L. Allen. One that is associated with "heightened modesty", self-concealment, and chastity. (Don't show yourself. Don't watch other women. In short, no pornification.) Porn's genteel cousin, erotica, has also faced similar panics. Remember the ban on D. H. Lawrence's *Lady Chatterley's Lover*²⁴ in the 1960s?

Problem is, in the policy gaze, women are still stuck in the passenger seat when it comes to sex. It imagines the hubby coming home, all pumped up, and asking the missus to go beyond the missionary position. Just like he saw on his iPad mini. (Dirty, dirty.) You see? Man, driver. Woman, passenger. From the first utterance of *porneia*, men have been seen as the drivers of sex, women its passengers. Never mind that this is rooted in another P – Patriarchy – which insists that women must have no sexual desire, let alone know pleasure-enhancing postures. (Dirty, dirty). Never mind that many women still can't refuse men sex, or get them to wear condoms. Never mind every inequality between men and women that pops up everywhere, including in the bedroom. If there was greater equality between the genders, fewer women would feign headaches when they don't want to have sex.

17 Biblehub. biblehub.com/greek/4202.htm

18 IANS. (2015, 1 August). Boys ain't having all the fun: Indian women watch more porn now. *Hindustan Times*. www.hindustantimes.com/sexandrelationships/boys-ain-t-having-all-the-fun-indian-women-watch-more-porn-now/article1-1375150.aspx

19 Pornhub Insights. (2015, 25 July). More of what women want. www.pornhub.com/insights/women-gender-demographics-searches

20 Ibid.

21 McCrum, R. (2014, 6 January). The 100 Best Novels: No 16 – The Scarlet Letter by Nathaniel Hawthorne. *The Guardian*. www.theguardian.com/books/2014/jan/06/scarlet-letter-nathaniel-hawthorne-100-best-novels

22 Warren, S. D., & Brandeis, L. D. (1890). The Right to Privacy. *Harvard Law Review*, 4(5), 193-220. www.jstor.org/stable/1321160

23 Allen, A. L. (2000). Gender and Privacy in Cyberspace. *Faculty Scholarship*, Paper 789. scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1788&context=faculty_scholarship

24 Robertson, G. (2010, 22 October). The trial of *Lady Chatterley's Lover*. *The Guardian*. www.theguardian.com/books/2010/oct/22/dh-lawrence-lady-chatterley-trial

That's gender inequality. That's what we need to fix. But it's so much easier to blame porn for patriarchy, no?

* * *

Multi-million. Dollar. Industry. This is how anti-porn crusaders often refer to porn. It's a magic bullet, this phrase, guaranteed to derail logic. Guaranteed to make folks see red. As if we're not doing all sorts of things like buying biscuits and Maggi noodles and data connections from multi-million dollar enterprises.

Of course we're all proponents of the small, the stand-alone, the artisanal. But. Can porn be damned just because it's big business? Let's stop eating Glucose biscuits first. And must we start loving all independent²⁵ or homemade porn, right from consenting cam girls to non-consensual hidden cam porn in cyber cafés? Nah. Like in other industries, porn production is "ethical" when there are no unfair or exploitative contractual or labour practices. When performers are not being pushed to perform sex acts beyond the contract or without condoms. But that's not enough. Porn is legit, first and foremost, if it's based on consent. And consent cuts all the way down the line: from those who are paid to perform porn to those who freely turn their images into porn for private pleasure. That some of these images end up as non-consensual porn – often called revenge porn – is a problem that policy makers in some countries have finally begun to tackle, notably in the US where revenge porn is a crime in several states.²⁶

But try asking anti-porn campaigners to use consent as a yardstick. No. In the anti-porn worldview, ALL porn causes harm to ALL women: those who consume it and those who don't. All porn objectifies and dehumanises women, never mind women who have starred as "personified" subjects! In this camp, there's only one kind of porn – in which men treat women as instruments to satisfy their sexual desires. In which porn is the villain with a capital P, mutating "healthy" sexual desires and relationships into "unhealthy" ones.²⁷ It's never about mutual pleasure or that there are as many kinds of porn as there are sexual desires. Including queer crip porn.²⁸ It's rarely about porn performers who don't see themselves as victims. Or the issues porn

performers themselves raise. "My stage name is less about withholding parts of myself or maintaining privacy than it is a symbol of the idea that I am more than just my job or any other isolated slice of my identity," says US porn performer, Stoya.²⁹ "Yes, there's a paradox here in that I willingly engage in work that reduces me to a few sexual facets of myself but expect to be seen as a multifaceted person outside of that work. I participate in an illusion of easy physical access..."

If objectification is the charge that some feminists typically hurl at porn, addiction is its moralist cousin. In the digital porn discourse, access is often vilified as "addiction" with untold consequences. Portrayed as a drug. A petitioner to India's parliament argues that online porn must be banned before we turn into the equivalent of "Motherless or Fatherless America".³⁰ This trend is "related to those 'orphaned' children, whose father or mother, though alive, are addicted to cyberpornography and don't take any care of their children or the family," the petitioner argues. Another #pornban petitioner in India's Supreme Court raises this bombast to untold heights.³¹ "Nothing can more efficiently destroy a person, fizzle their mind, evaporate their future, eliminate their potential or destroy society like pornography," he argues. "It is so terrible that many do not even recognize it until it is too late, and most refuse to admit it. It is worse than Hitler, worse than AIDS, cancer or any other epidemic. It is more catastrophic than nuclear holocaust, and it must be stopped."

This #pornban petition goes on to hold online pornography accountable for increasing violence against women, an emotive charge (like "multi-million dollar industry") that unites moralists and many feminists. Does porn cause rape? Or, as feminist Robin Morgan famously argued in the 1970s, is "porn the theory, rape the practice"?³² No. Even those who campaign against porn warily agree there's no evidence to back this charge.³³ In the

25 Morris, C. (2014, 17 January). The economics of being an independent porn star. *CNBC*. www.cnbc.com/2014/01/17/the-economics-of-being-an-independent-porn-star.html

26 End Revenge Porn. www.endrevengeporn.org/revenge-porn-laws

27 Massey, A. (2015, 3 April). Porn is not coming for our sex lives. *Pacific Standard*. www.psmag.com/books-and-culture/its-all-ok-you-can-watch-some-porn-right-after-you-read-this-article

28 Loree Erickson, Porn Star Academic. femmegimp.org

29 Stoya. (2014, 8 March). Can we learn about privacy from porn stars? *New York Times*. www.nytimes.com/2014/03/09/opinion/sunday/can-we-learn-about-privacy-from-porn-stars.html?hpw&_r=0

30 Prabhudesai, A. (12 June 2013). Petition to ban pornography by amending IT Act filed in Parliament. *Trak.in*. trak.in/random/ban-pornography-petition-1203

31 Singh, M. (2015, 10 July). Kamlesh Vaswani v. Union of India & Ors. *One Law Street*. onelawstreet.com/2015/07/pornography-ban-kamlesh-vaswani

32 Morgan, R. (1977). *Going Too Far: The Personal Chronicle of a Feminist*. New York: Random House.

33 Jensen, R., with Okrina, D. (2004). *Pornography and Sexual Violence*. National Online Resource Center on Violence Against Women. www.vawnet.org/sexual-violence/print-document.php?doc_id=418&find_type=web_desc_AR

1990s, one research study looked at four countries where porn was freely available in the previous two decades, including “aggressive porn”.³⁴ In all four countries, the availability of pictorial porn – including violent porn – had gone from “extreme scarcity to relative abundance” in the study period. It noted that other studies have shown that “rapists’ and nonrapists’ immediate sexual reactions to presentations of pornography showed generally *greater arousal to non-violent scenes*.” It concluded that in none of the countries did “rape increase more than nonsexual violent crimes. This finding in itself would seem sufficient to discard the hypothesis that pornography causes rape.”³⁵

Disregarding such evidence, anti-porn feminists continue to insist that porn is an act of sexual violence, that porn is not “words” and “images”, that porn is not speech to be protected.³⁶ Not media. This positioning is, of course, part of the problem, since it exceptionalises porn, locating it in a category by itself, unlike other speech or media. But seriously, what is porn – composed of words, sounds and images, albeit of naked bodies – if not media? Innumerable studies indicate that there is no causal relationship between media representations and realities, that spectators hold diverse and different positions to what they view.³⁷ Do we hold on-screen rape depictions in feature films responsible for causing actual rapes? No. Do we hold on-screen depictions of murder responsible for causing actual murders? No. Then why hold on-screen porn responsible for real-life rape and sexual assault? Why blame the representation for the reality in this one case alone? What’s so unique about porn – another media representation – that it must be singled out thus? Are naked bodies inherently harmful? Or what?

* * *

In a 2009 TED talk that went viral, Cindy Gallop, a 50-something fan of hardcore porn, described how she sees online porn.³⁸ “I have sex with younger men...” in their 20s, she says, “and encounter

directly the effect of a flood of hardcore porn.” One of these effects is the misbelief that women love men coming on their faces, a porn staple. “There’s an entire generation growing up that believes that what you see in hardcore pornography is the way that you have sex,” says Gallop. “Hardcore porn has become sex education.” But why has hardcore porn become sex education? One, because it’s easily available. Two, because there’s no other sex education. Three, because we’re so puritanical about sex, we won’t talk about it to our kids. Ergo, vacuum. Enter, online porn. As a “mature experienced self-confident older woman,” Gallop is adept at telling her 20-something lovers: “No, thank you very much. I’d rather you did not come on my face.”

As a user, how would Gallop change porn? “Reorient, reeducate, rehabilitate” is her motto. In other words, resocialise minds, reshape headspaces, rewire neurons away from the dungheap of patriarchy. Towards a more equitable gender-friendly porn. Sounds like sex-positive feminism to me. Her site³⁹ busts a bunch of porn myths including balloon boobs, while understanding that porn is play, a pleasure-enhancer, like sex toys. A form of sexual expression. In another TED talk that went viral, erotic filmmaker Erika Lust talks about how it’s time for porn to change.⁴⁰ Change. Not vanish. How it’s time to fight unethical porn with ethical porn, counter-porn, porn that makes women and transpersons⁴¹ the subjects of their sexual journeys, pleasures and destinations.

That’s right. Change porn, not ban it. Think about it. Seriously. Think how we try to change other media representations – through critique, debate, dialogue and alternative representations. Not through bans, right? If policy makers understood porn as sexual expression, why would they want to ban it?

* * *

So what should we really think about when we think about porn? Consent. We need to respect the consent of those who enact porn – if it’s given, even to enacting “rape porn”, dare we cavil? And we need to start getting justice for those who never dreamed they’d end up as digital porn – without their consent. Any image that turns into porn without consent can cause actual harm, not the imaginary variety – harm that wrecks lives, jobs, careers, relationships, self-image and identities. Harm that causes real damage, both on and offline. Harm that is harmful

34 Kutchinsky, B. (1991). Pornography and rape: theory and practice? Evidence from crime data in four countries where pornography is easily available. *International Journal of Law and Psychiatry*, 14(1-2), 47-64. www.ncbi.nlm.nih.gov/pubmed/2032762

35 Ibid.

36 MacKinnon, C. & Dworkin, R. (1994, 3 March). Pornography: An Exchange. *New York Review of Books*. www.nybooks.com/articles/archives/1994/mar/03/pornography-an-exchange

37 Tait, S. (2008). Pornographies of Violence? Internet Spectatorship on Body Horror. *Critical Studies in Media Communication*, 25(1), 91-111. www.researchgate.net/publication/232838902_Pornographies_of_Violence_Internet_Spectatorship_on_Body_Horror

38 Gallop, C. (2009, 2 December). Make love, not porn. *TEDTalk*. www.youtube.com/watch?v=FV8n_E_6Tpc

39 Porn world vs Real world. makelovenotporn.com/myths/facial

40 Lust, E. (2014, 1 November). It’s time for porn to change. *TEDx Vienna*. erikalust.com/ted-talk

41 Nadika, N. (2015, 1 April). Supporting ethical queer porn. *The Orinam Blog*. orinam.net/supporting-ethical-queer-porn

enough to be called out and punished as a crime. When actual rapes turn into digital porn, spreading from phone to phone, as is the case in Pakistan⁴² and India,⁴³ that's harm. And that's three counts of consent being violated: one, in forcing sex without consent; two, in filming forced sex without consent; three, in circulating this clip without consent. When physical rape turns into digital porn we know one

thing for sure: it's time to start talking consent. It's time to start talking harm.

If we really want to "do something" about porn, it's time we stopped talking about its imagined harms. It's time we started talking about actual harms.⁴⁴ It's time we started talking along the fault lines of consent.

42 BBC News. (2015, 26 February). How a rape was filmed and shared in Pakistan. *BBC News*. www.bbc.com/news/world-asia-31313551

43 Nelson, D. (2015, 13 April). Indian campaigner inundated by gang rape videos. *The Telegraph*. www.telegraph.co.uk/news/worldnews/asia/india/11533852/Indian-campaigner-inundated-by-gang-rape-videos.html

44 Datta, B. (2015, 29 May). Porn. Panic. Ban. *GenderIT*. www.genderit.org/feminist-talk/porn-panic-ban

Click “I agree”: Consent and feminism in commercial pornography

Jiz Lee
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Introduction

Adult video production is often regarded as controversial and culturally taboo. Due to social stigma concerning sexuality, including criminalisation and institutionalised offences prohibiting pornography, its industry remains largely unregulated and under-researched.

One of the most common misconceptions is that pornography exploits performer labour, namely women. Opposition to the industry and sex work at large claims that porn is the documentation of rape, preferring a singular narrative of female sexuality dependent on sexual abuse.

However, sex on an adult film set is one of the most consensual and statistically safest sexual environments.

Background

Commercial pornography¹ largely exists in digital video format on the internet, hosted on membership and video-on-demand websites. Most adult industry professionals (cast and crew) are employed as independent contractors, typically paid a day rate per project.

Adult films portray fantasy. Even when the intention is to show an honest depiction of the sex that actually happened, film language can be manipulated. Editing can rearrange a sexual timeline for a more dramatic narrative arc, moans in sound files are often duplicated, and, with “movie magic”, condoms and lubrication can appear and disappear in the final cut.

Lubrication and “movie magic”

Despite working in porn myself, I was once fooled by “movie magic” and a convincing actress. A friend showed me her performance for the fetish site

UltimateSurrender.com.² In the video, two women wrestle and earn “style points” for sexual aggressions performed during wrestling holds, such as kissing or fingering an opponent while she is pinned.

As the site’s tagline promises: “The winner fucks the loser” and the final “round” of the match culminates in a sex scene featuring strap-on penetration. In my friend’s video, the defeated performer cried out: “Please! Can’t I have more lube? Please, I need more lube!”

She looked like she was in pain so I scolded my friend, pointing at the screen: “Seriously!? Why didn’t anyone give her lube?” But she rolled her eyes and laughed: “It’s porn. Of *course* she had enough lube. She was just acting.”

For viewers who fetishise rough sex and punishment, the elements of a more “brutal” conquest, one where the performer is “uncomfortable” or humiliated, acts to heighten the sexual fantasy. The application of lube is done during a camera pan or removed in editing. Such tricks and acting performance through pre-agreed role playing is *de rigueur* in pornography, yet it even fooled me. Most people believe the abuse they see in porn is “real”, but forget that Coleridge’s “suspension of disbelief” applies to porn as it does to any other film genre.

Regardless of whether or not the final product depicts a narrative of consensual sex, consent is integral to a commercial pornography shoot, where the sexual activity is a performance of labour.

One of the most common questions consumers ask in discussions of feminism and porn is: “How can I be sure what I’m watching was ethically produced?” The underlying assumption is that an unethical porn production would involve exploitation of its labourers through non-consensual actions such as coercion and abuse.

While porn movies that feature enthusiastic verbal consent in a variety of sex acts exist, one should not assume that a production wouldn’t employ consensual sexuality by analysis of its film narrative alone. The “Please, more lube!” example demonstrates that videos depicting non-consensual

¹ For the sake of brevity, I’ve chosen to focus on the legal form of sex work that is commercial digital pornography produced in the United States where it is protected by law in two states: California and New Hampshire. My argument is that this specific legal business requires guidelines through which consent is *evident*. Outside these areas, broad concepts of porn contain situations where consent may be unclear in production or distribution (i.e. so-called “revenge porn”).

² ultimatesurrender.com

fantasies can also be created through ethical production and are common desires that many viewers want to see, and which many porn labourers themselves prefer to express.

Consent behind the scenes

A performer's sexual agency and ability is queried multiple times throughout the production process. Such query and validation exist to ensure performer safety as well as adhere to legal business practices.

Many forms of consent can appear throughout the production process:

- *Implied consent* occurs through a performer's application seeking work or a casting agent's list of the kinds of sex acts a performer is willing to do on camera.
- *Informed consent* is most evident in sexual health testing protocols. Performers know that any form of sexual activity is a risk to their personal health as well as their career. Through testing, use of barriers, and risk assessment of various sex acts, performers ascertain the best options for overall safety in a performance.
- *Expressed consent* comes in verbal or written correspondence. It pertains to information about the nature of the performance, pay, and other details. Many productions will also consult performers for a "yes" or "no" list of potential co-stars. Expressed consent also occurs while on set, when a performer can call a production hold or effectively "kill" a shoot if the performance becomes something they no longer consent to. This can be expressed through a verbal command of "stop" or "hold", or in the case of bondage and discipline, dominance and submission, and sadomasochism (BDSM) performances, through the use of safe words. (In the case of deaf performers, a sign language interpreter may be present to assist in communication between cast and crew to ensure clear affirmation of consent.)³

In the United States, legal documents create formal records of expressed consent. All productions are required to have key documentation for content distribution, including a Model Release Form in addition to an affidavit of 18 US Code § 2257 Compliance with the Child Protection and Obscenity Enforcement Act of 1988, title VII, subtitle N of the Anti-Drug Abuse Act of 1988⁴ ensuring that

the performer is over 18 years of age (under many jurisdictions minors are legally unable to give consent) and not under the influence of recreational drugs or alcohol (as someone who is intoxicated, asleep or otherwise unconscious is unable to express consent). Commonly referred to as "2257" or "Performer Source Document", it requires record keeping of performers' government-issued identification, generally a scanned image of a state driver's licence, identification card, or US passport. This form additionally requires a photographic image of the performer holding their proof of identification on set to prove the performer's age corresponds with the date of the film's production. The camera crew and producers also sign a release acknowledging workplace safety protocols in compliance with Occupational Safety and Health Administration (OSHA) regulations. As independent contractors, cast and crew file W9 paperwork with the production company to ensure proper tax documentation.

Through various forms of consent (implied, informed, expressed and documented), porn productions strive to create and maintain sexual efficacy. But in many ways, the final act of consent occurs through consumer transaction.

The exchange of money as a symbol of sex worker consent

Porn performer and vice president of the Adult Performer Advocacy Committee⁵ Conner Habib once wrote: "What is money if not a symbol of consent? While money is not the be-all and end-all of consent, it can symbolize and clarify it. Sex workers and their clients use money as a component of mutual understanding."⁶

Fiscal compensation defines porn performance as labour, qualifies the value of the work, and validates the ownership of the image.

The porn consumer engages in consent when accessing the website through site navigation culminating in a payment transaction. Purchasing porn online requires access through at least three processes: entrance, navigation and purchase.

An *age page* is the entrance into a porn website. It serves two main legal purposes: 1) it confirms that the viewer is old enough by legal jurisdiction to access the content within, and 2) it requires the viewer to "agree" to enter the site, effectively grant-

³ CrashPad Episode 71. Performers: Asteroid and Peyton. Director: Shine Louise Houston. <https://crashpadseries.com/queer-porn/?episode=episode-71-asteroid-and-peyton>

⁴ 18 U.S. Code § 2257 – Record-keeping requirements. Pub. L. 114-38. www.gpo.gov/fdsys/pkg/FR-2005-05-24/html/05-10107.htm

⁵ apac-usa.com

⁶ Habib, C. (2015, 24 June). If You're Against Sex Work, You're a Bigot. *The Stranger*. 2015. www.thestranger.com/features/feature/2015/06/24/22436683/if-youre-against-sex-work-youre-a-bigot

ing immunity to the company and its employees from obscenity charges.

Once through the age page, visitors utilise website *navigation* to browse for content. Through categories, search functions and other discerning factors they select a video best suited to their interest. This process involves an interactive element of trust between producer and consumer. Some companies display search results by filtering personal preference so that the viewer can avoid materials they may not wish to see.

In an attempt to help viewers find the porn they want to see, and avoid the porn they don't, membership site CrashPadSeries.com⁷ uses visual icons that viewers can toggle on or off to filter content with keywords such as "anal sex", "fisting" or "ejaculation". TrenchCoatX.com⁸ takes that idea further by offering customisable filters created by registered viewers with tags for content they either don't want to see ("squick") or do want to see ("squee"). The "Squick Protector" allows a visitor the option to either hide unwanted content while they browse the site, or display a warning that will alert the visitor and let them make the choice to view the material at their discretion. The "Squee Enhancer" prioritises favourable tags so that content the visitor prefers to see becomes more relevant within their navigation of the site. Through personalised navigation, consent becomes interactive between the producer and browsing customer.

At the time of the payment transaction, a customer effectively consents to view a video. After site navigation and information provided from video tags, previews and descriptions, the customer ideally has been given all the information necessary to make a satisfactory purchase. However, just like a performer can terminate a porn shoot, so can the customer retract their decision by cancelling a membership subscription or requesting a sale refund.

Commercial pornography (as opposed to a home video or other production not intended for public distribution) is comprised of agreements that bind symbolic and documented consent between porn labourers and end consumers.

This system benefits all parties involved, from performer to viewer, and encourages ethical labour conditions within production, as well as ethical viewership.

Feminist porn production

As cheaper technology and web hosting make porn more affordable to produce and consume, the "one-porn-fits-all" monopoly of "what sex should look like" is challenged to reveal new visions of porn that feature different kinds of sexuality, bodies and desires. This expansion improves porn's potential to reflect the complex biological truth that human sexuality is both diverse and natural.

Increased access to production modalities creates agency and entrepreneurial ownership for previously underserved populations. This grants the power of creating images to women, queers, people of colour, transgender individuals, and other marginalised producers. Now in a position of power, these producers can adopt new pay standards, for example, implementing equal pay for equal work.

Traditional pay rates for performers are generally negotiated per project and based on an industry standard that considers the performer's gender and type of sexual performance. However, various external factors also play a role in the negotiation of rates. For example, large production companies can generally afford to cover performers' sexually transmitted infection (STI) lab fees, travel and wardrobe, and offer higher rates. Fan marketability can also skew payments by favouring idolised Anglo-Saxon beauty standards, where people of colour, trans performers, and people of size and differing abilities are subject to casting discrimination and lower pay.

Due to a desire to create porn with diverse performers and desires, some feminist-identified producers enact an "equal pay" policy by compensating performers equally regardless of gender, experience or the kind of sex performed. A flat rate encourages performers to select their preferred co-star and perform sex acts as they choose. By paying performers equally regardless of race, size, ability or marketability, it democratises the casting process and broadens the selection of hireable performers.

In this way, porn production addresses feminist issues of labour and representation, made possible through systematic modalities of consent and sustainable commercial consumption.

Conclusion

Digital pornography incorporates systems of consent and sustainable income for an increasingly diversified market. Because it is commercial, it provides opportunity for entrepreneurial advancement, as well as a financially viable avenue for depictions of diverse desires and sexual expressions. This feminist potential includes producers who are women, trans, queer, people of colour, and

⁷ <https://crashpadseries.com/queer-porn/episodes>

⁸ trenchcoatx.com

those from other under-represented demographics. Their creative control broadens representations of human sexuality and values ethical production, respect and economic and socio-political equality. The greater our access to technology, the more feminist, sex-positive and consensual the web/world can become.

Porn literacy: A way forward

Our interest in consent and sexual imagery is not limited to commercial porn. The desire to share explicit images with one another is a natural aspect of human sexuality. As increased access to internet technology connects a global population, we struggle with the question of consent and the regulation – or rather, navigation – of sexual images. Anyone with a smartphone now has access to the tools to become a porn producer, porn distributor, and porn star.

With this new power as performer-producer, we have to consider modalities of consent with guidelines that offer protection and privacy, rather than sexual censorship and criminalisation.

Now, with the understanding of consent systems that take place behind the scenes, advocates can educate on “porn literacy” and push for improved navigation rather than place internet protocol (IP) bans on consensually produced porn and BDSM sites (such as the case of countries including India⁹ and the United Kingdom (UK)).¹⁰ Porn is the canary in the coalmine of free speech and, as such, must be protected.

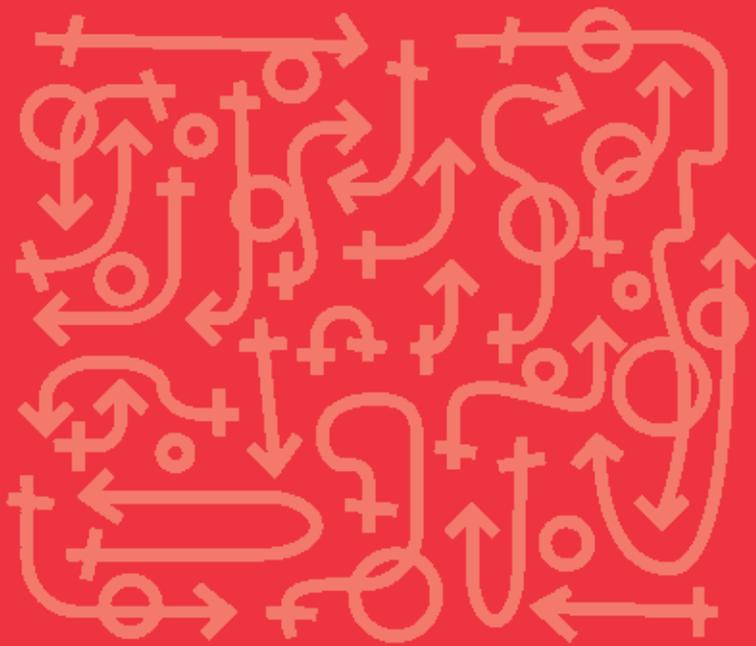
Let us take a lesson from the porn industry as we, as a greater society, grapple with increasing expressions of human sexuality online.

- Consider the porn performer as the agent of consent, regardless of your interpretation of the content.
- Be an ethical customer through consensual porn consumption.
- Be aware of a site’s terms of service, and advocate improved navigation over sexual censorship.
- Involve porn labourers as consultants in the legal process.
- Invite porn labourers to engage in academic discussion.
- As with all sex workers, respect porn labourers’ ability to advocate as experts in their field.
- Rather than ban consensual sexual expressions, educate on “porn literacy” to share and improve the methods in which consent occurs in adult film productions.

9 Barstow, D. (2015, 3 August). India Blocks 857 Pornography Websites, Defying Supreme Court Decision. *New York Times*. www.nytimes.com/2015/08/04/world/asia/india-orders-blocking-of-857-pornography-websites-targeted-by-activist.html?_r=0

10 Blake, P. (2014, 3 December). Hyperkinks: ATVOD anti-porn law edition. *Pandora Blake*. pandorablake.com/blog/2014/12/hyperkinks-atvod-anti-porn-law-edition

COUNTRY REPORTS



“Be obedient, be normal, do not stand out...”

Alan Finlay

For many, sexuality goes to the heart of who we are as human beings. As these country reports show, it can be both an intensely private negotiation, and an issue of direct public and political expression. It involves closed communities, but also open Pride parades. It can be a profoundly intellectual encounter – it can be thought through, in a rational-critical way – as much as it is about a process of self-realisation. It involves othering, saming, rejection, inclusion, risk, fear, both voice and voicelessness, politics, power, abuse and persecution. For some, it re-awakens painful encounters with the past, as Wolf Ludwig, author of the Switzerland report, shared in email correspondence:

When I first heard about the 2015 subject, I was not delighted and didn't understand why. When I started I realised that I was emotionally rather close and “touched” from my study years and many gay friends [some of whom were World War II Holocaust survivors persecuted for being homosexual] – and it's part of my history. At the beginning I thought this “lack of distance” is a handicap for writing this report; then I realised it may be an advantage as well – by using my personal experiences to enable reflection.

A number of previous GISWatch authors declined the invitation to write a report this year, stating that it was too dangerous to do so. One author submitted a report, but expressed his ambivalence of speaking on behalf of others, with the clear instruction to alert him to any sensitivities he might not be aware of (a careful concern that was admirable). There was some debate around “who gets to speak for whom”, and in the cases of countries like Russia and Iraq, where we worked with past GISWatch authors who are not nationals but who have notable experience of the countries they write about, we asked the authors to be in close contact with locally based organisations, or to reflect their views.

The topics dealt with in these reports are diverse. Inevitably many of them deal with the rights of marginalised lesbian, gay, bisexual, transgender and queer (LGBTQ)¹ communities, and the effec-

tiveness of and challenges faced by pro-LGBTQ campaigns online. Others, however, offer specific analyses of legal environments for sexual rights (see Canada for an exceptional example of this). The active role of religious, cultural and patriarchal establishments in squashing sexual rights is a frequent concern – for example, same-sex marriages and the right of same-sex couples to adopt bring activists in clear conflict with institutions, notably the Catholic Church (see Italy and Colombia).

China, in this regard, offers a provocative alternative in so-called “contract marriages” – a phenomenon widespread in Asia – arguing that this poses a challenge to global feminist discourse. A similar – and controversial – cultural challenge to rights is presented by Japan, where freedom of expression advocates conflict with anti-child pornography advocates in the context of child pornography cartoons. Palestine shows the link between state surveillance and sexual harassment, while Nigeria suggests that sexual rights can be used as a diversion during presidential campaigns.

In a number of countries, there are positive developments. Australia offers a colourful account of how sexual rights can, over time, start to be incorporated into the mainstream: “1978 saw violent clashes between police and marchers in the first ever Gay Pride protest march in Sydney. A decade later police led the Mardi Gras parade, saluting the sexually diverse community, honouring the ‘78ers as they have become known, and celebrating drag queen iconoclasts.” In Bangladesh institutional programmes recognise and support third-gender people.

As in previous GISWatch reports, the difficulty many have in speaking about online versus offline experiences remains. Tactical Technology Collective, in discussing issues of online visibility and invisibility for LGBTQ groups in Kenya, offers a liberating analogy to counter the binary conception:

A Möbius Strip is a flat ribbon twisted once, and then attached end-to-end to form a circular twisted surface. Imagine an insect walking along its surface; at the beginning of the circular journey the insect is clearly on the outside,

¹ In these country reports, we have respected the authors' use of the various acronyms that express LGBTQ community and solidarity, such as LGBTI, LGBT* and LGBTIQA.

but it traverses the twisted ribbon without ever lifting its legs from the plane and ends up on the inside surface. This analogy is one way to think about experiences of visibility through technology.

Yet, while the internet offers a place of refuge, expression and support for LGBTQ communities, more and more, this refuge can be vulnerable, transient, invaded. LGBTQ activists are surveilled, subject to hate campaigns, have their emails hacked, and are beaten up.

In some countries, such as Sudan, the persecution of the LGBTQ community is public and brutal: “Nineteen men were lashed 30 times and fined 1,000 Sudanese pounds each. Their offence: cross-dressing and ‘womanly behaviour’ at a private party.” In Yemen homosexuality is punishable by death.

Activism, in these contexts, is dangerous:

The circulation of the information, which the government considers “immoral and against religion and tradition”, puts the group’s leaders at risk. Fatima, as well as others active in Freedom-Sudan campaigns, faces many challenges and difficulties. Her email account and Facebook page have been hacked several times. She received threatening messages, and her family and relatives have also been targeted. She has been forced to hide her identity on the internet and to stop her public activities defending LGBT rights.

Reports deal with the rights of sex workers. Cooperativa Eines (Spain) shows how the so-called “hacker ethic” that plays with the ideas of anonymity and publicity can also be effectively used to express solidarity with sex worker rights. In interviews with sex workers in Costa Rica, Sulá Batsú points out how securing the rights of sex workers involves understanding the violations of rights on several levels at once:

Maria’s case is evidence of how discrimination for being an immigrant, a woman and poor, in addition to the stereotypes associated to her work and the violence sex workers experience, were multiplied by the disregard of privacy on social networks and the unauthorised use of online content by traditional media.

The way in which sexual rights campaigns are communicated is crucial to activists. In Ukraine, despite it being controversial amongst some feminists, Femen’s public politicisation of the naked body stands out. In Lebanon, popular support for Jackie Chamoun, the Olympic skier who was criticised for posing semi-naked for a sports calendar, went viral – showing how support for sexual expression and rights can be a spontaneous and a widely supported concern.

Sex education in schools is a key issue addressed by authors. Nodo TAU offers a useful first-base analysis of ICT and sexual education programmes in Argentina, suggesting that a sexual education curriculum that works from the real-world experiences of learners as digital natives is missing. The Netherlands promotes a culture of mediation in schools – the *poldermodel* – in cases of criminal sexting, rather than a legal response. Brazil also suggests that legal remedies to school-level sexual cyber bullying and shaming are not the answer; rather, the structural causes of how this occurs in the first place need to be understood and remedied: “Teenagers are simply mirroring the structures of the adult world they find themselves in.”

As Queer Montenegro and One World Platform write of Montenegro, the patriarchal structure that children imitate – a structure of silences and silencing – is sometimes violently reinforced:

Within this frame children learn to adapt or to suffer in silence. It is considered rude to “talk back” to parents, even to ask legitimate questions. The rudeness is punished quite often with physical violence ranging from simple slaps to being beaten with a belt. So the overarching accepted norms are: be obedient, be normal, do not stand out and do not provoke. Anyone who doesn’t comply gets punished. Adults punishing adults, parents punishing children, children punishing other children.

It is against this cycle of violence that these 57 country reports gathered here, in one way or another, pose a fundamental challenge.

ALBANIA

COMING OUT ONLINE IN ALBANIA



Civil Rights Defenders and One World Platform

Vasilika Laçi

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Introduction

A new wave of activism flourished in Albania during the late 2000s with the founding of several new lesbian, gay, bisexual, transgender and intersex (LGBTI) rights activist groups. Most important was a Facebook group started by lesbian activists which grew into the largest LGBTI community in the country.¹ It also changed the way sexualities are expressed for Albanians online. This report will focus on the impact that the internet and in particular social networks have had on the sexual rights of LGBTI persons in Albania. It will try to explore this from a feminist perspective, paying particular attention to its impact on women.

Policy and political background

Albania is a small country in the western part of Southeastern Europe, along the Adriatic Sea. After World War II a communist regime held the country under a dictatorship for 45 years. Although the regime was overthrown in 1991, the country is struggling to achieve democracy – with little success, as corruption and unemployment are high. Given its strong patriarchal background, Albania is still a conservative society, although traditional, conservative values are being deconstructed and dismantled. However, change has occurred mostly in the capital Tirana and other major cities, and less so in smaller cities and rural areas.

In 2010 Albania approved a law for protection from discrimination which included, among others, sexual orientation and gender identity.² A commission was set up to ensure that the law was implemented, but its effectiveness is quite low. The law was passed under the auspices of the European

Union (EU), as Albania aspires to become a member of the EU, but the authorities do not seriously engage in the implementation of the law.

Albanian cyberspace is a very vibrant sphere with 60.1% of the country's population using the internet.³ The internet is free in terms of expression, unregulated, and there is no clear definition of unlawful online content and activities.

Hate speech is widespread online, especially targeting ethnic minorities, women, LGBTIs, and religious groups, among others. Amendments to the Albanian criminal code introduced punishment for encouraging hate crimes.⁴ However, the law has had little impact because it has not yet been implemented properly.⁵

Online journalistic reporting ethics are problematic. Women are widely objectified in images and misrepresented, especially by internet-based outlets that aim to increase their readership. Although some news portals and websites have ethical guidelines and moderate user comments, most do not, allowing users to express harmful hate speech that keeps the LGBTI community closeted and isolated. Albania has no self-regulatory or ethical body for journalists where a breach of ethics by journalists can be addressed.

Opening up online

In the late 1990s Albania was still a relatively “closed” society where the expression and enjoyment of sexual preferences for most LGBTI people remained a challenge. LGBTI persons were very isolated and lonely with few opportunities to meet each other and socialise. The situation changed with the introduction of the internet, a communications tool that was also embraced by human rights activists and used for civil society interventions. Because of the internet, LGBTI sexualities are now being represented and expressed more than ever by Albanian LGBTI persons.

3 www.internetworldstats.com/stats4.htm

4 Albanian Criminal Code 1995, amended in 2013. www1.fint.gov.al/images/Ligji_nr_144_2013_date_Per_disa_shtesa_dhe_ndryshime_ne_Kodin_Penal.pdf

5 Interview with Xheni Karaj, executive director of the Alliance against Discrimination of LGBT Persons in Albania, 3 July 2015.

1 <https://www.facebook.com/groups/aleancalgbt>

2 Republic of Albania. (2010). Law on Protection from Discrimination. www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf

The existence of social media and online communication outlets such as Facebook groups and chat forums has impacted the LGBTI community significantly. It all started in 2000, peaking in 2009, when a group of young lesbian girls created a Facebook group called the Alliance of LGBT and Straight Persons against Discrimination (Aleanca).⁶ The group was trying to promote the rights of LGBTI persons and encourage LGBTI activism. Within a very short span of time the group had thousands of followers.

In the early 2000s, the way to meet other LGBTI individuals was through chat rooms such as www.shqiperia.com.⁷ Due to widespread homophobia, it was at first unthinkable to have specialised chat rooms for LGBTIs. So LGBTI persons used nicknames that would clearly indicate their sexual orientation when looking for each other. Later on messenger services such as MSN, Yahoo Messenger, AOL and mIRC were used. “For a community composed of individuals who are afraid of who they are, the opportunities to get to know people in real life are very low,”⁸ says Kristi Pinderi, the director of an LGBTI organisation. In 2004, an organisation led by gay men called the Group for Social Integration (Grupi per Integrim Shoqeror, GISH)⁹ set up an online dating platform, which had up to 500 accounts. However, it functioned only for a few years. At the same time, specialised chat rooms started to appear, such as gay.al (Gay Albania)¹⁰ and the Albanian version of PlanetRomeo.¹¹ They facilitated the creation of a small community mostly of gay men, but no activism or mainstream media presence was achieved.

Before the “internet era” the LGBTI community was more hidden and subdued. Family pressure to live a heteronormative life, to marry and have children, is very high for both men and women, and many LGBTI persons are forced to marry. This suppression affected their freedom, and created low levels of self-acceptance and self-esteem. There were fewer chances to find trustworthy persons to engage with in sexual relationships. For instance,

Ledia,¹² a lesbian and LGBTI rights activist, and a member of the Aleanca Facebook group since its early days, admitted that she met another lesbian for the first time in 2005, online, in a chat room “because there was no other way to find out if somebody had the same sexual orientation as you,” she explained. “Before I used to hang out in chat rooms hoping to find someone to meet,” she added. “At times it worked. At other times it was very risky, as some men would pretend to be women.” Making connections in non-friendly chat rooms was problematic for the LGBTI community. “Before, I was using the regular chats, using names that would help people recognise that I am homosexual,” says Ledia. “Some of the girls I chatted with thought that I was a guy who was playing with them. I also would most of the time think that the persons I spoke to as girls could be curious guys.”

The opportunities to have sex and engage in sexual games were considerably limited in the early days of the internet. For instance, what was troubling was that the dominant view of male-to-male relationships was thought of mostly in terms of classical, stereotypical roles: passive/feminine male with active/manly male. At the same time, very few stories online concerned lesbian women.

The spread of internet access¹³ has brought self-evident changes in society in general and the LGBTI community in particular. In this context, a sort of sexual empowerment took place in the LGBTI community, and it mostly benefited lesbian girls and women. The Aleanca Facebook group facilitated the creation of a lesbian community, which was almost non-existent before. Obviously, the internet offers the possibility of unlimited communication between persons, despite location and time. It has been helpful in terms of creating a space for communication, connection and learning. It offers the opportunity to speak more freely, without fear of repercussions. Ledia believes the creation of the group has had a huge impact. It created the only space where LGBTI persons could find information and also at the same time feel part of a community. LGBTI persons say that being free online helps them understand their sexual orientation.

6 <https://www.facebook.com/groups/aleancalgbt/>

7 Interview with Kristi Pinderi, executive director of United for the Cause Pro LGBT, 10 July 2015.

8 Ibid.

9 A survey of the LGBT community conducted by GISH in 2006 is cited extensively in: COWI & Danish Institute for Human Rights. (2011). Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Sociological Report: Albania. Council of Europe. www.coe.int/t/Commissioner/Source/LGBT/AlbaniaSociological_E.pdf

10 www.gay.al

11 <https://www.planetromeo.com>

12 Her name has been changed as she wishes to remain anonymous.

13 According to Internet World Stats, the number of internet users in Albania was 1,815,145 as of 31 December 2013, which amounts to a 62.7% penetration rate, while there were 1,097,800 Facebook users in the country on 31 December 2012 (www.internetworldstats.com/europaz.htm#a1); according to Internet Live Stats, in 2014, Albania ranked 101st worldwide and had 1,798,686 internet users out of a population of 3,185,413, with a penetration rate (% of population with internet) of 56.47% (www.internetlivestats.com/internet-users-by-country).

Apart from NGO websites offering information, Historia-ime.com¹⁴ has also become an important advocacy voice for the community.

While online exchanges have improved and intensified relationships among the LGBTI community, they have also created new types of risks. There have been cases of cyber bullying, threats of outing closeted persons, and the leaking of private images. Engaging in sexual relationships online in exchange for money is also growing.

The LGBTI community complains that websites like PlanetRomeo and Grindr have made communication more artificial, and less spontaneous. Offline meetings, such as in gay bars or other venues, are happening less and less. There is something very mechanical about the online apps that can make you feel objectified. Most of the online discussions start with the questions: “Hi. AP? Cm?” (Hi. Active or Passive? How many centimetres long?). Within such an environment it can be difficult to find somebody with whom to build a relationship.

There is general agreement that the lesbian community is not as visible as the gay male community. For example, LGBTI activist Elidjon Grembi says that applications like Grindr have “revolutionised relationships between same-sex persons.”¹⁵ But this applies mostly to gay men. Lesbian, bisexual or just curious women use it more rarely, even though a growing number of women are using apps like Wapa.¹⁶ According to Pinderi, whose organisation runs Historia-ime.com, men are more prone to look for erotic encounters online. Women, on the other hand, are more likely to seek information. For example, about 60% of the readers of the news section of Historia-ime.com are girls and women under the age of 30, compared to 40% men.

Conclusions

The internet has improved the possibility of accessing theoretical and practical knowledge for LGBTI individuals and groups. The queer community has also had a chance to “expand the spectrum of desires, needs and requirements of the Albanian citizens in general.”¹⁷ The internet has created opportunities for LGBTI individuals to explore their sexuality, and increased their chances of finding someone to engage in a sexual relationship. LGBTI activists have noticed that coming out anonymously online has helped the transition to sharing one’s

sexual identity openly in small, safe groups on social media.

Activism on the internet has been conducive to creating a larger LGBTI community, which has led to a collective momentum to change the attitudes of society. The actions of civil society organisations online have been fundamental to this.

It is interesting to note the connection between internet access and the changing life of the LGBTI community. The importance of “cruising areas”, or public spaces where the LGBTI community can engage, is reduced drastically. Nevertheless, these public spaces posed various dangers to the safety of the community, says Pinderi. In these spaces LGBTIs have been beaten, robbed and raped.

Social platforms have enabled the LGBTI community to interact with each other anonymously. Social media platforms also became the only means by which people could organise politically to start a movement. Xheni Karaj, director of the Alliance against Discrimination of LGBT Persons,¹⁸ thinks that the internet has played an important role in mobilising people from cities outside of the capital, primarily through the exchange of information.¹⁹ However, the internet has not solved the challenge of stigmatisation. Unfortunately, there are still LGBTI persons who think they are “ill” or who have difficulties in coming to terms with their sexualities, she says.²⁰

In Albania it is still taboo to talk openly about sexuality on TV or in other public spheres. While the internet has helped in challenging taboos, the objectification of sexuality continues to be misused by numerous online media platforms to gain more clicks. Typically they emphasise the very stereotypes that LGBTI activists are challenging.

Online violence has increased in line with LGBT issues becoming more visible on news portals and social media platforms through various debates. Unfortunately, although there is an article in the criminal code against hate speech, reporting this form of violence to the police has proved unsuccessful, as it is not considered a dangerous threat, according to Karaj.

Action steps

The following observations can be made for Albania:

- Sexual rights are fundamental to LGBTI and women’s rights. Feminist voices need to be strengthened. Existing feminist groups who

14 historia-ime.com

15 Interview with Elidjon Grembi, activist with the Alliance against Discrimination of LGBT Persons in Albania, 22 July 2015.

16 wapa-app.com

17 Interview with Xheni Karaj, 3 July 2015.

18 www.aleancalgbt.org/en/about-us

19 Ibid.

20 Ibid.

are active online need to be supported and encouraged.

- Dedicated spaces for women that offer information on sexualities and forums to connect with each other should be created.
- Scarce resources and patriarchal attitudes do not allow for the increased use of the internet amongst young girls and women. In the words of one lesbian activist, “If the economic conditions of a family allow for only one phone they would first buy it for their son and after that their daughter.” This requires campaigns for increasing internet access for women and girls, especially in remote areas.
- Dedicated online counselling and the sharing of information could help LGBTI people to help themselves and accept themselves.
- Specialised forums that combine information sharing about sexuality and sexual health, with blogs and spaces for discussion, as well as a dating or chat section, would be useful. A virtual space that allows persons to speak freely and openly is important.
- Registering on social networks with your identification number has been partly embraced by some LGBTI persons disappointed by the use of fake profiles online. However, this should not be encouraged as it breaches anonymity and the freedom to be oneself, at least on the internet.
- Activists need to better understand the use of the internet and how to reach out to isolated members of the community. For example, there is a need to increase information about transgender, transexual and intersex persons.



Nodo TAU

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Introduction

All students in Argentina have the right to receive sexual education, in line with the National Programme of Integrated Sexual Education (NPISE).¹ At the same time, the country's *Conectar Igualdad* ("Connect Equality") programme involves the distribution of laptop computers among students in high schools and for training teachers. Both programmes represent a challenge to schools regarding the development of pedagogical strategies to achieve their aims. When it comes to sex education, the law defines it as a cross-cutting issue, requiring a deep commitment from teachers. In the technological field, one of the main difficulties in the roll-out of laptops is the skills level and buy-in from teachers.

Nevertheless, information and communications technologies (ICTs) represent not only a pedagogical resource for teachers, but also a new way in which children and teenagers explore their sexuality. Because of both of these realities, ICTs are a fundamental resource in the classroom for sexual education, and to ensure that the sexual rights of children are realised.

The purpose of this report is to analyse the implementation of the NPISE in Argentina and the extent to which it addresses the use of ICTs. We do this through a series of interviews² with teachers' rights activists and people working for the implementation of the programme at a governmental level. The analysis is done from the perspective of students' rights to sexual education and access to information.

Policy and political background

In 2006, Law 26.150³ created the NPISE,⁴ which states that students at all levels of education have the right to receive sexual education. The programme affects all schools – whether they are public or private, or under national, provincial or municipal jurisdiction. The law establishes that the state should develop policies that guarantee this right to sexual education. The initiative also responded to Argentina's national and international human rights commitments.⁵ In line with its obligations, in 2008 the Federal Council of Education issued the common curriculum guidelines for initial, primary, secondary and higher education and for teacher training.⁶

In the following years, two other laws influenced the implementation of the NPISE. In July 2010, Law 26.618, or the Equal Marriage Act, was passed, allowing same-sex marriage. Law 26.843 on gender identity, passed in May 2012, recognises the individual's right to choose their gender and allows official records to be modified to reflect this choice.

In 2010, the national government implemented the country-wide *Conectar Igualdad* programme,⁷ through Presidential Decree No. 459/10. The programme involves the distribution of laptops among students in public high schools, as well as technical and special schools and teacher training institutes. Students are allowed to take the laptops home with them after school. So far 4,900,000 computers have been distributed.⁸ The programme is aligned with a previous policy that aims to incorporate technologies and digital culture in the national educational system, primarily but not exclusively through the

1 Programa Nacional de Educación Sexual Integral. portal.educacion.gov.ar/files/2009/12/ley26150.pdf

2 These include: informal conversation with Viviana Simón, first grade school teacher in School N° 22 in Pergamino, Buenos Aires; an interview with Gloria Schuster, coordinator of the office in charge of the implementation of the NPISE in the province of Santa Fe; and an interview with Celina González and Nicolás Dusanto, also from the NPISE office in Santa Fe, all conducted in May 2015.

3 Ley 26.150. <http://www1.hcdn.gov.ar/dependencias/ceducacion/ley26150.htm>

4 Ministry of Education. (2010). Lineamientos Curriculares para la Educación Sexual Integral. www.me.gov.ar/me_prog/esi/doc/lineamientos.pdf

5 International treaties included in the National Constitution: Convention on the Elimination of All Forms of Discrimination Against Women, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, American Convention on Human Rights, Convention on the Rights of the Child, American Declaration of the Rights and Duties of Man, Universal Declaration of Human Rights, Convention on the Prevention, Punishment and Eradication of Violence against Women.

6 The school curriculum in Argentina is designed at national level.

7 www.conectarigualdad.gov.ar

8 www.transparencia.anses.gov.ar/gobierno-abierto/conectar-igualdad

website educ.ar⁹ which offers resources for teachers and students.

The critical factors challenging the successful implementation of Conectar Igualdad are a lack of internet access in schools, insufficient bandwidth to allow students to work online simultaneously,¹⁰ and the absence of timely and effective technical support for the laptops. Another difficulty is related to the role of teachers and their sometimes alienated relation to technology compared to the digital culture absorbed by the kids and teenagers.

Implementation of sexual education

Due to the federal system that governs the country, with provinces experiencing different levels of social vulnerability, the NPISE is being implemented at different paces in different provinces of Argentina.¹¹ Yet the urgency for the programme is being felt: problems such as undesired pregnancy in teenagers, sexually transmitted diseases and gender discrimination are common in many poorer provinces.¹² The delays in implementation in some provinces may be due to several factors: the fact that sexuality is a controversial subject, the difficulties involved in the cross-cutting approach established by the law, and the resistance of school directors and teachers in the classrooms. In order to assist with the programme's roll-out, the Ministry of Education has developed virtual capacity-building courses on "integrated sexual education" for teachers, which are supported by provincial capacity-building programmes.

As regards ICTs in schools, the rationale of the NPISE itself is quite progressive as it proposes sexual education from a human rights perspective in its guidelines, addressing the "reflection and critical analysis around the implications of the use of new information and communication technologies on personal behaviour and interpersonal relationships."¹³ The NPISE's strategic definitions explicitly address issues related to mass communications, including

the mass media, although it does not mention the internet in particular.¹⁴

Fear and resistance

One of the major difficulties in the implementation of the sexual education programme in schools relates to the fears teachers have in talking about something they may feel the students know more about. This involves the perception that the students have more access to information on sex, and the prejudice that students lead a promiscuous life. This anxiety is heightened by the fact that many teachers lack previous experience in sexual education.¹⁵

"Working with sexual education implies reviewing one's own prejudices and deconstructing several myths around it – stepping aside from any moral approach," says Gloria Schuster, coordinator of the office in charge of the implementation of the NPISE in the province of Santa Fe. Celina González, also from this office, added that there is "a resistance in the way in which these problems are addressed. As sexual education is generally thought of in terms of 'genitalia', teachers declare, 'I don't dare, I can't.' When it comes to ICTs they say, 'I don't know; what if I touch something and break it?' But when they start working, they find another perspective. The tensions cease and they see they can work; they start getting involved and begin to lose their fear."

In the context of this society, the value of accumulated experience characteristic of adulthood decreases, while the capacity to experiment increases. In this way, knowledge and "the last word" are less tied to adulthood, and this is a situation that applies to teachers as well.¹⁶

In a study carried out by Ana Lía Kornblit and Sebastián Sustas,¹⁷ teenagers were asked who they would turn to in case they had any issues related to sexuality. Only 7% answered they would consult a teacher or any person at school. This points to the fact that school does not provide a strong and reliable reference point for teenagers.

A survey done in Rosario by an NGO working on sexual rights and monitoring the implementation of

9 www.educ.ar

10 Rabin, D. (2015, 5 January). (Des)Conectar Igualdad: un programa que inspiró elogios, pero hoy recibe críticas. La Nación. www.lanacion.com.ar/1757467-desconectar-igualdad-un-programa-que-inspiro-elogios-pero-hoy-recibe-criticas

11 Iñon, C. (2012). Seis años después: dificultades para la implementación de la Ley de Educación Sexual Integral en Argentina. www.academia.edu/8754662/Seis_a%C3%B1os_despu%C3%A9s_dificultades_para_la_implementaci%C3%B3n_de_la_Ley_de_Educaci%C3%B3n_Sexual_Integral_en_Argentina_-_Defensa_de_tesisna

12 Baima, E., Menchón, M. M., Menchón, M. A., & Sosa, C. (n/d). Educación sexual en las instituciones educativas. www.educacionsexual.com.ar/biblioteca-online/educacion-sexual-aspectos-ideologicos-y-conceptuales/educacion-sexual-en-las-instituciones-educativas#sthash.XQi7Pley.dpuf

13 Ministry of Education. (2010). Op. cit

14 Ministry of Education. Integral Sexual Education. http://portal.educacion.gov.ar/?page_id=57

15 Dillon, A. (2013, 29 August). La educación sexual aún no llega a todos. Clarín. www.clarin.com/sociedad/educacion-sexual-llega_o_983301809.htm

16 Chicos.net. (2015). *Impacto de la tecnología en niñas y niños de América Latina*. www.tecnologias.org.ar/chicosytecnologia.pdf

17 Kornblit, A., & Sustas, S. (2012). *Cambios en las prácticas y las actitudes en relación con la sexualidad en jóvenes argentinos escolarizados*. Buenos Aires: Instituto de Investigaciones Gino Germani, Facultad de Ciencias Sociales, University of Buenos Aires, mimeo. Quoted in Dillon, A. (2013, 29 August). Op. cit.

the NPISE confirms this trend: out of 152 students, 51% said that they received little to no information on sexuality at school, and affirmed that what they do know on the matter is a result of conversations with parents, friends or searching for information on the internet.¹⁸ But, interestingly, 95% said they would be willing to receive sexual education from their schools.

Gaps and bridges

The concepts of digital natives and immigrants¹⁹ are used to analyse generation gaps in the use of and familiarity with technology.²⁰ However, the concepts also promote the idea that adults have little to offer because they are not “digital natives”, resulting in a passive attitude when there is a need for them to set criteria for protection.²¹ Research conducted by the United Nations Children’s Fund (UNICEF) Argentina²² shows that “there are competencies that are not tied to a generation, or dependent on the technological context in which people were born.” At the same time, the curiosity of children and youth is expressed through ICTs, with the possibility of generating wonderful things, but also exposing them to new or old risks (e.g. grooming, bullying, discrimination and trafficking). Walking them through these risks is a task that adults should not disregard by considering themselves “immigrants” in the digital landscape.

Gaps between students and teachers can even be bridged through the use of ICTs, especially while addressing delicate subjects such as sexuality. A teacher of biology in a high school in Buenos Aires developed a website for sexual education and created a group on Facebook that includes the participation of students, teachers and parents. In his words: “The participation of students in the group allows us to work with them on the risks of using the internet and how to take care of themselves while they are online.”²³ For digital natives, it is not a matter of two realities, online and offline; it is a matter of life itself. Therefore what protects them in one “reality” protects them in the other.²⁴

Nicolas Dusanto, from Santa Fe’s sexual education programme, mentioned that “counting on ICTs

when planning classes allows us to get closer to the reality of our students. Technology provides us with a variety of content to work with, and guarantees the democratisation of access to information, much more than books do.”

Access to information as a right

On the website for the Conectar Igualdad programme, visitors read: “By turning on their devices, every kid is just a click away from the classics of universal, national and Latin American literature, educational videos, or pedagogical games.” And we would add, “They are also a click away from all kinds of content, positive and negative.”

According to the research carried out by UNICEF Argentina in 2013, and based on a survey of 500 adolescents,²⁵ 61% of teenagers in Argentina use the internet to find information, and 53% to share information on social media. This study also revealed that 43% of adolescents created their first social media account before the age of 13. Another striking finding is that three girls for every boy received requests to send semi-naked pictures.

In the words of María José Ravalli from UNICEF Argentina, “There is a decision by the national government to provide access to equipment and connectivity, to bridge the digital divide and to promote the bond between children and technology.”²⁶ But how far has the educational system gone in terms of implementing this in the classroom? How do teachers orientate students in their exploration and navigation of online spaces in terms of their sexual rights?

One possible approach to this is a restrictive or “protectionist” attitude in order to shield kids from particular content, such as pornography. However, this could lead to the exclusion in the educational process of valuable debates around online sexual content. This in turn could lead to censoring supported educational sexual exploration, and may undermine not only children’s right to access to information, but also their freedom of expression.²⁷

According to Claudia Mauri, also from the Santa Fe programme, “The level that cannot be affected in the treatment of controversial issues is the right

18 rosarioporlaeducacionsexualintegral.blogspot.com.ar/

19 <https://www.techopedia.com/definition/28139/digital-immigrant>

20 Prensky, M. (2001). Digital Natives, Digital Immigrants. On the Horizon, 9(5). www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf

21 Chicos.net. (2015). Op. cit.

22 Delgado, L. (2013, 8 November). Chicos y chicas en las redes, según una encuesta de Unicef. *Educ.ar*. www.educ.ar/sitios/educar/recursos/ver?id=120888

23 Rabin, D. (2015, 5 January). Op. cit.

24 Chicos.net. (2015). Op. cit.

25 UNICEF. (2013). Acceso, Consumo y Comportamiento de los Adolescentes en Internet. www.unicef.org/argentina/spanish/media_26131.htm

26 Telam. (2014, 7 December). El 43 por ciento de los chicos en Argentina creó su primera cuenta en una red social antes de los 13 años. Agencia Nacional de Noticia/Telam. www.telam.com.ar/accesible/notas/201412/88011-redes-sociales-adolescentes-argentina-informe-unicef.html

27 Busaniche, B. (2012, 15 August). Protección de menores y libertad de expresión en Internet. La Nación. www.lanacion.com.ar/1498094-proteccion-de-menores-y-libertad-de-expresion-en-internet

of kids and adolescents to access to information.” However, in line with the programme, teachers select what content is allowed from content prepared for them by the state. “If they are working on sexual and reproductive health, they have to use the materials delivered by the Ministry of Health or the Ministry of Education,” she says. Instead, she feels that “teachers should teach students to choose the information.”

Official sites include a variety of resources on sexual education such as articles, research, curricula for classes, or videos, most of them developed by Canal Encuentro, a TV channel administered by the Ministry of Education.²⁸ There is also material about disability and sexuality, and adaptations of material for differently abled people (subtitled, Braille, sign language, audio descriptions, etc.). Other material deals with issues such as privacy, intimate care, cyber bullying or sexting. Some content is loaded onto the laptops provided as part of the Conectar Igualdad programme. The laptops also include a “Manual for the responsible use of ICT and social networks, without risks and discrimination” developed in partnership with UNICEF.

However, it must be highlighted that the devices provided to kids can only connect to an official intranet during class, with all sorts of resources available, but with no full access to the prolific wildness of the internet – social media platforms, for instance, are not included. This raises the main challenge to the programme: since students take the computers home, and are able to connect to any other internet connection outside of the classroom, how can teachers create a realistic learning environment confining students to preselected content only?

Teaching is to guide by questioning

As specialists in youth culture and ICT affirm, today the identities of kids and teenagers are constituted in a significant way through their experiences with computers, mobile phones and TV.²⁹ “Just as society has contributed to an increasingly early sexual awakening [amongst the youth], the youth culture of social networks has imposed a paradigm where everything can and should be shared, regardless of the risks involved. Practices like sexting – sending sexually explicit pictures or videos via mobile phones – are becoming more common and, like many other behaviours that involve danger, [calling

for] its eradication through moral or legal condemnation is probably the wrong way,”³⁰ states Rayén Campusano in the article “Lack of sexual education and of knowledge of the risks on the internet”.

Gloria Schuster from Santa Fe’s programme agrees: “Nothing significant could be done on sexual education from a dogmatic, authoritarian and discriminating position. Integrated sexual education does not involve getting into the private lives of either the teacher or the student. But it does require a teacher who enables conversation, information, questions, doubts; a teacher who invites students to go to health centres, to search the internet and to question the internet. Students seem to know everything, but then they come and tell us that they give away their passwords as a proof of love. Or they masturbate in front of a webcam as evidence that they can do this.”

“Teachers are expected to embrace their true role, which relates to questioning, to thinking about the extent to which they are objective about these issues, to ask how their students’ sexual rights are eroded, what place they give to intimacy. Teachers are specialists in stimulating these questions in the classroom,” she adds.

Maria José Ravalli, from UNICEF Argentina, points out that teachers can create opportunities in the class that encourage students to become self-aware when using technology: “From the chosen resource – a trigger, such as a video, a movie or a news story – students can be encouraged to reflect on the veracity of the information published on the internet, how they interact with others, on the need to protect their identity, on their views of the public and the private, how many people see their publications, what kind of photos are published and who they share them with, etc. Starting with dialogue, by reflecting and sharing experiences... their online safety can be worked out, promoting their rights and preventing them from being violated.”³¹

Above all, it is important for kids to be able to build subjective filters, because that is the only way they will be able to protect themselves, regardless of an adult’s intervention³² – and this is where teachers have a huge role to play.

28 Chaheer, S. (2013, 22 May). Abundancia de materiales sobre educación sexual integral. *Comunicar Igualdad*. www.comunicarigualdad.com.ar/4351/

29 www.comunicarigualdad.com.ar/arroba-equis-redes

30 Campusano, R. (2015, 16 April). Pornovenganza: cuando la falta de educación sexual se cruza con el desconocimiento de los riesgos de Internet. *Derechos Digitales*. www.derechosdigitales.org/8547/pornovenganza-cuando-la-falta-de-educacion-sexual-se-cruza-con-el-desconocimiento-de-los-riesgos-de-internet

31 Delgado, L. (2013, 8 November). Op cit.

32 Chicos.net. (2015). Op. cit.

Conclusions

Argentina has extensive and advanced public policies, both regarding the incorporation of sexual education in schools and the inclusion of ICTs in classrooms. Even though the formal intersection between sexual rights education on the one hand, and technology on the other, is not spelled out in the programmes discussed, interviewees expressed that this intersection emerges practically in their daily work with students.

Both sexual education and ICTs in the classroom point to a generation gap in broader society. The fact that the NPISE proposes the inclusion of sexual education in a cross-cutting way that includes ICTs provides an opportunity for this generation gap to be bridged through building the capacity of teachers.

Even though access to information regarding sexuality is one core premise of the NPISE, no specific guidelines are provided to schools and teachers on how to deal with access to information using ICTs or on how to understand the internet as a new communications channel through which students express their sexuality.

Enabling access for students to a content-filtered intranet is not necessarily the best approach if one wants to empower kids with tools to confront the real online challenges they face outside the school as internet users.

Finally, we want to emphasise that the implementation of the NPISE programme is not only the responsibility of governments, ministries and schools, but also of teachers, students, parents, and women's rights, sexual diversity and gender rights organisations. In the case of high schools, students are very relevant actors in the implementation of the programme. They need to claim their sexual rights and help to promote the full exercise of these rights, in order to take care of themselves and their sexual partners.

Action steps

The following action steps can be suggested for Argentina:

- Make the links between technology and sexual education in the classroom more explicit, in order to create a common base and understanding for all schools across the country.
- Include the internet in capacity building on sexual education offered to teachers. They need to know how to use it as a tool that enables the exercise of the sexual rights of students, as opposed to something that raises concerns and anxieties regarding children's safety, and is seen as a dangerous and counterproductive space.
- Develop sets of best practices, experiences and proven strategies on matters of online safety, access to information, and the cross-cutting nature of sexual education and ICTs. This can be used as a training resource for the teachers and as content to be shared with students.

AUSTRALIA

THE INTERNET – 21ST CENTURY DRAG QUEEN



Wombat Crossing Consulting

Tracey Naughton

Introduction

Offensive as it is to many Australians, it seems for the rest of the world our identity has been built on legends of the tough macho bloke who conquered a hostile land. Our films, though, tell the story of an evolving acceptance of diversity. In just a decade the iconic film *Crocodile Dundee*, portraying a reptile-wrestling bloke, was followed by *Priscilla, Queen of the Desert*, starring drag queens. Portraying the clash of two communities who did not understand each other, Priscilla stretched the boundaries of Australian masculinity. The film had a broad resonance that surprised many. As Terence Stamp who starred in the film declared, “It added drag queen to the pantheon of Australian icons.” First a cult film, now a cultural touchstone, *Priscilla* is 21 this year – and shares its birthday with the introduction of the internet in Australia.

Before the internet, transgender expression fell into two main domains in Australia: private and theatrical. The lineage of questioning gender norms publicly can be traced back to the mid-1960s and the opening of Les Girls, a Sydney theatre venue and Australian first, dedicated to glamorous drag shows. Les Girls is still open, still attracting the curious.

Carlotta, one of the original Les Girls but now an elderly recluse, grew up as Richard Byron, yet identified as female from a very young age. She struggled to make her identity known in a time and society where being different meant being ostracised. Carlotta, the first person known to have undergone gender reassignment in Australia, laments: “Today I think [people] don’t realise how lucky they are. How they have so much freedom. They’re not being chased down the street by cops. These days they don’t have a clue what we went through. They don’t know how many people worked hard behind the scenes to give them the freedom they have got today.”¹

In 1974 homosexuality was still regarded as a mental illness, illegal in all but one Australian state.

A member of a live audience for a TV current affairs programme² interviewing a gay activist threw dung at him. Others jeered, calling him a “poofter” (derogatory Australian colloquialism for a gay man) and asking homophobic questions. Compare this to June 2015, when a national current affairs programme³ panel openly discussed transgender, sexuality and diversity. Panellists included a transgender woman, gay men and women, and the counterpoint religious right representative.

1978 saw violent clashes between police and marchers in the first ever Gay Pride protest march in Sydney. A decade later police led the Mardi Gras parade, saluting the sexually diverse community, honouring the ‘78ers as they have become known, and celebrating drag queen iconoclasts. Today the annual Mardi Gras is a popular family event and a celebration of sexuality, not simply “gay” pride.

Drag queens and their spectrum of sexualities continue to break out of the gender binary and remain prominent in reflecting and questioning shifting attitudes through theatrics. Drag queens rallied the sexually diverse troops in the 1970s, boldly celebrated in the 1980s as AIDS claimed lives, and cheered Priscilla into being when film investors were reluctant in the early 1990s. In the pre-internet era, drag queens kept sexual diversity in the public domain. Eventually, transgenders emerged from secretive bars, spilling onto the streets, never to be shut away again. Today those questioning their gender identity can head to the internet, the 21st century’s drag queen.

Opening conversations, closing the gap

The tectonic shift in Australian attitudes stands as inspiration for nations where conversations on sexual diversity are repressed. Societies can change, majority attitudes are eventually isolated, becoming minority views.

In contemporary Australia transgender identity has become a prominent media topic. Even so, transgender advocates believe that, compared to the acceptance of homosexuality, we are 30 years behind.

The internet’s role in promoting sexual health is rarely appreciated. Digital natives do not register this but “gender benders” over 60 are very clear on

1 Busby, C. (2014, 16 June). Carlotta: The legend of Les Girls. *Gay News Network*. gaynewsnetwork.com.au/news/national/carlotta-the-legend-of-les-girls-14140.html

2 Monday Conference: Homosexual Rights - And Wrongs.

3 Q&A – current flagship ABC TV current affairs programme incorporating Skype questions and tweets.

the topic. The internet has helped to break down painful isolation, offering hope and practical information. Lillian, a transgender woman and one-time dancer, declares: “I have no doubt that the internet has saved lives, stopped kids from committing suicide. It’s possible to find help to come out and that is crucial. I had to disappear from my life to develop a new identity. I left my beautiful mother when I was 30 and never saw her again. It pains me to imagine what she went through, but it was impossible to be me and be part of the family.”⁴

Robyn Thorne, who underwent gender reassignment surgery in 2014 at age 72, has used the internet to speak of the lack of support and reference material to help him understand his feelings in 1940s suburban Australia. “I had no idea what was going on; I didn’t know why it [his desire to be female] was there. There was no literature available at the time, there was no internet to look it up on.”⁵ Robyn waited until retirement to make the transition she⁶ had longed for since infancy.

Unfortunately, while Australian society is moving towards tolerance, bullying and “mateship”, a creed of male friendship that often excludes women, both persist. This behaviour is on display from the theatre of our parliament to social media on schoolchildren’s phones. Our first female prime minister, Julia Gillard, has written about being bullied while in office. Her famous “misogyny speech”⁷ in parliament directed at now prime minister Tony Abbott tackled sexism head on and went viral on YouTube. These behaviours stand as indicators of broader entrenched attitudes in a society. School bullying is a current focus area for parents, support campaigns and educators.

In public discourse, we often take pride in “key Australian values” – the freedoms of speech, religion and expression, democracy, egalitarianism, peacefulness, a “fair go” (equal opportunity) for all and support for the underdog. The reality for lesbian, gay, bisexual, transgender, questioning, queer, intersex and asexual (LGBTQQIA)⁸ people is one indicator that Australia has yet to fully embrace these values. Living with underlying apprehension, fear of violence and discrimination – intended or other-

wise – continues to place the LGBTQQIA community under extreme and inhumane daily pressure. In spite of the growth in acceptance, heterosexual bias plays out structurally in law, institutionally in the provision of services, and interpersonally in the expression of homophobia and transphobia.

Sistergirls and Brotherboys

The internet offers numerous resources on sexuality specific to Australians. Citizens scanning the cultural landscape for handles that reflect the identities they are building may, like the passengers on the bus Priscilla, still find themselves in hostile geography – but there is online respite. Websites and multimedia resources target specific age groups and look at the breadth of the gender spectrum, providing role models, information and access to direct support. A large community of gender questioning and same-sex attracted people are online and actually reply to their Facebook messages. In contrast, there is critique that broadcast and print media content is too focused on physical change through hormonal medication and surgery. Less interventionist ideas including living in the body you have, dressing as you please and greater tolerance of self-identification would take the focus away from genitalia and physical alteration.

Digital inclusion, though, is not universal. Three percent of Australia’s 23 million identify as indigenous – Aboriginal or Torres Strait Islanders. Twenty-five percent live in remote communities where tele-connectivity and internet access are limited or non-existent. The reasons for this include zero connectivity available, lack of electrical generators to run computers, low levels of technical skills and literacy, higher costs of equipment and maintenance due to distance and lack of competition, a lack of understanding about the potential benefits of the internet, and poverty, which puts ongoing costs out of reach.⁹ These barriers will be familiar to people living in developing countries, but are perhaps unexpected in Australia.

A recent Human Rights Commission report¹⁰ raises the intersecting points of racial discrimination and marginalisation for LGBTQQIA Aboriginal and Torres Strait Islanders. Indigenous gender querying people face complex social, cultural and support barriers in their explorations. The report tackles the unique challenges faced by this community, concluding

4 Interview with the author, 31 May 2015.

5 Hannaford, C. (2014, 14 November). Transgender woman Robyn Thorne talks about the hardships of transitioning from male to female. *Canberra Times*. www.canberratimes.com.au/act-news/canberra-life/transgender-woman-robyn-thorne-talks-about-the-hardships-of-transitioning-from-male-to-female-20141114-11gb83.html

6 Etiquette calls for referring to transgender people by the gender they identify with. For clarity in this instance, I have changed gender only when referring to Robyn later in life.

7 Transcript of Julia Gillard’s speech, 10 October 2012. smh.com.au/federal-politics/political-news/transcript-of-julia-gillard-s-speech-20121009-27c36.html

8 This is the most recent inclusive terminology used in Australian sexual identity discussion. The acronym has become unwieldy and a new term is coming into use: SOGI – sexual orientation, gender identity and intersex. It is not yet widely recognised.

9 Korff, J. (2015, 12 January). Internet access in Aboriginal communities. *Creative Spirits*. www.creativespirits.info/aboriginalculture/economy/internet-access-in-aboriginal-communities

10 Australian Human Rights Commission. (2015). *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights*. <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual>

that they cannot be adequately or appropriately addressed by standard government services.

For Australia's first people, culture, spirituality and ancestry are divided into men's and women's business. Western definitions of *transgender* or *gay* do not fit neatly and are rejected as post-colonial terms. The lived reality and culture of gender questioning and same-sex attracted Aboriginal and Torres Strait Islanders have given rise to the terms "Sistergirls" and "Brotherboys". Dreamtime stories, handed down for generations, tell of gender transformation in an easy and natural way.¹¹ It has always been there.

In a contemporary way of telling dreamtime stories, Brotherboys and Sistergirls are organising, populating the internet with websites, forming support groups and telling positive stories.

Kai Clancy of the Wakka Wakka and Wulli Wulli nations uses YouTube to share his female to male transition. He is both inspiring and informative about his physical and psychological changes over time as he takes "T" (testosterone injections), gradually growing facial hair, deepening his voice, eating more, building muscle and eventually having "top surgery" to masculinise his chest.¹² The AUD 8,000 (USD 6,000) needed for the operation was raised via Pozible.¹³ Kai was always unhappy as a girl: "When a trans-guy popped up on my newsfeed it finally made sense."¹⁴

A 52-year-old Wiradjuri man named Dean¹⁵ had no idea he could change his gender and had lived for many years in a lesbian relationship, feeling like a man trapped in a woman's body. After discovering gender transitioning on the internet, Dean became Australia's first indigenous person to officially change his gender and marry his partner as man and woman.

Dean had formerly learnt the "women's business" aspects of his spirituality and culture, no longer appropriate once he changed gender. The Wiradjuri elders accepted the change, but had to navigate this unprecedented terrain, developing a contemporary cultural response. Dean's *women's knowledge* and *spirit* were sent away in a smoking ceremony. Working with tribal elders, Dean gradually gained the knowledge required by Wiradjuri men. Dean contends that it is possible to be transgender and remain deeply embedded in the indigenous culture that is vital to Aboriginality.

There are many stories to tell, but not all are good. The rate of youth suicide in indigenous communities is extremely high and among these numbers are Sistergirls and Brotherboys, who lack information, support and role models. When there is internet access, it is not via a phone but found in an internet café, which presents other barriers. These include content filters, access logs and a lack of privacy.

Starlady is a white transgender youth worker based in Alice Springs in the centre of Australia. Affectionately known as "Queen of the Desert", she has spent years working in remote Aboriginal communities running workshops. Starting out with sessions on "deadly"¹⁶ hairdressing, her workshop content broadened to psychological well-being and later, to meet demand, began to address LGBTQQIA issues.

Highly visible wherever she travelled in the Northern Territory, Starlady was approached by young people grappling with their sexuality and their family members, desperate for information and support. "It's obvious that not talking causes harm," she says.¹⁷ Evident from her online and on-air presence, Starlady clearly has the sensitivity to talk in an appropriate and understanding way about sexuality, and respectfully stands aside from making any cultural interpretation, which in Australian Aboriginal terms remains private (men's or women's) business.¹⁸

The educational materials for schools used in the Northern Territory barely mention homosexuality and do not address other sexual identities. The education system and services tend to be managed by people who actively block discussions on sexuality. Starlady says, "The conversation is just not happening. I advocate to the education services to encourage the conversation but there's a massive gap between families and communities wanting information and the bureaucratic Northern Territory style of service provision." Sadly, Australia's indigenous population face many "gaps"; not only in the Northern Territory, and not only in the delivery of education.

Conclusion

In spite of all the current difficulties, the gender querying conversation has come a long way in Australian society. This is particularly the case in the last five years, according to Sophie Hyde, director of the 2014 film *52 Tuesdays*.

11 For more information see Costello, M., & Nannup, R. (1999). *Report of the First National Indigenous Sistergirl Forum*. www.afao.org.au/_data/assets/pdf_file/0005/4649/Indig_sistergirl.pdf

12 [youtube.com/watch?v=pvveWY-oifE](https://www.youtube.com/watch?v=pvveWY-oifE)

13 pozible.com/project/186873

14 Interview with the author, 4 June 2015.

15 Living Black – Brotherboys. www.sbs.com.au/ondemand/video/451014723969/Living-Black-Brotherboys

16 Rad, cool or hip.

17 Interview with the author, 20 June 2015.

18 This is evident in Starlady's Facebook timeline, various co-hosted TV and radio programs and a TED Talk.

This low-budget Australian film has won an impressive array of global awards.¹⁹ An intimate story, the film is about a gender transition from female to male. As “James” is transitioning, teenage daughter “Billie” is simultaneously exploring her own sexual dimensions away from the gaze of the preoccupied adults in her life. Billie is not shocked by the announcement of her mother’s planned transition, playing a curious supportive daughter and friend as James emerges. The film has surprised audiences with its naturalness. It marks maturity in the use of film as a contributor to the unfolding narrative in Australia about transgender identities. A worldwide, online participatory project ran in parallel to the production. The “My 52 Tuesdays” app²⁰ invited people to write down and then photograph their answer to a different personal question posed each week on Tuesday. Participants could share as much or as little as they wanted to with others by adjusting preferences.

It is currently argued that Australia has the most far-reaching data retention requirements among advanced industrialised democracies. The Telecommunications (Interception and Access) Amendment (Data Retention) Bill Act 39 of 13 April 2015 was passed by both houses of Parliament.²¹

Telecommunications service providers are legally required to collect and retain phone call, email and originating IP address web data for all Australians, for two years. Enforcement agencies with powers to access that data face a very low level of independent scrutiny. Many fear that such large databases will be hacked into by criminal elements and abused by security agencies. An online campaign, “Citizens not Suspects”, failed to stop the passage of the bill. While data retention powers are publicly linked to counterterrorism, they also have a chilling effect on the private exploration of sexuality using the internet.

In *52 Tuesdays* Billie’s own interest in film leads to the documentation of her erotic awakening involving intimacy with a boy and girl her own age. Desire and responsibility collide. The internet looms large as a dark force as the adults become aware of the existence of the footage that could so easily be posted online. Liberating as it has been for

many, *52 Tuesdays* posits the internet’s potential to impact negatively on a young life.

Hyde believes “we don’t talk about sex enough, we don’t see it in any media as much as we ought to given its importance to our lives.”²² She harboured a concern that *52 Tuesdays* would be X-rated and that access would be restricted for a key audience: young adults. Australia’s rating system is notoriously tougher on sex than it is on violence. “Nudity isn’t sex. Sex isn’t porn,” says Hyde. Counterproductively, the film’s M+15 rating does limit access for young adolescents, right at the start of puberty, when exposure could be of enormous benefit.

It would not be right, I am told, to examine the intersection of transgender and the internet without mentioning online dating. Stigma about dating transgendered people often blocks personal approaches. Whatever is being sought – romance, love, sex – dating sites are an essential medium for many. Straight men are the most regular dates for transgendered women. Face-to-face meetings often fail because the straight guy has been overexposed to “tranny porn”, expecting stiletto heels and silicone breasts, not people just being themselves, in comfortable clothes.

It is difficult to isolate the role of the internet in building equality and driving societal acceptance of sexual diversity. Less challenging is evidencing the positive effect the internet has on mitigating sexual identity crises and suffering due to lack of access to information. Everyone has the right to know and one obvious challenge for Australia is to build digital opportunities for all citizens, wherever they live. Another is to protect privacy in a time of data retention. While our current conservative government is focused on building fear and playing Big Brother with our information, neither seems likely in the near future.

Action steps

The following advocacy steps are suggested for Australia:

- Question Australian censorship regulations that allow extreme violence but limit access to information on human sexuality, especially for pubescent Australians.
- Campaign for digital inclusion and a national broadband network that is affordable and accessible to Australians living in remote communities.
- Ensure that “closing the gap” between indigenous and non-indigenous Australians includes access to appropriate information and support on sexual health and diversity.
- Challenge the approach to data retention that erodes privacy, makes citizens suspects and builds a police state.

19 Best Director, World Cinema Dramatic – Sundance Film Festival 2014. Crystal Bear – Berlinale 2014. Elese-Siegessäule Readers’ Jury Award – Berlinale 2014. Best Original Screenplay – AWGIE Awards 2014. Special Jury Prize, Freddy Awards – Rio International Film Festival 2014. Best Feature Audience Award – Melbourne Queer Film Festival 2014. Best First Feature – Inside Out Toronto LGBT Film Festival 2014. Best Film – Divergenti Festival (Festival del Cinema Trans) 2014. Spirit of Gaze – GAZE International LGBT Film Festival 2014. Eye of Youth, Audience Award – Seoul International Youth Film Festival 2014. Best Director & Best Screenplay – LesGaiCineMas Madrid International LGBT Film Festival. Youth Jury Award – Cork Film Festival 2014. Jury Award, International Youth Film – ExGround Youth Days Film Festival 2014. Best Film (Jury Award) & Best Film (Audience Award) – CAN [BE] GAY Festival de Cine LGBTIQ de Canarias 2015. Best Feature – South Australian Screen Awards 2014.

20 mys2tuesdays.com

21 www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r5375

22 Interview with the author, 17 May 2015.

BANGLADESH

THE “THIRD GENDER” IN BANGLADESH



Bytes for All

Partha Sarker¹

www.bytesforall.org

Introduction

The Global Gender Gap Report 2014² placed Bangladesh in 68th position out of 142 countries. It has the eighth lowest gender gap in the area of political empowerment, while women’s life expectancy, for example, has increased from 54.3 years in 1980 to 69.3 years in 2010 – one of the highest increases in the South Asian region. Bangladesh is also reducing its gender disparities at a faster rate than the global average in areas such as youth literacy and secondary school enrolment. Although the manufacturing sector employs almost the same number of men and women, 80-85% of the employees in the ready-made garment sector are women.

But “gender” is typically portrayed as male and female in Bangladesh. “Hijra”³ or “third gender” people do exist in Bangladesh, but they are socially excluded. One estimate from the Ministry of Social Welfare suggests that there are about 10,000 third gender people in Bangladesh, while some rights groups think that the actual number is about half a million.⁴

The concept of a “third gender” goes back at least as far as the third century A.D., with Hindu, Buddhist and Jain texts all including debates on sexuality and gender definitions. References to a third gender crop up sporadically throughout the historical record, until the 18th century, when colonial laws criminalised all sexual acts between men and cast relationships into a rigidly binary-gendered form.⁵ Often hijras do not have any

permanent job or profession other than singing, dancing or entertaining other people. Violence against the third gender community, especially hijra sex workers, is often brutal, and occurs in public spaces, police stations, prisons or even at homes. They continue to face extreme discrimination when it comes to government services such as health, housing and education as well as in areas such as employment and immigration.

Policy and political background

Third gender people are considered to be a “forgotten class” in Bangladesh. During the late 1970s and early 1980s, they were assured of voting rights but only as male voters. Later in 2000, when the voter list was being prepared, the third gender community negotiated with the Election Commission to allow them to vote as third gender and not as male or female. But the Election Commission consoled them only by giving them an opportunity to vote either as male or as female, as per their choice – which is not how they identify.

Bangladeshi law recognises only two sexes, male and female. Discrimination on the basis of sexual orientation or gender identity has not been prohibited by any civil rights law in Bangladesh. Likewise, no law exists in Bangladesh to address harassment of the lesbian, gay, bisexual and transgender (LGBT) community. On 14 May 2009 the high court laid down a set of guidelines to prevent sexual harassment of women and children at work places, educational institutions and on the street, but that did not include issues related to harassment against third gender people. The Penal Code 1860 Section 377 clearly prohibits “carnal intercourse against the order of nature”, where the penalty ranges up to 10 years imprisonment.⁶ The ambiguity of the phrasing can also be used to penalise anal intercourse amongst heterosexuals. Importantly there has been no case tried under this section of the penal code.

However, it has been used in everyday harassment, where it is considered acceptable for law enforcement agencies and others to bully persons

1 Data collection for this report was supported by Mossaber Hossain Ribon. Also thanks to Shale Ahmed, executive director, and Bandhu Social Welfare Society, Bangladesh for their support.

2 World Economic Forum. (2014). *The Global Gender Gap Report 2014*. www.weforum.org/reports/global-gender-gap-report-2014

3 https://en.wikipedia.org/wiki/Hijra_%28South_Asia%29

4 Gayle, D. (2014, 11 November). Transgender Bangladeshis hold Dhaka’s first-ever pride parade to mark a year since their official recognition as a third gender. *Daily Mail*. www.dailymail.co.uk/news/article-2829481/Transgender-Bangladeshis-hold-Dhaka-s-pride-parade-mark-year-official-recognition-gender.html

5 Anam, T. (2015, 2 July). Transgender Rights, Bangladesh Style. *The New York Times*. www.nytimes.com/2015/07/03/opinion/tahmima-anam-transgender-rights-bangladesh-labannya-hijra.html

6 Sexual Rights Initiative. (2009). Report on Bangladesh: 4th Round of the Universal Periodic Review. www.upr-info.org/IMG/pdf/SRI_BGD_UPR_S4_2009_SexualRightsInitiative_JOINT_upr.pdf

that do not comply with the hetero-normative structures of the Bangladeshi society.⁷

The first big development happened when the government, in a landmark decision, approved a proposal from the Ministry of Social Welfare to allow hijras to officially register as persons with a third gender identity. This opened up an opportunity for members of the community to identify themselves as “third gender” in government documents, including passports, national and voter identity documents, and bank applications, among others. This issue was important because the Bangladeshi constitution provides a guarantee of equality before the law on the basis of citizenship, not on the basis of sex.

The Ministry of Social Welfare is running a number of social safety net programmes through which different disadvantaged groups including third gender people receive support for livelihood development. In the current 2014-2015 budget, the ministry has expanded third gender development programmes to 35 districts and took the initiative to employ 18 third gender people in various institutions. One private television channel in Bangladesh has already employed five people from the third gender community to work for security and other office jobs. For its part, Bangladesh Bank – the central regulatory bank of Bangladesh – has decided to provide bank loans to eligible third gender people. In a notice in June 2015 to all scheduled banks, Bangladesh Bank requested that they take steps to include this underprivileged group within their activities supporting small and medium enterprises. In another development, in a cabinet meeting the government decided to recruit third gender people as traffic police on the streets. One big media house in Bangladesh has already employed a number of third gender people at its office, mainly for office management.

Despite all these developments, Bangladesh still lacks an integrated legal framework that could address all the rights of the third gender population.

No easy life...

The third gender population in Bangladesh lives a difficult life. In the traditional society of Bangladesh there is a stigma associated with the word “hijra”. It has been shown that the reason many hijras seek a life outside of the normative

constellations is to protect their families from further societal stigmatisation. Their status tends to become more visible as siblings enter into the institution of marriage, where one sibling who does not get married is then perceived as conspicuous.⁸ The predominant norms present in Bangladeshi society have more or less always forced hijras to leave their families, as discrimination and abuse are common factors in an adolescent hijra’s life.⁹

Without any appropriate employment opportunities they do not have stable jobs or professions in most cases. They live in a community and usually work under a “guru” who gets a percentage of their earnings. These gurus in turn provide them all with protection including health, legal and other administrative support as is necessary.

In Bangladesh, the courageous act of a third gender person can be symbolically connected to the issue of online freedom of expression. This was after Labannya Hijra captured two killers of a 27-year-old secular blogger, Oyasiqur Rhaman. Rhaman was attacked by three young men for what he wrote on the internet. When they were fleeing the scene, two of them were captured and held by Labannya on the spot. Her intervention led to the arrest of the men, who later confessed to the killing.

However, Labannya’s story also showed a darker side of her existence, revealing a lack of real freedom of expression enjoyed by the marginalised community. When journalists wanted to interview her, she had to wait for permission from her guru Sapna Hijra. As the columnist Tahmima Anam wrote in *The New York Times*: “If this all sounds very progressive, thirdness must also be seen in the light of what it restricts, as well as what it permits. The hijra community is tightknit and hierarchical, with its own rules of kinship and power. When Labannya made her first public statement, she could only do so with the blessing of her mentor, Sapna Hijra – a figure who is somewhere between a symbolic parent and a spiritual leader in the hijra commune to which Labannya belongs.”¹⁰

Sharful Islam Khan, in an ethnographic study¹¹ on the third gender community, shows that the socio-political space is non-existent for hijras, and stems from their non-recognition in the society

7 Godwin, J. (2010). *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action*. Bangkok: United Nations Development Programme.

8 Nanda, S. (1999). *Neither Man Nor Woman: The Hijras of India*, 2nd ed. Belmont: Wadsworth Publishing Company.

9 Khan, S. I., et al. (2009). Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh. *Journal of Health, Population and Nutrition*, 27(4), 441-451. www.ncbi.nlm.nih.gov/pmc/articles/PMC2928103

10 Anam, T. (2015, 2 July). Op. cit.

11 Khan, S. I., et al. (2009). Op. cit.

where male-female gender construction is prevalent. He also observes that the social movement of the hijra community lacks power in Bangladesh, due to deficient support from the legal, religious and political spheres. Furthermore, a study by the United Nations Development Programme (UNDP)¹² points out that sexual minorities are vulnerable to health risks such as HIV.

There is no central location or physical space where third gender communities can be easily identified. Their presence on the internet as third gender people is also not evident. Rather they are represented by organisations that work for their rights. Bandhu Social Welfare Society (BSWS)¹³ is one such organisation. Soon after the recognition of hijra gender status by the Ministry of Social Welfare, BSWS in collaboration with the ministry and UNAIDS organised a series of events called “Hijra Pride 2014”¹⁴ at all divisional and central levels. All these events helped them prepare a set of recommendations (known as the Dhaka Declaration)¹⁵ that include issues such as creating awareness amongst the third gender community, sensitising media about the challenges that they face, incorporating the plights and challenges of the third gender population in the education curriculum, creating quotas to provide preferential access to education, and creating employment opportunities. BSWS provides media fellowships to journalists to help portray the lives and struggles of the third gender community in the mainstream media. Its legal aid counsellor Ain Alap has meaningfully contributed to addressing the legal needs of the community members and successfully settled a number of rights violation cases with the support of the National Human Rights Commission (NHRC).¹⁶

Online news media, including three major English-language daily newspapers – the *Daily Star*, the *New Age* and the *Dhaka Tribune* – have lately been paying attention to the third gender community. The frequency and the depth of these reports certainly create a favourable environment to recognise hijras and to establish their rights. The *Daily Star*, for example, has increased the frequency of

its reports on the third gender community since 2009, and has published almost 25 reports and opinion pieces. 2014 was a particularly significant year (right after third gender people were able to officially register as such). The *New Age* online archive goes back until the beginning of 2014 only, and it published six articles this year alone. The *Dhaka Tribune* on the other hand published 24 articles on the issue, with articles appearing more frequently soon after the hijra gender status was officially recognised.

Conclusion

In Bangladesh, hijras are highly marginalised. Poverty and exclusion from minimum daily requirements such as health services, housing and work are the reality many hijras live in.¹⁷ Since the situation here is urgent, it is important for society to understand the lives they live, and the socio-economic conditions they find themselves in. Media and online representation of the third-gender community will play a vital role in confronting negative public stereotypes of the community. Declaring their gender to be “third gender” is not enough -- it would be useless unless supportive measures are not taken to protect the rights and livelihoods of this minority population.

Action steps

A seminar called “Third gender recognition for hijra community – aftermath and way forward”,¹⁸ organised by BSWS and the NHRC in April this year, identified some action points or recommendations. Those recommendations include:

- BSWS and other civil society organisations will lobby the government and other lawmakers in the parliament to approve a bill to protect the rights of the third gender community and to establish their preferential access to health, education, employment and other government services.
- The NHRC will send a proposal to the Ministry of Education to allow free admission of third gender children in school.
- Concerned bodies will be pursued to take immediate legal and administrative measures to allow inheritance of properties for third gender people.

12 Chakrapani, V. (2010). *Hijras/Transgender Women in India: HIV, Human Rights and Social Inclusion*. United Nations Development Programme (UNDP), India.

13 www.bandhu-bd.org

14 Ahsan, F., & Al Amin, Z. (2015, 1 September). Celebration of the third gender. *Daily Star*. www.thedailystar.net/op-ed/politics/celebration-the-third-gender-135667

15 Bandhu Social Welfare Society. (2014, 29 December). Hijra Pride 2014. www.bandhu-bd.org/hijra-pride-2014

16 www.nhrc.org.bd

17 Stenqvist, T. (2015). *The social struggle of being HIJRA in Bangladesh - cultural aspiration between inclusion and illegitimacy*. <https://dspace.mah.se/bitstream/handle/2043/18568/Stenqvist-T-DP15%20final.pdf?sequence=2>

18 www.bandhu-bd.org/third-gender-is-not-a-word-it-is-a-gender

- Steps will be taken to create safe accommodation for the third gender community, particularly for its elderly population.
- Recommendations will be made to incorporate chapters in the national education curriculum mentioning the existence of hijras and their traditional cultures.
- BSWS and other civil society lawyers will be trained to handle the human rights issues of the third gender community at the district level.
- An initiative will be taken to map the community through a proper census.
- The NHRC will share a draft for anti-discrimination laws so that the law minister can represent the topic in the parliament soon.
- The Ministry of Social Welfare will be requested to continue and expand the livelihood programme for third gender people in 64 districts.
- There will be awareness and capacity-development campaigns so that members of the third gender community can represent themselves with dignity and self-esteem.

BOLIVIA

DIGITAL VIOLENCE: MULTI-SECTORAL ANSWERS TO CHILD SEXUAL ABUSE ONLINE



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Introduction

In June 2013, a national campaign to prevent digital violence, *No Caigas en la Red* (“Don’t Fall into the Web”),¹ was implemented by the Bolivian government, represented by the Telecommunications and Transportation Authority (ATT). The campaign formalised the state’s concern regarding the violation of human rights online, emphasising the protection of women and children.

Reports produced by the REDES Foundation’s programme ENREDOMINO (2010-2015) confirm that the most common cases of digital violence amongst secondary school students have to do with hacking, grooming, harassment, impersonation and identity theft, threats, extortion, blackmail, the consumption of violent content and pornography, and threats that are the result of the use of social media for illicit ends (by organised crime, and for crimes such as sexual commerce, selling drugs and human trafficking).²

A form of digital violence that is increasing exponentially is the production, distribution, circulation and consumption of online material containing child sexual abuse. This is a real concern for stakeholders in the educational community, such as parents, students and teachers, as well as police officials and local and national authorities.

At the beginning of 2015 a working group against child sexual abuse material on the internet was formed. Organisations participating in the working group were the REDES Foundation, a task force in charge of fighting against violence in Cochabamba (FELCV, for its acronym in Spanish), the TICBolivia Network³ and the Internet Society⁴ chapter in Bolivia. This is the first effort in combating

the problem, and the working group, alongside 45 countries in the world, aims to create a telephone hotline to report these acts.

Legislative context

The production of online content containing child sexual abuse requires a complex legal response involving different legislation dealing with, for instance, technology-related crime on one hand and sexual abuse and the protection of children on the other. It implies legislating on the digital storage, reproduction and circulation of content, as well as the trade and exchange of material among people and networks worldwide. It involves both organised crime and individuals acting independently.

In Bolivia, Article 60 of the Constitution, Article 7 of the Child and Adolescent Code, and Article 5, Clause 4 of Law 263 Against Human Trade and Trafficking all establish that the state holds the “highest responsibility for children and adolescents.” Additionally, Articles 130 and 131 of the Constitution provide for the Protection of Privacy Act (*Habeas Data*), which allows for the “protection of personal data retained by any physical, electronic, magnetic or computerised means in public or private archives or databases.”⁵ Notably, the Protection of Privacy Act is only applied once an individual’s rights are infringed upon.

Apart from these legislative tools, there are no explicit references for child protection on the internet. Few public and private institutions know about –and research – this issue in any depth. In September 2014 the REDES Foundation trained 40 members of FELCV to be able to deal with cases of digital violence. This was in response to an increase in the number of reports regarding the use of information and communications technologies (ICTs) in the violation of citizen rights. The REDES Foundation contributes by providing technical tools that help to strengthen legal action, widening the protection of rights to all people in cyberspace, not just children.⁶

1 www.nocaigasenlarede.bo

2 www.teprotejo.org/index.php/es, www.icmec.org/missingkids/servlet/PageServlet?LanguageCountry=en_X1&PagelD=1222, www.safernet.org.br, www.inhope.org/gns/home.aspx, https://www.unodc.org/documents/wdr2014/V1403603_spanish.pdf

3 www.ticbolivia.net

4 www.isoc.org

5 www.silep.gob.bo/silep/inicio

6 www.nocaigasenlarede.bo, www.enredomino.fundacionredes.org, www.fundacionredes.org/index.php/home/7-noticia-as/154-2015-03-04-02-03-24

The need to take action

Between 2012 and 2015, through an alliance that involved inter-institutional cooperation,⁷ the REDES Foundation trained 17,837 secondary students on the topic of preventing digital violence. This took place in La Paz, Cochabamba, Santa Cruz and Tarija. During these workshops, the training team became aware of many cases such as the theft of computer chips and portable memory devices (i.e. an invasion of privacy), the theft of passwords, impersonation or identity theft, and harassment. More alarming cases included cyber extortion, violent digital content gone viral in educational communities, sexual abuse using ICTs as the main tool of contact, and – the main theme of this article – the production of online material containing child sexual abuse.

This experience is in line with cases registered by the Bolivian judicial system: in 2011 the national police registered a total of 574 accusations of tampering with a computer in eight out of the nine capital cities in the country.⁸ On the other hand, the Magistrate Council in the city of La Paz confirms that between 2002 and 2012, the same crime was involved in 255 criminal trials in the city. According to the director of FELCV, Captain Mauricio Méndez, over the last 10 years “there has been an increase of 890% in cases of computer manipulation in the country. Police officials must be prepared to include digital evidence in all their investigations. In 2014 we began training police officials to manage these cases and, at the start of 2015, we installed computing equipment for computer forensic analysis; however there is still a lot for us to do.”

We are facing a global phenomenon with alarming statistics. The UN Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid, reported to the UN General Assembly on 24 December 2012: “It is estimated that child sexual exploitation affects up to two million children each year around the world. The real magnitude of this phenomenon is unknown, given the lack of investigations and data available about the victims and the perpetrators. The criminal nature of this activity and the fear of the negative repercussions that its revelation may have, block the accessibility to information. Indubitably, the great

majority of cases never get reported. The number of images of child sexual abuse has quadrupled between 2003 and 2007.”⁹

Setting up the hotline

According to REDES Foundation reports, the formation of a multi-sectoral national system for the prevention of digital violence is needed.¹⁰ This system would involve the collaboration of multiple stakeholders that share the responsibility for the collection of “digital evidence” to be used in criminal cases involving human rights violations online.

Partly in response to these needs, since 2014, the REDES Foundation has been developing an initiative in collaboration with the International Association of Internet Hotlines (INHOPE). The main objective is to set up a hotline to report and eliminate child sexual abuse content online. The hotline will be part of a global network, and will have the support of Interpol.

The initiative works through an international database coordinated by Interpol. Anonymous complaints can be made to the hotline of online child sexual abuse content. Hotline operators then remove the content, once it has been confirmed that it violates human rights. In Latin America the hotline operates in three countries: Brazil, Colombia and Peru. At present, Bolivia and Paraguay are considering implementing the service.¹¹

On 9 March 2015, in the city of Cochabamba, the REDES Foundation convened a meeting with more than 30 institutions with the aim of discussing the potential of setting up the hotline.

Those who participated in this meeting included representatives of local and national governments, national police officials, the Ombudsman’s Office of Bolivia and ATT functionaries. Members of the TICBolivia Network and ISOC Bolivia, civil society organisations, and academics from public and private universities were also present. The event resulted in the creation of a working group, which committed itself to standing up against the production of online child sexual abuse content.

Months later, the working group presented a paper titled *Diagnosis of institutional capabilities to mitigate and deal with the production, consumption and circulation of online child sexual abuse*

7 CREPUM Foundation, Municipal Council of La Paz, Municipal Council of Santa Cruz, CONEXIÓN Fondo de Emancipación, Ombudsman’s Office of Bolivia, VIVA Foundation, TICBolivia Network, Telecommunications and Transportation Authority (ATT).

8 This data shows an increase in cases of computer tampering for which the maximum penalty is eight years in prison, according to the gravity of the crime. The relevance of this finding is that the focus is on tampering and therefore the defence of a capital asset, rather than the defence of the legal interests of the person owning the property.

9 www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-54_sp.pdf

10 www.fundacionredes.org/index.php/home/7-noticias/152-reporte-giswatch-vigilancia-de-internet-en-bolivia

11 www.gsma.com/publicpolicy/wp-content/uploads/2012/03/GSMA_InhopebrochureWEB_2014.pdf

content.¹² The internal document states: “The institutional and professional capacity to deal with cases of digital violence in Bolivia is precarious. All professionals recognise situations of digital violence in their daily lives, where potential threat is suspected, but they have yet to explore the possibilities of how their own work could contribute to an emerging professional field.”

By June 2015, the initiative had achieved the following:

- The formation of a national inter-institutional working group.
- The publishing of the *Diagnosis of institutional capabilities* report, which includes public policy recommendations.
- The formation of a high-level government team to work on state policy to support the initiative.¹³
- A commitment from the vice-presidency of the Senate Chamber, represented by Senator Nélica Sifuentes, to support a bill for the prevention of digital violence (including the fight against online child abuse).
- The formation of a public-private team of computer forensics and forensic psychology experts in Cochabamba.¹⁴
- The TICBolivia Network confirmed its administrative and institutional support while ISOC Bolivia confirmed its technical and technological assistance for setting up and running the hotline.
- Using their own money, FELCV installed computers in Cochabamba to contribute towards the management and research of cases of digital violence. For the third year in a row, ATT carried out the national campaign Don't Fall into the Web, which includes the fight against online child sexual abuse content.
- Agreements of technical support and collaboration from solid international allies were achieved.¹⁵

What has been described is a working multistakeholder model that aims to have a national impact, and with a clear vision of the active and participatory role of civil society actors. A collective effort involving local, national and international actors is being made that offers answers to a specific type of digital violence using the hotline. The main finding of the initiative so far is that a law on the prevention of digital violence that includes input from all stakeholders needs to be created, to protect people online.

Action steps

Initiatives that aim to defend human rights online are more substantial when they are backed up by evidence, especially research based on experience. It is a priority to design an online system that is sustainable and multidimensional.

The formulation of a long-term plan of action is recommended; this could include the design of policies, strategies, programmes, plans and projects that have to do with the prevention and eradication of online child abuse.

It is important to promote specialised, inter-institutional cooperation when dealing with cases of digital violence. This should include sharing specialised experiences, research, and the development of capacity for a transnational response to the challenge of online child abuse.

12 REDES Foundation. (2015). *Diagnosis of institutional capabilities to mitigate and deal with the production, consumption and circulation of online child sexual abuse content*. La Paz: REDES Foundation. This paper is considered a confidential internal document and is not linked here.

13 Such as the need for a “Law on the Prevention of Digital Violence”.

14 Computer forensics is dedicated to generating evidence in criminal cases related to computer crimes or violation of rights using digital technology. Forensic psychology is the application of the science and profession of psychology to questions and issues relating to law and the legal system.

15 Such as with INHOPE, Interpol and the TICBolivia Network.

BOSNIA AND HERZEGOVINA

BETWEEN FREEDOM AND LONELINESS: THE TWO SIDES OF THE INTERNET



Okvir and One World Platform

Azra Causevic and Valentina Pellizzer

www.okvir.org and oneworldplatform.net/en

Introduction

In Bosnia and Herzegovina, lesbian, gay, bisexual, trans*, intersex, queer and allied (LGBT*IQ) persons and activists are targeted because of their gender, sexuality and political actions. They are faced with violence and discrimination on social, economic and institutional fronts on a daily basis, both offline and online. This is due to the patriarchal and nationalistic politics of division, segregation and silencing, which have found a strong ally in anti-LGBT*IQ groups in Bosnia and Herzegovina. The authorities passed an anti-discrimination law in 2009, which included gender identity and sexual orientation¹ (both terms were undefined). Yet there is a lack of political will, public awareness and institutional strategies to implement the law at all territorial levels in Bosnia and Herzegovina. This results in a general lack of trust in state mechanisms for protection amongst LGBT*IQ persons, with most cases of human rights violations unreported.

LGBT*IQ persons, communities and activists, failed by state mechanisms for protection, are turning to the few LGBT*IQ organisations for help. Some, who do not do this, are left to their own devices to find support, often online. The internet is being used to access diverse information, as a way to network and socialise, as well as a tool to bring about social change for LGBT*IQ groups. Its main advantages are the flow of information and the anonymity it allows. On the other hand, as powerful as they are, social and multimedia platforms are responsible for not adequately resolving online

violence against LGBT*IQ persons. Changes in this regard should go hand-in-hand with awareness raising on privacy amongst the LGBT*IQ community in Bosnia and Herzegovina.

This report focuses on how the internet and social media have been used as a resource by LGBT*IQ persons, activists, groups and organisations in Bosnia and Herzegovina. It reflects on the advantages of the internet when it comes to the free flow of information, how it is a source of support and a way to socialise for LGBT*IQ persons, and how it also serves as a powerful community-building tool for LGBT*IQ organisations. The report points out vulnerabilities for LGBT*IQ persons online (regardless of whether they are “out” or not), and how their privacy is being violated and their personal and public information used without their consent by other internet users. It shows that online violence is committed even within closed LGBT*IQ circles. It identifies the weaknesses of LGBT*IQ strategies for combating gender and sexual violence that use platforms such as Facebook and GayRomeo.

Policy and political background

Bosnia and Herzegovina has a set of domestic laws and is signatory to international conventions,² that together with the anti-discrimination law should serve to protect individuals from a range of criminal offences. However, when it comes to technology-related violence these laws appear to offer little in the way of protection.

One World Platform researched remedies and responses in the case of technology-related violence against women and girls and the results were discomfoting. We found that: “The legal framework is full of obstacles that prevent survivors of technology-related violence from accessing legal remedies. There are very few lawyers dealing with

¹ Bosnia and Herzegovina Law on Prohibition of Discrimination, Official Gazette No. 59/09, 2009 – Article 2 (Discrimination): (1) Discrimination, in terms of this Law, shall refer to different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons on grounds of their ... sex, sexual expression or sexual orientation, and every other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or realisation of rights and freedoms in all areas of public life. www.mhrr.gov.ba/PDF/LjudskaPrava/ZakonOZabraniDiskriminacijaNacrpt.pdf

² Such as the Criminal Code and the Law on Protection of Personal Data, in terms of domestic legislation, and international agreements like the Council of Europe Convention on Cybercrime (conventions.coe.int/Treaty/EN/Treaties/Html/185.htm). The national policy regarding the analysis, detection, prosecution and prevention of cyber crime is regulated by the Bosnia and Herzegovina Strategy for Combating Organised Crime and Corruption (adopted by the Council of Ministers in June 2006). This is based on the Council of Europe Convention on Cybercrime, signed on 9 February 2005 and ratified on 19 May 2006.

internet rights in the country, and survivors rarely seek justice through civil lawsuits because it is a very expensive process... The police are the first point of contact for women facing violence, but they appear ill-equipped to deal with technology-related VAW.”³ If we consider the discriminatory attitudes towards both communities of women and LGBT*IQ, the perception that threats do not constitute violence, and the inability to take online harassment seriously, anyone who faces attacks is left with little meaningful recourse. Cyber crime departments tend to focus, with the exception of cases of child pornography, on high-tech systems violations such as banking fraud or the hacking of security systems.

“I am not crazy nor the only one...”

Gathering information regarding the internet and sexual rights for our research was met with a great deal of enthusiasm by the LGBT*IQ persons and activists that we contacted. After the first dozen questionnaires had been gathered, it was already clear that internet platforms and forums are being used widely among LGBT*IQ persons to express themselves freely because of the inability to do this publicly in offline spaces. The internet is also being used to compensate for the missing gaps in public education and information⁴ and for socialising on platforms like Facebook, GayRomeo and Grindr. For all research participants, the internet has given them a chance to explore the information that is missing in the educational system, and in society generally, regarding sexual identities and sexual expression. For all participants except two, this is enabled by the ability to be anonymous online. The internet has “opened my eyes” one participant said. It “helped me reach the right persons” and “has primarily helped me in understanding and educating myself regarding my identity” another participant noted. I.M.,⁵ aged 25-35 and self-identifying as pansexual queer, had this to say:

Within the past 15 years the internet has helped me in finding additional information needed for understanding both my gender and sexuality

and accepting the “phases” in the development of my own identities. In those moments when I had nobody to talk to, the articles, texts and books I was downloading have served as a form of support, to actually see I am not “crazy” nor the only one. Through [online] self-education I could widen my own horizons, accept myself better and love myself. Knowing there are people who are different and connecting with them has meant so much regarding my development.

Sexual rights groups in Bosnia and Herzegovina use the internet as a tool for community building, awareness raising and advocacy on a daily basis. LGBT*IQ groups and formal organisations who focus on community building in Bosnia and Herzegovina primarily use email, Facebook, Instagram, Tumblr, Twitter and Skype to reach out to their community members and promote the activities and events organised. Some LGBT*IQ groups such as TANKA (Tuzlanska Alijansa Kvir Aktivista)⁶ are using the power of technology and the internet for creative education such as streaming queer movies among their community members on a monthly basis. Due to the powerful spread of information, the internet is making it easier for organisations and groups to reach out to victims of violence, discrimination and hate speech based on sexual and gender identity, while at the same time being an equally dangerous tool in the mobilisation against LGBT*IQ persons in Bosnia and Herzegovina, as noted by Association Okvir:⁷

On January 27, 2014, the “Stop the Faggot Parade in Sarajevo on May 1, 2014” Facebook page was organised. It received more than 4,000 likes from potential [anti-LGBT*IQ] perpetrators. There were hundreds of hate speech comments inciting hate crime and the personal profiles of other Facebook users were also targeted. The same Facebook page was used as means of mobilisation for a physical attack against the participants in the Merlinka International Queer Film Festival, where our documentary movie “With Love, Your Children” was to be screened as the first Bosnia and Herzegovina movie of the Festival. We were continually reporting the page... Some of our community members were forcefully “outed” and locations of LGBT*IQ friendly places in Sarajevo were mapped. We immediately reacted through contacting our community members who were “outed” on the page. Some of them live with their families and

3 Association for Progressive Communications (APC). (2015, 21 July). Exploring technology-related violence against women in Bosnia and Herzegovina. *GenderIT*. www.genderit.org/edition/exploring-technology-related-violence-against-women-bosnia-and-herzegovina; the research in local language is available here: oneworldplatform.net/wp-content/uploads/2015/07/Zaustavinasilje-%C3%85%C2%BDenska-prava-i-sigurnost-na-internetu.pdf

4 See www.queer.ba, www.okvir.org, www.lgbt.ba and www.transserbia.org

5 Interviews conducted for this GISWatch report. The interviewees' names have been changed to protect their anonymity.

6 <https://www.facebook.com/aTkivizam?fref=nf>

7 www.okvir.org

keep two different Facebook profiles, yet some have only one profile with customised visibility settings. We were in the position to access their accounts, as they were not able to do so from their homes, and to customise their privacy settings on Facebook. This was an alarm for us, knowing how low the awareness on privacy protection is among our community members. This was also the starting point of our community work on internet safety and data protection workshops among LGBT*IQA persons.

Okvir itself experienced the crude reality of Facebook's real-name policy. As a young collective, they were using Facebook to communicate with the LGBT*IQA community:

The real-name policy has caused us major setbacks regarding the outreach and safety of our community. Our trans* friends and some of us were forced to shift to "real" names where even the violent option of sending one's documents [the demand of disclosure is experienced as a form of violence] would not pass due to discrepancies between the category of sex on the documents and one's gender identity.

Additionally, some of our friends who are not "out" regarding their gender identity did not want to succumb to Facebook's policy of sending the documents at all. This meant shifting to names given at birth. Obviously, we understood the scope of violence imposed by Facebook and were thinking of ways how to respond, yet we felt quite limited...

Further, our profile as an Association was a personal profile which we had used for about three years... it brought many benefits regarding safety and control over whom we befriend and what kind of information we share regarding public events and community events. But it was suspended and automatically shifted by Facebook to a public page. We were left to our own devices when it came to communication in the meantime (especially setting up the events – an option now not available via our public profile). Shifting our profile to a public page was done within a couple of days, without our permission, without prior notice, with one option: to either have everything public or remove all of the comments made before. We chose the latter. This means that since then all of the data of our friends tracked on our profile has been made public and we had to notify them on online safety, in terms of leaving comments and

"likes" publicly, with the risk of being "outed" in public .

Regardless of the internet offering freedom and anonymity for persons who are not (completely) "out", there is the spectre of violence targeting LGBT*IQA persons based on their gender expression and sexuality. Such is the example of A.D., a self-identified gay man, aged 24-30, who is "out" to his closest friends and family. He was a victim of cyber stalking including receiving online death threats on Facebook. He was left to his own devices to find support:

I started receiving hate speech private messages on my Facebook profile account from an anonymous profile. This person/profile was sending me threatening messages, including offensive name-calling (faggot) and direct threats to kill me, repeatedly saying, "You are sick." I did not reply to any of the messages and immediately blocked the user. I strengthened my privacy settings on Facebook and also deleted my last name, as Facebook offered that option. Soon afterwards, a second anonymous user showed up and started sending me a stream of harassing messages, calling me out for a date and [asking] to meet me. I ignored the messages, which made him start threatening me ... calling me "provoking" and "ridiculing God, an infidel" and "sick". He then posted a link to a porn site on my wall. Luckily I had only my closest friends who were allowed to see my wall; yet after that I decided to completely delete my Facebook profile and open up a new one, with a nickname.

All self-identified gay men participating in the research have noted that GayRomeo is the number one platform used for dating and establishing new contacts, followed by Grindr and Facebook. However, as one participant in our research revealed, violence within already closed LGBT*IQA online spaces is rarely spoken of and considered taboo, especially on social networks such as GayRomeo.

GayRomeo, an instant messaging and dating community for gay, bisexual and transgender men founded by the German GMBH company Planet Romeo, has more than 6,740,000 registered profiles and 1,389,150⁸ active users worldwide. A case of so-called "revenge porn" happened to one self-identified and publicly "out" gay man, D.J., who was

8 www.planetromeo.com/service/kontakthilfe/keyword_suche.php?helpid=176

one of the 2,498 users⁹ registered on GayRomeo Bosnia and Herzegovina:

In 2007, when I was not yet “out”, I registered a profile using a nickname on GayRomeo. I started chatting with this person (both under nicknames) and told him my name... and sent him some of my personal pictures. We arranged to meet, yet I did not show up for the date. A couple of days later, I saw an active profile under my personal name, with all my private pictures. He literally outed me! I did not know what to do, as I was new to GayRomeo. I then received a message from that person, who told me he did it out of revenge because I did not show up for the date. His profile was active seven days more and then turned off.

When A.D. was sharing his story, visibly distressed, on the question of how he handled his situation, he repeated: “I couldn’t report him (the abuser) to Facebook, I was not out! I couldn’t come out to my friends and tell them to keep reporting him! I was not out! I also couldn’t go to the police when he was sending me life-threatening messages – it’s scary!”

Conclusions

Due to the harsh restrictions to freedom of expression regarding sexuality and gender rights in Bosnia and Herzegovina, the internet is widely used by LGBT*IQ persons and activists as their main source for information, to find support and to mobilise. For LGBT*IQ persons, the internet represents one of their main resources for support in their personal and political development, while for activist groups it is a vital tool for communication, mobilisation, education and providing support for LGBT*IQ persons. Platforms used include Twitter, Facebook, email, Skype and Tumblr.

Most of the LGBT*IQ participants in the research said they are subjected to at least some forms of LGBT*IQ-phobic abuse online via the social platforms they use. Social media platforms such as Facebook remain the primary platforms for socialising for most of the research participants, while GayRomeo and Grindr are favoured by self-identified male gay participants. Both Facebook and GayRomeo offer some forms of protection specifically for LGBT*IQ persons, yet, according to the experiences shared by LGBT*IQ persons in Bosnia and Herzegovina, their standards and procedures of tackling gender and sexuality-based violence are insufficient and poor.

The Facebook policy of reporting the abusers should be tightened when dealing with LGBT*IQ-phobic abusers. Facebook does have its Facebook Network of Support that was formed “in light of recent tragedies involving youth who have taken their own lives as a result of anti-LGBT bullying.”¹⁰ The aim is to “effectively address issues faced by the lesbian, gay, bisexual, and transgender community.”¹¹ On the other hand, steps advised by Facebook include: block bullies, report harassment, stick up for others, think before posting, get help when overwhelmed and know you are never alone. These do not solve the issue of LGBT*IQ-phobic violence. Facebook does not suspend abusers’ profiles, but temporarily removes them from the victim of online abuse. This lack of concern for their LGBT*IQ users is especially evident in cases of persons who are not “out”, leaving them to resort to their own capacities when handling the abuse.

It is a similar situation when it comes to the policy of GayRomeo, where, in cases of “revenge” porn as described by D.J., GayRomeo only offers the options to block the abuser (i.e. to restrain their access to the victim) and to contact GayRomeo directly, adding: “Please include a picture of yourself holding a [piece of] paper with your profile number or email address on it. This will help to prove that you are the person featured in the image. You should be recognizable in this image.”¹² When presenting this option to D.J. he said: “I was not out at that time, there is no way I could trust someone online by giving away my identity. On the other hand, I trusted this man [the abuser] and had given him my personal pictures...”

Being led by their experiences, all of the participants in the research have given a lot of thought to their safety online and do not believe the internet is a safe place where they can be anonymous. There is a great lack of awareness of privacy by LGBT*IQ persons, as well as little knowledge and use of privacy protection tools. Only two participants in the research used security mechanisms and tools like TOR,¹³ VPNs,¹⁴ proxies and others – in one case an LGBT*IQ group had to intervene and use these tools to protect the personal profiles of persons who were subjected to online violence. All the participants in the research want to improve their

10 https://www.facebook.com/note.php?note_id=161164070571050

11 Ibid.

12 <https://www.planetromeo.com>

13 <https://www.torproject.org>

14 https://en.wikipedia.org/wiki/Virtual_Private_Network

9 <https://en.wikipedia.org/wiki/GayRomeo.com>

online safety, yet it is clear that one's safety online is a collective issue as much as it is personal. The internet safety of LGBT*IQ persons demands a strategy implemented by the LGBT*IQ community itself, as much as measures by social media platforms need to be taken.

Action steps

The following advocacy steps can be suggested for Bosnia and Herzegovina:

- Facebook should consider the specific circumstances of LGBT*IQ persons who are not “out” when they report hate speech and threats. They should consider designing strategies that are more effective in punishing LGBT*IQ-phobic violence, as well as the perpetrators of this violence.
- Organised action to change Facebook's real-name policy should be supported.
- GayRomeo should be more open to discussing online violence happening between GBT* men on their platform and develop an appropriate strategy of awareness raising and combating this violence.
- LGBT*IQ community members in Bosnia and Herzegovina should be supported by developing effective resources and security tools to ensure their internet safety.
- A rapid response network (such as trolling the trolls) should be organised to help the victims of abuse in the very first hours and days of the attacks. Legal remedies are too slow to ensure a prompt and timely response and public support.

BRAZIL

NOT REVENGE, NOT PORN: ANALYSING THE EXPOSURE OF TEENAGE GIRLS ONLINE IN BRAZIL



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Introduction

The term “revenge porn” has become popular internationally for describing a virtual form of violence: the act of an ex-partner making private sexual images or videos public online. Strictly speaking, so-called revenge porn could victimise anyone, but it most involves the violation of women. The impact on the lives of victims of revenge porn can be devastating: some are forced to leave school, or a place of employment, or to withdraw from social life; others face depression and even commit suicide. While this form of violence existed previously – the act of circulating private information from a previous intimate relationship in order to harm the other person is not new – information and communications technologies (ICTs) allow the impact to be felt more widely. Because many women are affected by revenge porn online, it is now at the centre of feminist advocacy.

Across the world, all stakeholders – government, business and civil society – have been coming up with initiatives to discuss and propose alternatives to eradicate or minimise the effects of revenge porn. There are bills and laws that punish those who upload private images and videos,¹ campaigns aimed at building awareness and offering support to victims,² and initiatives by internet companies that aim to block this kind of content.³

It is no different in Brazil. While monitoring this problem here, however, we were faced with a

peculiar situation: a case where teenagers aged 12 to 15 years and living on the outskirts of São Paulo were exposed online, in a phenomenon that became known as the “Top 10”. However, this phenomenon did not fit the strict definition of “revenge porn”.⁴ The analysis of this problem, combined with a more general look at what the government can do, offers insight into how to design public policies for violence against women on the internet in Brazil and, we suspect, elsewhere in the world.

Policy and political background

Revenge porn began to permeate the international debate on gender violence a few years ago. In Brazil, the term was picked up by the media in mid-2013, the year when, within a week, two teenagers committed suicide after having their intimate images spread across the internet.⁵ The discussion then moved from being a concern on feminist blogs and an issue that had received little media attention, into mainstream political debate. In December 2013, when the bill for Brazil’s Civil Rights Framework for the Internet (*Marco Civil da Internet*) was discussed in Congress (it was approved months later), a special rule for intermediary liability was introduced for cases of revenge porn, in order to expedite the removal of content.⁶ Since 2013 members of congress have proposed several

1 In the context of the United States, for instance, legislative efforts are well summarised in Frank, M. A. (2015). *Drafting an Effective ‘Revenge Porn’ Law: A Guide for Legislators*. papers.ssrn.com/sol3/papers.cfm?abstract_id=2468823

2 The campaigns End Revenge Porn (www.endrevengeporn.org) and Take Back the Tech! (www.takebackthetech.net) are good examples of such initiatives.

3 Google announced, in June 2015, that it was reviewing its policies to allow for the removal of revenge porn from its search results. Such a decision is considered to be very exceptional within the company’s policies. Singhal, A. (2015, 19 June). “Revenge porn” and Search. *Google Public Policy Blog*. googlepublicpolicy.blogspot.com.au/2015/06/revenge-porn-and-search.html

4 It is not only in Brazil that young teenagers have been exposed to this sort of violence. In the UK, for instance, police records show that one recent victim was 11 years old. Drury, I. (2015, 15 July). Child of 11 and pensioner are victims of revenge porn: Surge in cases over past six months sees both pupils and adults being blackmailed. *The Daily Mail*. www.dailymail.co.uk/news/article-3163131/Child-11-pensioner-victims-revenge-porn.html

5 Dip, A., & Afiune, G. (2013, 19 December). Como um sonho ruim (“Like a bad dream”). *Agência Pública*. apublica.org/2013/12/6191

6 Law No. 12.965/2014, Art. 21: “The internet application provider that makes third party generated content available shall be held liable for the breach of privacy arising from the disclosure of images, videos and other materials containing nudity or sexual activities of a private nature, without the authorization of the participants, when, by receipt of notice by the participant or his/hers legal representative, refrains from removing, in diligent manner, within its own technical limitations, such content. The notice set forth above must contain sufficient elements that allow the specific identification of the material said to violate the right to privacy of the participant-user and the confirmation of the legitimacy of the party presenting the request.” The Civil Rights Framework for the Internet (Marco Civil) is available in Portuguese and English at: www.publicknowledge.org/documents/marco-civil-english-version

other bills addressing the issue,⁷ in some of them criminalising the dissemination of intimate images without consent, in others changing the Maria da Penha Law⁸ on domestic violence against women to include violations of privacy. The current scenario is, however, contradictory: on the one hand, the public debate has been enriched with an awareness of the problem; on the other, the Congress elected in 2014 is seen as the most conservative since 1964,⁹ and this has led to setbacks in terms of human rights and gender-related issues.

What is the “Top 10”?

In May 2015, the Brazilian media began reporting on an online phenomenon that appeared to be different from reports of violence against women and girls on the internet that had so far appeared. It was happening in schools in Grajaú, Parelheiros, Peri Alto, Itaquaquecetuba, Jardins Buenos Aires, Itaquera, Caçapava and Itaim Paulista – all areas with low human development indices surrounding the metropolis of São Paulo, the largest in Brazil and one of the largest in the world.¹⁰ The phenomenon was referred to as the “Top 10”.

The “Top 10” involves videos produced from images of teenage girls downloaded off the internet without their permission which are then posted on YouTube, or shared on WhatsApp and (less frequently) on Facebook. In the videos, the girls are scored, and described in ways that supposedly reveal details of their intimate sexual lives and how “loose” they are sexually. Videos that contain some level of nudity are shared on WhatsApp only, to avoid YouTube’s take-down policy on nudity.

The media became interested in this phenomenon after they heard about attempted suicides in the districts of Parelheiros and Grajaú.¹¹ Accord-

ing to feminist activists from the Women in the Struggle Collective (*Mulheres na Luta*)¹² in Grajaú and the Rights Sowers Initiative (*Sementeiras de Direitos*)¹³ in Parelheiros who we interviewed,¹⁴ the phenomenon has been going on in the schools and communities for at least three years, but it has mostly been hidden “from adult eyes”.

The videos are updated, usually every week, so the girls move up or down in the rankings. This prolongs the exposure that the girls suffer through the violation of their privacy. The “Top 10” phenomenon gained such momentum that descriptive phrases about the adolescents who are ranked online began to appear as graffiti on school walls, and even on the homes of some of the girls. It led, in some cases, to physical abuse and harassment.

Grajaú, Parelheiros and many other districts on the outskirts of Brazilian cities are characterised, in general, by a low level of education, health and public security.¹⁵ The activists told us that the teenage victims have not been receiving proper support at their schools, and that to prosecute is also not an option: “The police presence here is not for us,” one said. What comes closest to a state protection network are the Basic Health Units, which employ community health agents hired by the state. The activists expressed conflicting opinions regarding how prepared these agents are to cope with the teenage victims. They also said that the teenage girls are likely to avoid going to the units for help. Because the units are situated within communities, the health agents are likely to know the adolescents and their families, which presents a further challenge to the teenagers’ right to privacy.

The efforts of activists in this context are three-fold: to welcome and assist the girls who fall victim to this abuse, to preserve their privacy within the community and beyond, and to work with the boys who share and watch the videos, who are generally the same age as the girls. Betting on the transformative power of public advocacy on gender and sexual rights, in Grajaú the Women in the Struggle collective organised a *Feminist Graffitiço*: an event that gathered women street artists together to paint over one of the walls that contained sexist

7 In the Senate, Bill 63/2015; in the Chamber of Deputies, Bills 6831/2013, 6630/2013, PL 6313/13, 5822/2013, 5555/2013, 7377/2014, 70/2015. In 2012, Law No. 12.737 was also approved – it is known as the “Carolina Dieckmann Law”, because it was voted immediately after the actress had intimate pictures leaked on the internet. The law made it a crime to invade information devices, and the penalty is higher if private electronic communications are obtained.

8 Law No. 11.340/2006, available (in Portuguese) at: www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm.

9 Souza, N., & Caram, B. (2014, 6 October). Congresso eleito é o mais conservador desde 1964, afirma Diap. (“Congress elected is the most conservative since 1964, Diap affirms”). *O Estado de S. Paulo*. politica.estado.com.br/noticias/eleicoes/congresso-eleito-e-o-mais-conservador-desde-1964-afirma-diap,1572528

10 See United Nations Development Programme (UNDP) data, in Portuguese, at: www.atlasbrasil.org.br/2013/pt/perfil_m/sao-paulo_sp.

11 Albuquerque, S. (2015, 27 May). Meninas abandonam estudos e tentam suicídio após entrar para a lista das “mais vadias” (“Girls drop out of school and attempt suicide after entering ‘biggest whores’ ranking”). *R7*. noticias.r7.com/sao-paulo/meninas-abandonam-estudos-e-tentam-suicidio-apos-entrar-para-lista-das-mais-vadias-27052015

12 <https://www.facebook.com/Mulheres-na-Luta>

13 <https://www.facebook.com/sementeirasdedireitos>

14 After a few previous contacts, we conducted interviews with activists from these groups on 15 and 17 July 2015, and have kept up communication since then.

15 Located in the extreme south of São Paulo, these districts are marked by the lowest level of human development in the city, according to the Municipal Human Development Index (IDHm - Índice de Desenvolvimento Humano Municipal). See (in Portuguese): www.prefeitura.sp.gov.br/sempla/mm/mapas/indice1_1.pdf

graffiti about the “Top 10” with empowering feminist phrases.¹⁶ In Parelheiros, the Rights Sowers are running workshops with teenage boys and girls (including victims of the “Top 10”) about women and the media.¹⁷

In both Grajaú and Parelheiros activists complain of the disrespect the traditional media show towards the girls when reporting on the problem. Newspapers and TV stations sought out the activists, who were vocal on social networks about what was happening in their communities, as a way to get to the girls and turn their stories into news pieces. The activists say that the media exposure represents nothing more than an amplification of the online violations to which the adolescents were already subjected – especially if the tone of reporting is one of victimisation rather than empowerment. Some of the girls were contacted even without the activists’ permission, and, with one notable exception,¹⁸ their stories were told sensationistically. The digital editing tools used by television programmes to protect the anonymity of those who accepted to be interviewed on TV – such as blurring an interviewee’s face – were insufficient to keep their identities private from their families and acquaintances.¹⁹ The positive agenda that the activists were implementing was ignored. Activists even reported coercion by one reporter who wanted to get access to the victims. The cycle of violence was fed.²⁰

The “Top 10” poses a difficult question regarding the framework for this discussion. Clearly there are parallels between this and the cases of revenge porn that have been taking place since 2013. However, here there is neither “revenge” nor “porn”. If in some cases revenge may be part of the motivation, it is not what characterises the practice; if the

sharing of personal images takes place, it is not necessarily porn – the images shared are typically Facebook profile pictures.

Neither the victims of the “Top 10” nor the activists supporting them in Grajaú and Parelheiros are making use of existing legal solutions, for at least two reasons. One is the physical distance from government services (transportation is scarce and relatively expensive). The second is the fear that accessing services that have, in the words of the interviewees, “been designed for someone else” could put them at risk. To think of law enforcement in these neighbourhoods is to think of the historical absence of the Brazilian state there.²¹ Another is that activists feel that imprisonment or other forms of civil remedy would be undesirable or even ineffective as a solution, since the core problem is *not* the disclosure of the sexual content as an act of criminality, but the long-term emotional impact on the lives of the teenage girls, as well as the motivation behind the boys uploading the videos in the first place. This position argues that the teenagers are simply mirroring the structures of the adult world they find themselves in, and should not be punished for it.²²

What happens when the Brazilian state looks at the problem?

The Committee for the Defence of Human Rights, Citizenship, Participation and Social Affairs of the São Paulo State Legislative Assembly held a meeting on 27 May 2015 to discuss the possibility of holding a public hearing on the “Top 10” phenomenon. The activists from Grajaú who were present at the meeting stressed the need for dialogue with governmental health and education sectors. In the end, the government officials did not participate in the public hearing, which took place on 10 June. Instead it was attended by São Paulo State Legislative Assembly deputies, activists and one computer expert. Companies such as Google and Facebook, although invited, did not attend. The main interest

16 Using the statements “Where one sister is exposed, there will always be a feminist group ready to defend her! Our Top 10 is something else, our Top 10 is feminist!”, the collective also promoted debates within the community about the problem. More information about this intervention can be seen in the video on their Facebook community page: <https://www.facebook.com/411459515662514/videos/570654566409674>, or the photos at: <https://www.facebook.com/media/set/?set=a.1601565713417871.1073741850.1458646637709780>

17 More information about the Rights Sowers, developed by the NGO IBEAC, can be obtained from their Facebook page: <https://www.facebook.com/semteiradireitos>

18 Albuquerque, S. (2015, 27 May). Op. cit.

19 In one case, interviews with victims were broadcast on national television. “Bullying postado na Internet prejudica alunas e preocupa pais” (“Bullying posted online harms girl students and worries parents”). *Jornal Nacional, TV Globo*. globotv.globo.com/rede-globo/jornal-nacional/v/bullying-em-video-postado-na-internet-prejudica-alunas-e-preocupa-pais/4246907

20 When we started the research for this report, we intended to interview victims. After comprehending the extent of the violence they were subjected to, we took the ethical decision to drop the plan.

21 This diagnosis becomes ever more problematic from the perspective of the rights that children and adolescents hold in our constitution. Article 227 of the Constitution of the Federative Republic of Brazil states that “It is the duty of the Family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to *guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.*” An English translation of the Constitution is available at: www.stf.jus.br/repositorio/cms/portaStfInternacional/portaStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf.

22 Although the Statute of the Child and the Adolescent (Law No. 8.069/1990) does include penalties for parents who do not fulfil their duties as parents, as defined by the statute, these were never mentioned by the agents we interviewed.

among the deputies was how to identify who uploads the content on YouTube, and the liability of the service providers who run the online platforms where content is uploaded to.²³

For us it was still an open question, as to exactly how the Brazilian legal framework responded to the sexual exposure of women and girls on the internet. To answer this question we researched judicial decisions extensively at the São Paulo Court of Appeals,²⁴ a process that led us to an interesting answer: the term “revenge porn” does not return any results in the court’s database. This is probably due to the absence of “revenge porn” as a legal category. The search for other terms that could describe the phenomenon of revenge porn returned 36 relevant results.²⁵

Civil or criminal cases that were returned through our search of the database always involved ex-boyfriends or partners, but the actual leaking of intimate content on the internet corresponded only to one case. In criminal cases, defendants were accused of:

- *Threat*: A defendant makes use of psychological violence, threatening to expose the images in his possession.
- *Threat and rape*: Sex is imposed as a condition for the non-disclosure of the intimate images.
- *Extortion*: The threat of disseminating the images is accompanied by demands for money or property.

In most cases, the motivation of revenge is not present or explicit. A third of the criminal cases involved adolescents under 18, and so specific legislation on children and adolescents applies.²⁶ In both civil and criminal cases, the large major-

ity of cases resulted in conviction.²⁷ As for lawsuits against content providers, all rulings, even in cases prior to the approval of the Marco Civil, were that once the company is notified it must remove the content under dispute and becomes liable if it does not.

What these results seem to show is that online forms of sexual violence against women and girls is a much broader issue than it seems to be at first. In other words, it is not just about dealing with the violation of a woman’s rights when intimate videos or pictures are shared online, but also refers to the fear of having these images disclosed, which is accompanied by threats of blackmail, and other forms of violence. In this context, the motivation of revenge does not seem to play a particular role. Looking at the cases we reviewed, we would like to propose that, since the courts ruled in favour of the victims, the widespread idea that this form of online violence against women does not lead to legal consequences in Brazil is misleading.²⁸

Conclusions

Our research forces us to ask whether discussions on public policy on violations against women online are being reductionist. In the “Top 10” cases, for example, if no nudity or private sexual acts are involved, would the special rule for intermediary liability in the Marco Civil apply? And would other bills under discussion in Congress apply? Also, why do we focus solely on leaking private images and videos, if it seems that threats and extortion related to this type of material are considerably more common? And lastly, could it be that online service providers should consider, when developing their terms of service, that content containing “porn” or “nudity” is not the only sort of content that can be harmful to women?

Another point is that narrowing policy discussion to criminalisation or liability proves to be reductive. The activists point to the strained relationship that certain communities have with the police, and believe that the punishment of teenagers is not the proper way to curb gender violence. They understand that it all comes down to education on gender

23 A short description of the discussions that took place during this public hearing was published on the Assembly’s official webpage: ALESP. (2015, 11 June). Onda de vídeos com conteúdo degradante contra adolescentes é discutida na CDH (“Wave of videos with degrading content against adolescents is discussed at the Committee of Human Rights”). www.al.sp.gov.br/noticia/?id=365141

24 The search was performed on the website <https://esaj.tjsp.jus.br/cjsg/consultaCompleta.do>, from 27 May 2015 to 5 June 2015.

25 After a testing phase, we defined the search terms “pornography”, “intimate image”, “intimate photograph”, “intimate video”, “intimate data”, “nudity” and “sexual relation” as our main keywords. They were each combined with keywords “Internet”, “social networks”, “WhatsApp”, “Facebook”, “Virtual” and “YouTube”, which led to 42 search term combinations. After excluding repetitions and cases outside the scope of our research, we reached the number of 36 decisions in which parties shared an intimate or sexual relationship (heterosexual, but only because no cases involving homosexual relationships were found).

26 Statute of the Child and the Adolescent, Law No. 8.069/1990. Available in Portuguese at: www.planalto.gov.br/CCIVIL_03/leis/L8069.htm

27 In civil cases, when the judges understood there was proof of moral damage, they determined that the victim be compensated. In criminal cases, defendants were sentenced to prison terms between one month and eight years.

28 There is one aspect that needs further research and could challenge this conclusion. There were very few cases involving actual exposure of the privacy of adults. We suspect there might be difficulty in prosecuting them, since crimes of this sort involving adults must be prosecuted through private legal actions, meaning the victim leads the process instead of a prosecutor. We are currently conducting interviews to assess the validity of this perspective.

equality in schools and in communities, and that the problem ultimately boils down to sexism. In fact, what unites the different practices mentioned in this article is that they only victimise people insofar as gender norms are evoked.

This view does not currently find sufficient support in the Brazilian legislature. In 2014, in negotiating the main guiding document of principles and goals for education for the next decade, the National Education Plan (PNE – *Plano Nacional de Educação*),²⁹ a crucial controversy arose over whether or not to include guidelines to promote equality, among which would be guidelines on gender equality and on sexual orientation. The guidelines were rejected by the conservative parliamentary group (mostly Christian), who dubbed them a “gender ideology”.³⁰ The result was a more general wording,³¹ which had a trickle-down effect on the legislative discussions at the state and municipal levels.

Action steps

Although the issue of gender and sexual orientation has not been specifically integrated in the PNE – which shows just how much gender inequality is misunderstood in the Brazilian context – gender

and sexual equality guidelines can still be incorporated in state and local plans. Many of these documents are currently under development, and it is up to civil society to monitor their formulation. An interesting model for such an initiative is one called the “An Eye on the Plans” (*De Olho nos Planos*) project.³²

In a context where gender violence is recurring and enhanced by the use of technologies, where the mainstream media’s approach to gender violence is troubling, where there are few supportive initiatives from social media platforms and ISPs, and resistance from policy makers, civil society must continue exposing violations in order to bring about a change in political attitude and policy.

The internet is a useful way to mobilise around the issue of gender and sexual violence online, publicising cases on blogs or writing articles for the alternative press online. Direct community action, especially with young people, is also needed.

Lastly, this report leads to the possible conclusion that the creation of new formal spaces of participation – such as multistakeholder working or advisory groups – in relevant state bodies and other institutions is necessary to better understand and deal with the issue of gender violence online.

29 Law No. 13005/2014. Available in Portuguese at: www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Lei/L13005.htm

30 Duarte, A. (2014, 20 March). Educação ou Ideologia: Dom Augusto fala sobre gênero na Educação (“Education or Ideology: Dom Augusto speaks about gender in Education”). *Zenit*. www.zenit.org/pt/articles/educacao-ou-ideologias

31 Fernandes, S. (2014, 22 April). Lobby conservador retira igualdade de gênero do Plano Nacional de Educação (“Conservative lobby removes gender equality from National Education Plan”). *Rede Brasil Atual*. www.redebrasilatual.com.br/educacao/2014/04/lobby-conservador-retira-igualdade-de-genero-do-plano-nacional-de-educacao-5214.html

32 An initiative implemented by Ação Educativa, Campanha Nacional pelo Direito à Educação, União dos Conselhos Municipais de Educação (UNCME), União Nacional dos Dirigentes Municipais de Educação (Undime), Associação Nacional de Política e Administração Educacional (ANPAE), Fórum Nacional dos Conselhos Estaduais de Educação (FNCE), supported by Instituto C&A and UNICEF. www.deolhonosplanos.org.br

BULGARIA

AZIS AGAINST ALL ODDS



BlueLink Foundation

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Introduction

An international music star at the peak of his career coming out as gay. His provocative music videos and posters contain graphic images of same-sex relations. Watched by millions online. Discussed by politicians and the media in his home country. Used as symbols of resistance against homophobic regimes abroad. This is the true story of Azis – the Bulgarian Roma super star whose record-breaking hits and drag-queen image conquered the popular folk music scene over the past decade.

Yet despite being the biggest celebrity in the Balkan region to have ever come out as gay, Azis receives anything from hostile ignorance to outright denial of his role by gender rights activists and analysts. They accuse him of being way too commercial, primitive, not genuine, unnecessarily presumptuous, and worse: of reinforcing popular, negative stereotypes of gay people, rather than confronting them.

With the popularity of Azis' music, videos and scandalous public image skyrocketing on local and international television and online, the lesbian, gay, bisexual and transgender (LGBT) movement appears to be missing a chance for an unprecedented breakthrough in the rigid homophobic and racist mass and social media sphere of Southeastern Europe. This article uses semi-structured interviews with activists and analysts to showcase the drivers and limitations in the popular politics of sex and sexual rights activism in Bulgaria that transpire in the story of Azis.

Hostile terrain

Over eight years after joining the European Union, Bulgaria's political and media sphere is marked by growing intolerance and denial of human and minority rights, while classic liberal and democratic values gradually lose public support. The populist neo-conservative messages and nationalistic and racist hate speech that prevail in the news and

mainstream politics often target unrepresented minorities such as Roma, LGBTs and – most recently – foreign refugees. Sexism is tolerated and encouraged in all aspects of social life,¹ leading to what Ibroscheva and Raicheva-Stover describe as “post-communist masculinization of democracy”.²

Among other minorities, Bulgaria's LGBT community is subject to increasing pressure from far-right, nationalist and religious groups who exercise growing influence on mainstream politics and public perceptions. The gender rights movement is under-represented both in mainstream news and online.³ An embattled Sofia Pride Parade organised annually since 2008 is faced with suspicion by most mainstream political parties and with aggressive hostility by nationalistic groups.⁴ Apart from notable exceptions, such as actor Marius Kurkinski, gossip columnist Evgeni Minchev, or the late celebrity stylist Dim Doukov, few renowned public figures chose to come out as gay over the past 25 years since the country moved from state socialism to formal democracy and capitalism.

Negative and derogatory attitudes to same-sex relations are fuelled by a toxic media where the absence of a functioning advertisement market leads mass media owners to sell supportive news coverage to businesses and politicians who can afford it.⁵ Ethical journalism is in decline⁶ and most news coverage focuses on crime, scandal, gossip and celebrities. Dominated by reality and entertainment formats, sports, lifestyle and consumption, media content is predominantly sexist and prone to repro-

1 Ibroscheva, E., & Raicheva-Stover, M. (2009). MPs with Skirts: How the Popular Press in Bulgaria Portrays Women Politicians. *Observatorio*, 2009(8), 311-335.

2 Ibid.

3 Vroom, R., & Antonov, P. (2012). Bulgaria: Divided movements, divided rights. *Global Information Society Watch 2012*. Association for Progressive Communications and Hivos. www.giswatch.org/en/country-report/womens-rights-gender/bulgaria

4 Potts, A. (2014, 7 July). 7th Sofia Pride march blocked by Bulgarian nationalist protesters. *Gay Star News*. www.gaystarnews.com/article/7th-sofia-pride-march-blocked-bulgarian-nationalist-protesters070714

5 Trifonova Price, L. (2014). A Free Press: Time for the EU to Act. *British Journalism Review*, 25(3).

6 Antonov, P. (2012). Environmental Storytelling: Negotiating Travelling Norms in Post-Socialist Journalism. PhD Thesis, The Open University, Milton Keynes. https://www.academia.edu/6048888/Environmental_Storytelling_Negotiating_Travelling_Norms_in_Post-Socialist_Journalism

duce male-chauvinist and religious-conservative views.⁷ And while these trends stem from traditional commercial media, they are now upheld by a new generation of online commercial outlets.

Music for the masses

A particular brand of music show business has flourished in Bulgaria's post-socialist environment over the past decade: pop folk – or *chalga*, as most Bulgarians refer to it. Having emerged as a folk-inspired dance music genre with influences from Greek, Turkish, Arabic, Serbian and Gypsy music, *chalga* evolved into a profitable and fast-expanding entertainment music industry in the decade after 1990.⁸ And while musically it is clearly dominated by Balkan and Oriental tunes, both the vision and textual content of pop folk are characterised by vulgar consumerism, male and national chauvinism,⁹ and excessive sexualisation of femininity.¹⁰ Ina Sotirova puts it a nutshell for the BBC:

From its inception in the 1990s, pop-folk has glamorised easy money and shady deals, aggressive men and promiscuous women. Although the genre has evolved and diversified over time, its explicit lyrics and videos continue to idealise a femininity marked by an incessant

sexual and material appetite, artificial looks and submissiveness.¹¹

With these features *chalga* responded so neatly to political and social trends in Bulgaria's society that some observers accuse it of actually shaping them,¹² while others go as far as conceptualising it as a reflexive “voice” of Bulgarians' perceived journey of catching up with Europe after 1989.¹³

As a music and entertainment genre *chalga* was originally ghettoised in specialised cable networks and radio stations in the beginning of this period. Since the end of the 1990s, it has poured into most mass media channels – both with its numerous music videos and with the overwhelming presence of its performers in various media content formats. Video-sharing sites such as YouTube and Vimeo.com, as well as online radio stations, expanded its reach further to predominantly young internet audiences during the 2010s.¹⁴

Among a myriad of *chalga* stars, Azis is the shiniest and most acclaimed at present. Born Vassil Trayanov Boyanov into a Roma family in the town of Kostinbrod, near Sofia, in 1978, Azis approached an already populated *chalga* music scene in the late 1990s. Gergana Petkova, who was well familiar with that scene as host of the first pop-folk music show on Sofia's general interest television channel Nova, explains his genesis as a star:

[Vassil Trayanov] was one of too many young starlets and felt that he needed to do more to be on the top. Pop-folk female singers are traditionally sexualised. But for male singers this is not easy to achieve. He chose sexualisation as a way to boost his star career and turned into Azis.¹⁵

The rest is history. Once named the “*chalga* gay king”,¹⁶ Azis would leave no taboo unturned to defend his “royal” title. Vulgar lyrics. Provocative images. Flamboyant cross-gender clothing.

7 Kotzeva, T. (2011). Младите хора, джендър стереотипите и рекламите [Young people, gender, stereotypes and advertisements]. Съвременна хуманитаристика, 2011(2). www.bfu.bg/uploads/pages/humanitaristika-broiz-2011.pdf; See also: Petkova, K. (2010, 11 December). Всички са равни, но само пред шоуто: джендър картината в българските риалити формати [Everyone is equal, but only for the show: The picture of gender in Bulgarian reality formats]. Семинар_BG. seminar-bg.eu/spisanie-seminar-bg/broy4-tabloidnata-kultura/item/291-%D0%B2%D1%81%D0%B8%D1%87%D0%BA%D0%B8-%D1%81%D0%B0-%D1%80%D0%B0%D0%B2%D0%BD%D0%B8-%D0%BD%D0%BE-%D1%81%D0%B0%D0%BC%D0%BE-%D0%BF%D1%80%D0%B5%D0%B4-%D1%88%D0%BE%D1%83%D1%82%D0%BE-%D0%B4%D0%B6%D0%B5%D0%BD%D0%B4%D1%8A%D1%80-%D0%BA%D0%B0%D1%80%D1%82%D0%B8%D0%BD%D0%B0%D1%82%D0%B0%D0%B2-%D0%B1%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D1%81%D0%BA%D0%B8%D1%82%D0%B5-%D1%80%D0%B8%D0%B0%D0%BB%D0%B8%D1%82%D0%B8-%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%82%D0%B8.html

8 Lazarov, A. (2004, 11 December). Попфолкът, истинският български шоубизнес [Pop folk: The true Bulgarian show business]. Капитал. www.capital.bg/politika_i_ikonomika/bulgaria/2004/12/11/229178_pop_folkut_-_istinskiyat_bulgarski_shoubiznes.

9 Rott, K., & Lilov, E. (2012, 19 April). Чалгизирането на България [The Chalgisation of Bulgaria]. DW. www.dw.com/bg/%D1%87%D0%B0%D0%BB%D0%B3%D0%B8%D0%B7%D0%B8%D1%80%D0%B0%D0%BD%D0%B5%D1%82%D0%BE-%D0%BD%D0%B0%D0%B1%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F/a-15890682

10 Stelova, R. (2007). Седемте гряха на чалгата: Към антропология на етнопопузиката [The seven sins of *chalga*: Toward anthropology of ethnopopmusic]. Sofia: Prosveta.

11 Sotirova, I. (2012, 10 February). Bulgaria's *chalga* pop-folk: A cultural rift. BBC News. www.bbc.com/news/world-europe-21364650

12 Penchev, B. (2007, 4 January). Бетовен, Шилер и чалга [Beethoven, Schiller and *chalga*]. Дневник. www.dnevnik.bg/analizi/2007/01/04/303001_betoven_shiler_i_chalga; and Rott, K., & Lilov, E. (2012, 19 April). Op.cit.

13 Livni, E. (2014). *Chalga to the Max!* Musical speech and speech about music on the road between Bulgaria and modern Europe. PhD Thesis, Indiana University. gradworks.umi.com/3672900.pdf

14 Savchev, G. (2009, 20 February). Чалга 2.0 [Chalga 2.0]. Култура. www.kultura.bg/bg/print_article/view/15276

15 Azis: the phenomenon. Interview with Gergana Petkova, former anchor of Top Folk at Nova TV. 14 May 2015.

16 Novinite.com. (2011, 18 November). Chalga Gay King Azis Sick of Bulgaria, Moves Abroad Forever. *Novinite.com: Sofia News Agency*. www.novinite.com/articles/134072/Chalga+Gay+King+Azis+Sick+of+Bulgaria,+Moves+Abroad+Forever

Purposefully shocking public behaviour. Penis enlargement. Lip surgery. Rumours of a planned sex change and breast implants. Erotic photo shoot with breasts. A lavish “wedding” ritual with alleged boyfriend Niki Kitaetsa (aka The Chinese), even though same-sex marriage is banned in Bulgaria, followed by an amicable separation. A daughter born by “close friend” Gala, allegedly through in vitro insemination. Alongside Azis’ undisputed musical talent, all these scandalous facts amplified by a sensationalist mass media produced an international show business mega star of a scale unseen in Bulgaria since the glory days of 1960s European *estrada* icon Emil Dimitrov.

But unlike Dimitrov, who had been arrested in his time for alleged homosexual conduct by the then socialist regime’s authorities, but never publicly admitted to being gay, Azis turned his sexuality into a primary selling point of his career. There had never been a drag queen in Bulgaria’s mass culture before him, and Azis mastered his transsexual image purposefully and carefully, as a calculated step to advance his career, Petkova explained. She then describes Azis as remarkably diligent, devoted to his work and “boringly pragmatic”¹⁷ – an important detail that might explain both his daring to pursue a seemingly impossible career as a gay Roma *chalga* singer, and his avoidance of any engagement with advocacy that could hamper his career.

Gay idol or false idol

Ordinary LGBT people were certainly less than thrilled by the “pragmatic” rise of Azis to a “gay idol” role¹⁸ in an inherently homophobic media and social environment. Victor Lilov, the first openly gay politician to run for the Sofia mayor’s office in 2015, is very negative about the role of Azis in shaping and fixing stereotypes.¹⁹ “Azis exploits these stereotypes in a way that derogates the Bulgarian public’s understanding of gender minorities and affirms them as a subject of mockery,” Lilov explained. LGBT activists do not like to be associated with marketing projects that rely on scandal, explained Svetla Encheva, a Roma and gender rights activist and blogger.²⁰

Calculated or not, the artistic actions of Azis came in sharp confrontation with the patriarchal nature of *chalga*²¹ and persistently fuelled public debate around gender equality in Bulgaria and abroad. In November 2007 a promotional billboard displaying Azis kissing Kitaetsa was censored by the order of then Sofia mayor and present prime minister General Boyko Borissov under the pretext that it strayed from the limit of public morals. Bulgarian LGBT rights social movement Gemini objected to the removal of the billboard, while Genoveva Tisheva of the Bulgarian Gender Research Foundation wrote in an op ed: “What is off limits in the graphic image of two naked male bodies is our heterosexual consciousness which Azis challenges yet again.”²²

Further, Tisheva used the incident to question the right of white heterosexual men with power to determine which kind of sexual relationship is acceptable for artistic interpretation in public and accused them of applying double standards by not acting equally strictly against similarly explicit imagery popularly displayed to advertise products such as alcohol.²³

The status of a gender emancipation icon assumed by Azis soon expanded beyond Bulgaria’s borders. His duo with rapper Ustata was described as “challenging not just musical conventions, but just about every traditional notion of masculinity” by Daryoush Haj-Najafi in his Men’s Fashion Blog in the *New York Times Style Magazine* in 2009.²⁴ Then in 2012 Anonymous used a video clip to Azis’s song *Мразиш* (“You Hate”)²⁵ to deface the website of the Khamovnichesky court where the members of the band Pussy Riot were convicted for demonstrating in a temple against human rights abuses in Russia.²⁶

Milena Fuchedjieva, acclaimed author of screenplays like *Zen Porn* (2002), *Crisis* (2005) and novels such as *Sex Under Communism* (2014), called for support for Azis in the aftermath of the 2014 Eurovision song contest which was won by Austrian pop recording artist and drag queen Thomas Neuwirth,

17 Azis: the phenomenon. Interview with Gergana Petkova. Op.cit.

18 Novinite.com. (2007, 5 August). Bulgaria’s Gay Idol Becomes Father. *Novinite.com: Sofia News Agency*. www.novinite.com/view_news.php?id=83861

19 A fake idol. Interview with Victor Lilov, openly gay mayoral candidate for Sofia with newly founded liberal party DEOS. 1 September 2015.

20 The attraction of Azis. Interview with Svetla Encheva, Roma and LGBT rights activist and blogger. 20 August 2015.

21 Daskalova, K. et al. (2012). *Gendering Post-socialist Transition: Studies of Changing Gender Perspectives*. Münster: LIT Verlag.

22 Tisheva, G. (2007, 23 November). Кривото огледало на хетеросексуалното ни съзнание [The curved mirror of our heterosexual consciousness]. Дневник. www.dnevnik.bg/print/arhiv_zh_grada/2007/11/23/400662_krivoto_ogledalo_na_heteroseksualnoto_ni_suznaniie

23 Ibid.

24 Haj-Najafi, D. (2009, 12 May). Kitsch of the Day – Azis i Ustata’s ‘Tochno Segá’. *New York Times Style Magazine*. tmagazine.blogs.nytimes.com/2009/05/12/kitsch-of-the-day-azis-i-ustatas-tochno-sega/?_r=1

25 <https://www.youtube.com/watch?v=F4hQ4J4BFOM>

26 Michaels, S. (2012, 22 August). Anonymous defaces website of court that convicted Pussy Riot. *The Guardian*. www.theguardian.com/music/2012/aug/22/anonymous-website-court-pussy-riot

better known as Conchita Wurst. Fuchedjieva criticised LGBT activists for never giving credit to Azis for his bold stand against homophobia at home and in Russia.²⁷

Conchita expresses a very different culture, embodying the activists' stereotype, Encheva says. "Azis seeks scandal, not just a manifestation of difference," she explained, acknowledging her respect for his talent and sense of scenic presence. She then praised his ability to hold the boundary between personal and professional identities. But Encheva refuses to acknowledge Azis's potential to alter public conventions in favour of LGBT people. "He plays with cross-dressing, with a drag queen [image], and with all the stereotypes that he can gather together, but this does not result in more tolerance," she commented.²⁸ Lilov also remains convinced that Azis cannot generate meaningful messages regarding the rights of the LGBT community.²⁹

But such a conclusion contradicts documented statements of Azis in favour of gay rights and European values, like the one he made in October 2004 when one of his billboards was taken down in Sofia for the first time. Azis then explained in a media interview that the removal of the billboard might stand in the way of Bulgaria entering the EU. "One of the clauses of the EU says that if there is discrimination of homosexuality, origin, etc., we shall not enter the EU," he explained, and was then quick to steer clear of any possible engagement with gay rights activism: "They want to say that I am telling people 'Be homosexual! While I am just advertising my new maxi single *Как боли* ('How It Hurts')." Still, the incident indicates that Azis is well aware of gay rights and of his potential as their advocate.

In 2011 Azis complained publicly for the first time against "the homophobia, the racism, the fact that the people here do not value my talent."³⁰ While of course this statement could easily be waved off as yet another media sensation, it might also be a rare occasion of Azis breaking his own pragmatic convention and voicing a truly personal account of the challenges he faces as a Roma gay musician in Bulgaria.

Problems, opportunities and action steps

Both Encheva and Lilov agree that gender equality is in decline in Bulgaria. Opinion leaders, politicians and public figures are ever more reluctant to come out as lesbian or gay, which prevents the LGBT community from generating leaders who openly identify and demand equality. While part of the reason might lie within the reluctance of potential leaders to come out, as suggested by Lilov,³¹ there are indications that Bulgarian society is slipping into extreme conservatism whereby the rights of one or another minority could easily be sacrificed. In Lilov's view such a scenario is systematically pursued by oligarchic media ownership, which aims to degrade European liberal values and promote a conservative Orthodox public moral that is more typical of Russia instead.³²

The internet sphere, similarly, is increasingly reflecting the traditional media environment. According to Lilov, opinion leaders on social networks are unable to compensate for the influx of intolerance against LGBTs and other minorities that dominates online media content. Internet users who seek balanced, tolerant viewpoints need to refer to Western liberal outlets such as the BBC, *The Guardian*, *The New York Times* or *Deutsche Welle*. But this is only true for a very narrow group of users on the social networks. The majority of people uncritically circulate the degrading messages planted by mainstream media, Lilov explained.

In this rather grim context, the story of Azis indicates that LGBT and other minority rights advocates may seize surprising opportunities and act upon them:

- It proves that pursuing an openly gay identity is not necessarily professionally damaging for a public person. In fact, with a great deal of discipline, hard work and intuition, it might turn out to be quite beneficial: something that Victor Lilov and other politicians and opinion leaders might learn from.
- While Azis has maintained a distance from LGBT activism, by exploiting different sexualities commercially there is evidence that he is aware of the plight of gay people and has been willing to speak about it. This demonstrates a great potential for galvanising public support and reversing the negative trends in gender rights, should he or other celebrities embrace this form of publicity more actively.

27 Fuchedjieva, M. (2014, 13 May). Война на красотата срещу „красотата“ [The war of beauty against "beauty"]. *WebCafe*. http://www.webcafe.bg/id_1400902069/fpage_4

28 The attraction of Azis. Interview with Svetla Encheva. (2015) Op.cit.

29 A fake idol. Interview with Victor Lilov. (2015). Op.cit.

30 [https://www.youtube.com/watch?v=CmXwNwa_Tts&src_vid=zDMOxDwZZIM&feature=s2lp&annotation_id=pfC%3ACmXwNwa_Tts; and Mihaylova, A. \(2004, 7 October\). Азис: няма да ни приемат в ЕС заради сваляния билборд \[Azis: We won't be allowed into the EU because this billboard was taken down\]. *Novinar*. novinar.bg/?act=news&act1=det&mater=MTQxOTsZMA==](https://www.youtube.com/watch?v=CmXwNwa_Tts&src_vid=zDMOxDwZZIM&feature=s2lp&annotation_id=pfC%3ACmXwNwa_Tts; and Mihaylova, A. (2004, 7 October). Азис: няма да ни приемат в ЕС заради сваляния билборд [Azis: We won't be allowed into the EU because this billboard was taken down]. <i>Novinar</i>. novinar.bg/?act=news&act1=det&mater=MTQxOTsZMA==)

31 24Hours (2011, 17 November) Азис напуска България завинаги [Azis leaves Bulgaria forever]. *24Часа.bg*. www.24chasa.bg/Article.asp?ArticleId=1116465

32 A fake idol. Interview with Victor Lilov. (2015). Op.cit.

- The case also speaks of the existence of vast unexplored areas in the public domain that appear alien and even hostile to rights discourses at first glance, but could be turned into allies for activists pushing for gender, minority, environmental and other rights. Relevant to this report is the unnecessarily stigmatised pop folk fan base of Bulgaria. Nothing indicates that it is necessarily prone to ideologies of hate and intolerance and it is up to LGBT and other rights defenders to successfully reach out to it.
- Finally, the story of Azis shows how interlinked the causes of problems experienced by different minorities are. As a talented performer of Roma origin, who publicly came out as gay, Azis has been forced to continuously break conservative taboos and overcome the inherent discrimination of gender expression and Roma rights alike. This suggests that further analysis of the possible synergies between ethnic and gender minority movements might be beneficial for guiding further practical cooperation in their activities, and media and web outreach.

CANADA

CRIMINALISING, REDRESSING AND EMPOWERING: CANADIAN LEGAL RESPONSES TO CYBER MISOGYNY



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Introduction

Cyber misogyny is a new spin on an old problem. It is the technology-enabled manifestation of the long-standing issue of violence against women. Though the term escapes a universal definition, it is commonly understood to comprise the different forms of online gender-based hate speech, sexual harassment, and abusive behaviours targeting women and girls.¹ The five most common manifestations of cyber misogyny are so-called revenge porn, non-consensual sharing of intimate images, child sexual exploitation, cyber stalking, and gender-based hate speech online.² Advocates for safer online spaces for women and girls insist on distinguishing cyber misogyny from cyber bullying in order not to erase the discriminatory and gendered nature of the behaviour. According to numbers from the United Nations, an estimated 95% of online aggressive behaviour, harassment, abusive language and denigrating images are aimed at women and come from current or former male partners.³ Online violence is therefore tied to the larger social problems of sexism and misogyny, while the online space, with its anonymity, affordability and wide reach, allows for the proliferation of misogynistic abuse.

This report aims to provide an overview of the tools available to women and girls within Canada's legislative body, from criminal law recourse to avenues for civil redress. In doing so, it hinges on issues of freedom of expression, privacy rights, and state surveillance.

Policy background

The terminology around technology-enabled violence against women entered mainstream discourse in Canada following the high profile cases of teens committing suicide after a prolonged period of online abuse and sexual harassment. On 10 October 2012, 15-year-old Amanda Todd from British Columbia committed suicide after years of bullying following the distribution of topless pictures of her. A few months later, in April 2013, 17-year-old Rehtaeh Parsons committed suicide after photos of her alleged gang rape by four boys at the age of 15 circulated in her school.

Public outrage at the deaths morphed into conversations about online violence. Often, however, these conversations are articulated around the notion of cyber bullying and therefore gloss over the systemic roots of the violence. Canadian feminist activists have worked to highlight the social hierarchies and relations of power at the roots of the sexual violence online. In parallel, a public conversation on the effectiveness of existing legal tools to address this problem took place, holding perpetrators of technology-enabled sexual violence legally responsible for their conduct and calling for redress for their victims.

Criminalising

Canada's legal landscape features no definition of cyber misogyny, and no criminal offence specifically prohibits it. Instead, a wide range of existing legal tools and mechanisms can be used to address one manifestation of cyber misogyny or another. In other words, depending on the nature of the cyber misogyny activity, a number of offences in the criminal code can be used to prosecute the perpetrators.

Among the offences used to prosecute cyber misogyny are criminal harassment,⁴ extortion,⁵ intimidation,⁶ uttering threats,⁷ voyeurism,⁸ publication of obscenity,⁹ false messages,¹⁰ counselling

1 West Coast LEAF. (2014a). *#CyberMisogyny: Using and strengthening Canadian legal responses to gendered hate and harassment online*. www.westcoastleaf.org/wp-content/uploads/2014/10/2014-REPORT-CyberMisogyny.pdf

2 For a definition and examples of each manifestation, see West Coast LEAF. (2014a). Op. cit.

3 Association for Progressive Communications. (2010). *How Technology is Being Used to Perpetrate Violence Against Women – And to Fight It*. <https://www.apc.org/en/system/files/How+Technology+is+Being+Used+to+Perpetrate+Violence+Against+Women+%E2%80%93+And+to+Fight+it.pdf>

4 Criminal Code, RSC 1985, c C-46, s. 264

5 Criminal Code, s. 346

6 Criminal Code, s. 423

7 Criminal Code, s. 264.1

8 Criminal Code, s. 162

9 Criminal Code, s. 163

10 Criminal Code, s. 372(1)

suicide¹¹ and defamatory libel.¹² Offences related to the way the technology is used include the unauthorised use of a computer,¹³ “mischief” in relation to data,¹⁴ identity theft and identity fraud.¹⁵ With relation to online sexual exploitation of minors, some existing offences are child pornography,¹⁶ luring of a child using the internet,¹⁷ sexual exploitation¹⁸ and making sexually explicit material available to a child.¹⁹

This approach is both palliative and limited. It is palliative because, in the absence of specific criminal offences related to online violence against women, the onus is left on the prosecutors and the victims to find the best legal option. It is limited because most existing criminal offences require a specific additional conduct, besides online violence against women, before deeming it prosecutable.

For example, cyber stalking, though not legally defined, is often prosecuted as criminal harassment.²⁰ However, harassment is only criminal under Canadian law if the target has “reasonable fear” for her safety or the safety of someone she knows. This fear includes the risk of physical as well as psychological or emotional harm, and is left to the appreciation of the court on the basis of the submitted evidence. Embarrassment, humiliation, and breach of privacy are not necessarily equated with “fear” by the courts.²¹

A few of these problems were rectified when the federal Protecting Canadians from Online Crime Act came into force in March 2015.²² To use the same example, cyber stalking can now be prosecuted as a harassing and indecent communication. Before the changes, only communications made by telephone calls, regardless of how indecent or harassing they were, could constitute a criminal offence. The criminal provisions related to false information and indecent communication were also modernised by the Act to include any means of tele-

communications, thereby extending them to online communications.

The main change to the Act is the creation of a new criminal offence. Canadian law now explicitly criminalises the publication of intimate images without the consent of the person depicted. Intimate images are defined as a “photographic, film or video recording” in which a person is nude, exposing intimate regions or “engaged in explicit sexual activity”. For the publication to constitute a criminal offence, the person depicted must have a “reasonable expectation” of privacy, meaning that they expected the image would be kept in the private sphere. This new offence fills a gap in Canadian criminal law. It used to be that the distribution without prior consent of intimate images of an adult could only be prosecuted in the presence of additional aggravating factors, while child pornography provisions were applied if the depicted person is a minor.²³

Advocacy groups for women’s rights welcomed the changes brought by the Act, but described them as a limited response to a broader societal issue that focuses only on the application of criminal law.²⁴ Moreover, the sections of the Act infringing on privacy raised numerous concerns. Indeed, the federal government made the provisions of the Act related to online violence contingent on increased state surveillance.²⁵

Moreover, given the lack of a definition for technology-enabled violence against women in the legal landscape, there is a corresponding lack of clarity as to the procedures and investigation process in these cases.²⁶ It is important to ensure a gender-sensitive approach to enforcement and implementation of criminal laws applied to cyber misogyny as well as proper training on how to handle technology-enabled cases of violence against women.²⁷

Redressing

Though criminal activity is under federal jurisdiction, provinces in Canada have the powers to enact legislation affecting education and civil law, two fields under provincial jurisdiction.

11 Criminal Code, s. 241

12 Criminal Code, s. 298-301

13 Criminal Code, s. 342.1, 342.2

14 Criminal Code, s. 430(1.1)

15 Criminal Code, s. 402.1, 402.2, 403

16 Criminal Code, s. 163.1

17 Criminal Code, s. 172.1

18 Criminal Code, s. 151-153

19 Criminal Code, s. 171.1

20 Criminal Code, s. 264

21 CCSO Cybercrime Working Group. (2013). *Report to the Federal/ Provincial/Territorial Ministers Responsible for Justice and Public Safety – Cyberbullying and the Non-consensual Distribution of Intimate Images*. www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii

22 www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6830553&File=4

23 CCSO Cybercrime Working Group. (2013). Op. cit.

24 West Coast LEAF. (2014b). Submissions to the Standing Committee on Justice and Human Rights on Bill C-13: An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act, and the Mutual Legal Assistance in Criminal Matters Act.

25 Ibid.

26 Women’s Legal and Human Rights Bureau. (2015). *From impunity to justice: Domestic legal remedies for cases of technology-related violence against women*. Association for Progressive Communications. www.genderit.org/resources/irpunity-justice-domestic-legal-remedies-cases-technology-related-violence-against-women

27 Ibid.

Provinces can establish torts (civil wrongs). This option allows women and girls to take positive actions to stop the abuse through court-issued injunctions and to seek damages (monetary compensation) for the harm endured. There seems to be no tort of harassment, but women and girls can obtain civil redress for violation of their rights through the torts of defamation and invasion of privacy.²⁸ Legal options for civil redress raise questions of access to justice, because civil law suits are often time-consuming, open to public scrutiny, expensive, and sometimes not covered by provincial legal aid regulations.²⁹

With regards to public scrutiny, some advocates have called for enhanced privacy protections for women and girls when technology-enabled violence is part of a case, maintaining that it should be considered by courts to be a prerequisite to ensuring the proper administration of justice.³⁰

Nova Scotia's newly created Cyber-safety Act (CSA),³¹ enacted three weeks after the suicide of Rehtaeh Parsons, introduces a tort of cyber bullying.³² The adopted definition of cyber bullying is not restricted to minors and therefore makes it possible to use it for the benefit of adults.³³ The CSA allows a person to request the court to issue a protection order prohibiting a person from engaging in cyber bullying, confiscating any electronic devices and discontinuing a person's internet access.³⁴ It also empowers the court to award damages³⁵ and renders parents legally liable for their children's online conduct.³⁶ The legislation creates the Cyber SCAN investigative unit tasked with the investigation of cyber bullying complaints and granted data collection powers.³⁷

Several Canadian provinces have also passed legislation amending their respective Education Acts to address online violence. In Québec, the Edu-

cation Act and An Act Respecting Private Education require schools to establish an anti-bullying plan and give principals the authority to expel students who pose a risk to the safety of others. Similar provisions were included in 2012 in Ontario's Education Act.³⁸ Some provincial laws include a specific reference to a particular kind of discrimination. For example, Manitoba's Public Schools Amendment Act (Safe and Inclusive Schools) provides a definition of bullying and requires schools to implement a respect-for-human-diversity policy.³⁹ Reference to discrimination provides a useful element for a legal framework to address cyber misogyny because of the gendered nature of the conduct.

Empowering

Law can play a crucial role in addressing cyber misogyny by holding perpetrators legally accountable for their actions, denouncing and deterring abusive conduct online, and remedying the suffered harm.⁴⁰ Yet, given the breadth of online abusive behaviour targeting women and girls, no single legislative response can address it fully. Moreover, three comments must be made as to the use of laws to halt technology-enabled violence against women.

First, legislative provisions, criminal or civil, can only respond after the fact, once the cyber misogyny has occurred and harmed women and girls.⁴¹ Second, the existence of legal tools does not guarantee that they are enforced and implemented.⁴² Third, provisions that protect and victimise women and girls are rarely articulated in a way that empowers them.

In that context, it is imperative to develop a comprehensive and systematic approach to ensure that laws and policies addressing cyber misogyny respond to the actual experiences of women and girls, monitor enforcement of those policies, and foster prevention initiatives that aim to change attitudes.

This would serve to shift the role of women and girls from victims who need protection from the state to empowered actors in their own experiences. It can take the form of open consultations with women and girls who experience cyber misogyny, popular education initiatives to foster secure online

28 Korte, C. A., & Gatensby, A. H. (2015). *No Man's Land: Cyberbullying and the Canadian Legal Landscape*. clcnw.com/uploads/articles/75/no-mans-land.pdf?1428588648

29 West Coast LEAF. (2014a). Op. cit.

30 Safety Net Canada. (2013). *Executive Summary: Canadian Legal Remedies for Technology-Enabled Violence Against Women*. www.bcsth.ca/sites/default/files/SNC_Executive%20SummaryLegalRemedies2013_2.pdf

31 Cyber-safety Act, SNS 2013, c 2. www.canlii.org/en/ns/laws/stat/sns-2013-c-2/latest/sns-2013-c-2.html

32 For a detailed overview of the CSA, see: Nyst, C. (2014). *Technology-related violence against women: Recent legislative trends*. Association for Progressive Communications. <https://www.apc.org/en/pubs/technology-related-violence-against-women-%E2%80%93-recent>

33 Cyber-safety Act, s. 2

34 Cyber-safety Act, ss. 2, 5, 8, 9

35 Cyber-safety Act, ss 21, 22

36 Cyber-safety Act, ss 22(3)

37 Cyber-safety Act, s. 26; cyberscan.novascotia.ca

38 CCSO Cybercrime Working Group. (2013). Op. cit.

39 Ibid.

40 West Coast LEAF. (2014a). Op. cit.

41 Ibid.

42 Fascendini, F., & Fialova, K. (2011). *Voices from digital spaces: Technology-related violence against women*. Association for Progressive Communications. <https://www.apc.org/en/node/14236>

behaviour and increase autonomy as a technology user, and the implementation of measures to ensure participation of women and girls in the development of policies related to cyber misogyny.

Action steps

The following action steps are suggested for Canada:

- Create a dedicated office tasked with data collection, research, and recommendations on implementing and creating laws and policies addressing cyber misogyny.
- Conduct an extensive review of Canada's legislative body to define the gaps in the legal response to cyber misogyny before creating new laws.
- Include the input and experiences of women and girls in drafting legislation through consultations.
- If there is a legal gap, focus on redress over criminalisation.
- Increase and promote public awareness and prevention campaigns aimed at empowering women and girls – for example, media literacy and cyber security workshops – instead of implementing control and data collection measures.

CHILE

FIGHTING THE CRIMINALISATION OF ABORTION WITH ONLINE INFORMATION: THE CASE OF *ABORTO LIBRE*



Derechos Digitales

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Introduction

Chile is one of the few countries where abortion is outlawed regardless of the particular case, along with Nicaragua, Malta, El Salvador, the Vatican and the Dominican Republic – with harsh penalties for those who perform abortions.¹ To date, there have been several attempts to push for legislation to legalise abortion in Chile, all of which have failed or remain hanging in Congress. However, this year might be a turning point: on 31 January, Chilean President Michelle Bachelet announced new legislation that contains three types of circumstance in which abortion would not be a crime.

The initiative is currently being debated in Congress, where the country's political elite remain divided between those who stand for women's rights to sexual and reproductive health, and the so-called "pro-life" supporters of the conservative wing.

In this political and social setting, the internet has become one of the most important platforms for sexual and reproductive health rights activists to express their opinions, provide information and exercise their rights. But at the same time the internet can invite harassment and infringement of communications privacy. In this report we examine the case of *Aborto Libre* (Free Abortion), a Chilean collective that uses technology to distribute information about abortion to women who need it.

Policy and political background

Abortion had been allowed in certain cases in Chile until 1989, when in the final year of Augusto Pinochet's rule (1973-1990), legislation was enacted to universally outlaw abortion. Since 1990 there have been a few attempts to end its criminalisation. Women who live in Chile have had to cope with a reality

in which, under the law, they are forced to continue gestating a foetus at any cost. Despite abortion being illegal, women in certain circumstances have continued to search for ways to terminate their pregnancy.² In the midst of severe restrictions on information about abortion, a polarised Congress, and a situation which forces unwanted pregnancies on them, desperate women have sometimes paid for clandestine procedures and more recently have resorted to purchasing drugs and pills of dubious origin.³

In 2009, a group of feminists formed the *Aborto Libre* collective and set up a telephone hotline to provide information to women contemplating abortion, replicating a similar foreign initiative. Today, *Aborto Libre* also has a website and an email account as well as a Facebook fan page.

In the face of crippling legal restrictions, Chilean women have managed to find a way to exercise their sexual and reproductive rights through the internet – from buying contraction-inducing pills online to finding information about how to end an unwanted pregnancy.

2 It is hard to say what the actual percentage and numbers of clandestine abortions in Chile are. According to the University of Chile in 2005, some 200,000 clandestine abortions take place in our country every year. On the other hand, Pontificia Universidad Católica de Chile places the number around 160,000. See Universidad de Chile. (2005, 8 August). En Chile 200.000 mujeres interrumpen su embarazo. www.uchile.cl/undinz/actuales/noti4891.shtml and Oyarzún, E. (n/d). Por qué no innovar en la legislación sobre el aborto terapéutico. *Pontificia Universidad Católica de Chile*. escuela.med.puc.cl/publ/arsmedica/ArsMedica18/Porque.html.

3 In 1995, 1999, 2006 and 2014, the Committee on the Elimination of Discrimination against Women (CEDAW) publicly stated its concern and recommended that Chile legislate on therapeutic abortion. It also called on the state to take concrete measures to enhance women's access to health care, in particular with regard to sexual and reproductive health services. A group of visitors from the UN came to Chile last year and shared their concerns about the abortion legislation in this country. They were relieved to hear about the new legislation that was going to be announced.

On 26 February this year, UN Women Executive Director Phumzile Mlambo-Ngcuka gave an interview for CNN Chile in which she stated that abortion, given with proper medical care and a supportive legal framework, is a realisation of sexual and reproductive rights.

The interview can be viewed here: <https://www.youtube.com/watch?v=G6MPWc3fCA8>

1 Halper, K. (2013, 21 May). 5 Countries That Would Let a Woman Die Before Getting an Abortion. *Care 2*. www.care2.com/causes/the-5-countries-that-would-let-a-woman-die-before-getting-an-abortion.html

The case of *Aborto Libre*

Aborto Libre is a group which stands for women's and lesbian rights and advocates free abortion. It defends a woman's right to abort regardless of circumstances. The group was formed because people thought it crucial to fight for female and lesbian rights and to distribute information regarding abortion. The group has stated that an induced abortion should be a normal right and procedure. But in Chile abortion entails a stressful and problematic situation where women have to resort to clandestine measures.

The group started out by providing general information to women who live in Chile via a telephone hotline. They offered advice on how to induce an abortion through the use of Misoprostol pills, and also gave lectures on the subject.⁴

The decision to migrate towards using the internet was taken to expand the scope of their work with Chilean women. According to *Aborto Libre*, in Chile almost all women have an email account or a Facebook profile: "Today the internet opens up a lot of possibilities to share information with women that we cannot reach physically, who live in outlying regions and isolated places."⁵ It is *Aborto Libre's* strategy to circumvent legal restrictions by refraining from saying where or how to buy Misoprostol on any of its communications platforms, in this way evading possible legal consequences within the current legal framework. Instead, they merely provide information about how to use these pills – asserting the right to give and access information, and stating clearly that they are only communicating what is already available in World Health Organization (WHO) directives.

The internet has also been particularly useful for *Aborto Libre* to share information with the outside world about the legal status of abortion in Chile. Despite it being impossible under the current laws to maintain a presence in local mass media, *Aborto Libre* has been featured in reports in international media.⁶ The group's members believe this has provided an affirmation of their work and acted "as a safeguard when something happens. [...] We assume that international exposure will protect us."⁷

The threats that *Aborto Libre* faces can be divided into two categories: surveillance and online harassment.

Surveillance of sexual rights advocacy

Members of *Aborto Libre* have reportedly been investigated on at least three occasions.⁸ The most significant attempt was when the public prosecutor investigated the group for the felonies of inciting the commission of a crime and criminal association. Although no formal charges were filed, it was the most serious threat of prosecution faced so far, which the organisation perceived as a violation of the right to due process of law. Police officers interrogated group members' relatives about their activities. As a result, some activists based in the north, in Iquique, got scared and closed the group's email account.

The group further suspects that their communications are prone to being intercepted. Despite being a group that aims to raise public awareness and offer support to the public regarding abortion, they do not have a strong presence in mass media, which means the state can only find out about their activities by tracking their communications. For this reason, the members of *Aborto Libre* are careful with the information they publish on their communications platforms. However, the real threat to privacy occurs when women call in or write to *Aborto Libre*. On such occasions, a lot of personal information is shared and could be intercepted.

Online harassment and hatred

Aborto Libre has faced online harassment and has received aggressive messages through email, in the comments section on their website, and via their Facebook page. The activists downplay these comments, and label them as "insults" and "religiously inspired comments", even though they entail name-calling, death threats and attempts at shaming women for having intercourse. The Facebook page has been taken down several times because of user notifications to Facebook denouncing the page's content, even though it is not illegal in any way.⁹

The frequency of the messages has decreased over the years due to the group's preventive measures – such as closing the comments section on the website and on a Facebook post, or simply not replying.

4 *Aborto Libre*, using this name, started its operations in 2012, but by their own account most of the members were originally part of the hotline associated with the group *Feministas Bío Bío de Concepción*. This group was the first to bring the pro-choice initiative to Chile in 2005 through financing from the Dutch association Women on Waves and Coordinadora Juvenil de Ecuador. *Aborto Libre* is the current embodiment of this ongoing project in Chile.

5 Interview with members of *Aborto Libre* by Derechos Digitales on 26 June 2015.

6 Nelsen, A. (2013, 3 January). Taking Calls on Abortion, and Risks, in Chile. *The New York Times*. www.nytimes.com/2013/01/04/world/americas/in-chile-abortion-hot-line-is-in-legal-gray-area.html?smid=tw-nytimesworld&seid=auto&_r=2

7 Interview with members of *Aborto Libre* by Derechos Digitales on 26 June 2015.

8 Universidad Diego Portales (2013). *Informe Anual sobre Derechos Humanos en Chile*.

9 The group has avoided troubles with NIC Chile by hosting its website in a foreign country, with a domain name not ending in .CL. At the same time, all the domains registered in Chile that contain the word "abort" or "abortion" are owned by anti-choice groups or are not currently available for registration, as we observed when searching for these terms in NIC Chile on 11 May 2015.

In fact, they say the main reason for shutting down the comments sections on their communications platforms was to avoid receiving advertisements for Misopostrol from suspicious sources.

The legal framework and finding solutions

Harsh public opposition against abortion providers and pro-choice activists is a reality in various parts of the world, and many activists label some of that opposition as hate speech.¹⁰ Although there is little research being done in Chile on hate speech and the internet, evidence of why pro-choice women in the country consider themselves victims of hate speech is readily available.¹¹

Chilean law does not provide specifics on hate speech outside the mainstream press. The “Anti-Discrimination Law”¹² does not really cover the issue, nor does the Penal Code.

In the case of *Aborto Libre*, it is clear how the internet is not only a platform for distributing necessary information to women regarding abortion, but is also a space where those seeking and providing such information are harassed. It is interesting to see how the activists have managed to neutralise the harassment, minimising its impact, even if this means they have had to adapt their normal behaviour to do this. However, it is more important to keep in mind that the real threat to activists and their work is the law which criminalises women who have an abortion, as well as how the law provides a pretext for harassment and the infringement of women’s privacy through technology.

For criminal investigation purposes, Chilean law imposes an obligation on internet service providers (ISPs) to retain metadata on the activities of all registered IP addresses for at least one year.¹³ Under court authorisation, public prosecutors can ask for this data to be disclosed, but ISPs

are simultaneously required to protect their users’ privacy.¹⁴ Sadly, there have been many cases where law enforcement entities have not followed regular procedures, asking for the IP addresses of a range of users based on mere suspicion, often with service providers complying with such requests even without court orders.¹⁵

Public prosecutors can also request the interception of private communications. The Chilean Criminal Procedure Code states that it is necessary to get court authorisation for interception. But several unrelated accounts of abuse regarding information technology by law enforcement officials have come to light, with no reports of consequences for those officials.

Given the dubious legal context, *Aborto Libre*’s fears about surveillance are not unrealistic. Rather, they are probably understated.

Conclusions

Abortion in Chile is banned regardless of circumstance, and an infringement of the law entails criminal penalties for those involved. As a result, proponents of the right to abortion resort to the internet to circumvent the restrictions placed on them by the Chilean legal system. The internet allows people to access information about abortion and about the means to practice an abortion.

However, for activists such as the members of *Aborto Libre*, the threat of the “offline” world remains: even though they do not think of online harassment as something dangerous, they have had to change their online behaviour to avoid the threats they receive. And apart from a legal framework which criminalises all types of abortion, the technology exists to monitor activists, putting their own privacy and the personal data of women who seek help at risk.

In such situations, a technical response, including encryption, makes sense.

Answers on the legal front are also needed. The law in Chile has to progress to a state where the anonymity and personal data of activists, human rights defenders and vulnerable groups are protected, with improved legislation on hate speech and freedom of expression (especially as regards the internet), and liability for those responsible for infringements. In addition, the authorities have to respect due process and respect privacy,

10 Arthur, J. (2011, 21 September). The Limits of Free Speech. *RH Reality Check*. rhealitycheck.org/article/2011/09/21/limits-free-speech-5/

11 After a pro-choice rally in 2013, some people instigated riots in the main Catholic cathedral in Santiago. The executive director at Observatorio de Género, the feminist NGO behind the organisation of the rally, said: “There has been constant political action from institutions such as the Catholic church and other churches, to impose their lifestyle and point of view on the entire country. [...] As long as the conflict incited through hate speech is not addressed, these situations will continue happening.” See *Cooperativa.cl*. (2013, 27 July). Organizadora de marcha pro aborto: La Iglesia tiene un discurso de odio y violencia sistemática. *Cooperativa.cl*. www.cooperativa.cl/noticias/pais/mujer/organizadora-de-marcha-pro-aborto-la-iglesia-tiene-un-discurso-de-odio-y-violencia-sistemática/2013-07-27/091056.html

12 Ministerio Secretaría General de Gobierno. (2012). *Ley N° 20.609 Establece Medidas contra la Discriminación*. www.leychile.cl/Navegar?idNorma=1042092

13 Article 24 H, Telecommunications Law. www.leychile.cl/Navegar?idNorma=29591

14 Article 222, Criminal Procedure Code.

15 Derechos Digitales. (2010). *Policía de Investigaciones de nuevo vulnera privacidad en Internet*. <https://www.derechosdigitales.org/1925/policia-de-investigaciones-de-nuevo-vulnera-privacidad-en-internet>

transparency and accountability in matters of communications surveillance.

But halfway through the current discussions on the draft bill on abortion, we should nevertheless realise that the internet is probably not the most suitable medium to address the problems of advocacy; engaging in public policy processes is. Chile has to address the current reality in which women for various reasons have to put their lives and their freedom at risk when they use the web, either for buying the necessary drugs illegally or trying to obtain information – information that might often not be accurate or safe.

Action steps

The following advocacy steps are recommended for Chile:

- Educate both the general population and medical workers to acknowledge and respect the need for sexual and reproductive health rights and the privacy rights of women.
- Encourage intermediaries to include gender sensitivity in their policies, and to include measures that protect freedom of expression around sexual and reproductive rights on the internet.
- Strive for the enactment of legislation on hate speech (especially on the internet) so that those responsible for infringements are legally liable.
- Consider including more protection for privacy and freedom of expression rights in the new Chilean Data Protection Law, especially with regard to vulnerable groups.
- Encourage local activism to achieve a secure and encrypted internet.
- Hold civil society workshops offering technical training in online security, especially for vulnerable groups and human rights activists.

CHINA

LESBIANS ORGANISING ONLINE: WHEN LESBIANS COME OUT AND MARRY GAY MEN IN CHINA



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Xiaopei He

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Introduction

The first website dealing with so-called “contract marriages”,¹ called “Marriage Without Sex” (无性婚姻网),² was launched in China in 2005. This website divides people into two categories: people with physical and psychological problems who want to be married but not have sex, and lesbians and gay men who want wedding ceremonies but do not want to have sex with each other.

Many homosexual people, mainly lesbians, have since then set up online chat rooms for lesbians and gay men looking for contract marriages, and the practice has spread rapidly throughout urban China.

In 2014, Pink Space produced a documentary film called *Our Marriages – When Lesbians Marry Gay Men*.³ The film follows four lesbians who had been seeking out gay men and negotiating contract marriages. The film shows their weddings, listens to their stories of how lesbian lives are lived in a compulsory heterosexual culture and society, and documents why lesbians need to use the internet to organise their desires and lives.

Homosexuality in China

Being homosexual is not illegal in China and there are many lesbian, gay, bisexual and transgender (LGBT) organisations operating in big and small cities. However, homosexuals were punished under a legal provision against “hooliganism”, a criminal offence until 1997, which could lead to a life sentence for having a one-night stand, a mistress, sex outside of wedlock or for same-sex behaviour. Homosexuality was also treated as a mental illness

until 2001, when it was removed from the list of mental disorders.

Chinese society has also been ruled for thousands of years by Confucian philosophy⁴ – which says the most unfilial thing a child can do is to not produce an heir – and that thinking will not change overnight. Doctors at public or private clinics still treat homosexuals in secret. The word “homosexual” is not allowed to appear in official newspapers or on TV, and there is no celebrity who has come out as homosexual in public.

On the one hand there is the influence of Confucian philosophy, on the other there are policies that state that every child must be born within wedlock and pregnancies require prior permission from the government.⁵ Both the policy and culture make heterosexual marriage compulsory and legitimate.

It is not difficult to understand why an estimated 90% of gay men in China marry heterosexual women (this is estimated to be 15-20% in the US).⁶ There are no estimations for lesbian women marrying heterosexual men in either country. Women’s desires and sexuality, by and large, are ignored. Therefore the stories below are extremely important.

The chat rooms

I will use the film *Our Marriages – When Lesbians Marry Gay Men* to explain how contract marriages are organised, what role the internet plays, why the internet offers a new way for lesbians to organise, and what this way of organising means for lesbian lives.

Xiong is one of the four lesbian women in the film. She started a QQ chat room⁷ in 2008. She spoke about a letter that her mother wrote to her at the time urging her to get married, as well as how her girlfriend broke up with her and married a man. Xiong said that she felt she could only remain lesbi-

1 “Contract marriages” – or marriages of convenience (形式婚姻, *xingshi hunying*) – are a growing practice in China. In this report the term “contract marriages” is used loosely to refer to any relationship where an agreement is struck between two parties, whether verbal or written, and then a wedding ceremony performed. In only one of the four relationships discussed here was the wedding actually registered with the government.

2 www.wx920.com

3 Xiaopei He and Yuan Yuan, 2014. www.imdb.com/title/tt3546992

4 Confucian philosophy instructs people to marry, to reproduce and to continue the family line without thinking of one’s desires and sexualities.

5 Population and Family Planning Law Of The Peoples Republic of China, 2002.

6 The Economist. (2010, 18 March). Homosexuality in China: Collateral damage. *The Economist*. www.economist.com/node/15731324

7 QQ, an instant messaging service, also offers games, music, shopping, and micro-blogging, amongst other services. https://en.wikipedia.org/wiki/Tencent_QQ

an if she married a gay man. She then set up a chat room and named it “L-G Unusual Marriages”. Soon she found that just one chat room, which could accommodate 100 people only, was not meeting the demand. She then launched four contract marriage chat rooms and ran them simultaneously to meet the need. One is for lesbians and gay men in Beijing, the capital city.

Xiong put her personal information online using a template and required people to fill in their information in the same way: age, height, weight, occupation, income, horoscope, current living conditions (whether the person has a lover, house, car, etc.) and their requirements for an ideal partner.

Xiong met her girlfriend and a lesbian couple in the chat room. The four of them began living together and helping each other in the process of searching for gay husbands.

Shan Shan was the first one among the four who found a gay husband. One morning she logged on and chatted with a gay man; by that afternoon they had met and were engaged and soon after they had the wedding.

Ke Le chatted with many men, but no one met her needs. A gay friend of hers, out of loyalty, came forward and married her. He had taken his boyfriend home and his mother had already accepted them as a couple. However, at their wedding, his mother asked Ke Le if they could now be a “normal” husband and wife. Ke Le told her that their desires are their fate, which will not be changed by a wedding.

Jing Jing is Xiong’s girlfriend. She had been forced to go on many blind dates set up by family and friends, since society allows no one to be single. She eventually married a gay man to satisfy her parents, as she realised her parents were facing too much pressure from others. Along the way, she had rejected one gay man who had requested that she have eye surgery to look pretty. She told him to find an actress instead if he wanted a pretty girl to save face.

Xiong chatted with many gay men. There was one that she thought could be an ideal husband, but she said, “He talked like he was better than me, just like many men – I could not stand it.” Xiong said she does not need that. She finally found a husband who treated women equally and met her needs.

At the end of the film, all four lesbian women married gay men and carried on living together. They and their gay husbands had agreed that after the wedding ceremonies they would not live together and they would not have children together. Three out of four did not register their marriages with the government. But they all agreed to visit

each others’ families during festivals or at certain family gatherings.

The challenge posed by contract marriages

Contract marriages are criticised widely in and outside of China, as well as in lesbian and gay communities. Some say lesbians marrying gay men are cheating or lying; they should come out as gay or lesbians rather than hide their desires, living in a closet and leading double lives. Some say that lesbian women inviting men into their lives is the same as inviting gender inequality into their lives. They say it is not feminist. Others say to enter into contract marriages is to pretend to be the same as straight people, and to compromise oneself by engaging in institutionalised heterosexual culture.

However, in the process of making the film, we began to see the essence and nature of contract marriages. Firstly, these lesbians and gay men are true to themselves and to each other and they do not betray their desires. They marry each other for the sake of their parents, as they love their parents and wish to satisfy them. They recognise that it is only if they get married that they can have their desires fulfilled, only if they get married can they be true to themselves, and once they get married they can live the lives they wished for. They are happy rather than miserable.

They are also not “in the closet”, because as soon as they log into the contract marriage chat rooms, they come out as lesbians or gay. They have to come out to themselves and to the others. At the same time, logging into the chat rooms is not only to come out as a homosexual person, but also to find a way that guarantees their same-sex desires can be fulfilled. Marrying another homosexual person will ensure that their same-sex desires will not have to be repressed. Therefore to marry is to come out, rather than being in the closet.

Furthermore, the most important thing is to come out to oneself or to the community that provides support, rather than to the public or the government which represses, suppresses and punishes homosexual desires.

Secondly, women in contract marriages have the freedom and space to declare their desires and needs. Women can negotiate conditions and claim their needs online before meeting their candidates (i.e. husbands-to-be). In traditional marriages women are taken for granted, and their needs and desires are largely ignored. In contract marriages women are in a more equal position. Although many do not register their marriages, when written contracts are struck between the partners these are

enforceable in court. The internet allows women to articulate their desires and needs and ask men to meet their needs. Because of this, some argue that women who seek contract marriages are true feminists.

Thirdly, contract marriage is a queer practice rather than a pretence to be straight or to compromise oneself to meet the needs of a heterosexual culture. If gender is performance, transgender people and drag queens are queer because they challenge the gender system. In the film the weddings are performance too: both husband and wife, groom and bride, gay and lesbian, they dress up, they come to the stage, they perform and tease the rituals; they subvert, transform and challenge the institution of marriage.

The institution of marriage is deeply unequal and discriminatory. While traditional marriages can allow economic benefits and social respect, certain people are excluded from these benefits due to stigma: sex workers, people with HIV or disabilities and LGBT people. Since they are excluded from the institution of marriage, they are excluded from those benefits and respect. At the same time, it can be argued that calling for same-sex marriages to be legalised is a compromise with heterosexual culture, and reinforces an unequal and discriminatory institution, rather than challenging it.

Finally, the film also shows that the internet has led to changes in women's lives. Women can articulate their desires, women can make demands, women can negotiate the conditions of engagement with men, and women can take the lead in organising social change.

Xiong explained that much of the organisation of online contract marriages is led by lesbian women, because men are not used to being equal with women. Even some gay men find it difficult to meet the demands of lesbian women and prefer to marry straight women. But lesbian women do not want to enter marriage to suppress their desires. Through organising contract marriages online, Xiong not only took control of her own life, and built new lesbian and gay families and communities, she also became a lesbian activist and a leader for the movement.

Conclusions

First of all, chat rooms used to organise contract marriages create a new space for lesbians and gay men to come out to themselves and to each other. It is a space that is safer because they come out to people with the same needs and desires, rather than

offline, where people might judge or attack them. This is also a space that accumulates narratives and stories which challenge the very institution of marriage, revealing its unequal and discriminatory nature. It also challenges the notion of same-sex marriage, which is dangerously becoming a singular and universal goal of global LGBT movements. This goal reflects a lack of awareness about different needs, cultures, societies and the politics of different LGBT people in diverse locations.

Instead, the demand for contract marriages in China shows that there are many ways to be homosexual or to lead movements. Same-sex marriage should not be a single goal and should never dominate global LGBT movements. The act of organising contract marriages online sheds a new light on same-sex marriages that can benefit the LGBT movement. It creates a feminist space, allowing lesbian women to declare their needs and desires that are often the opposite of what the patriarchal marriage institution is designed for – one that requires women to be silent and obey their husbands.

The space not only leaves women free to articulate their sexual desires, but also gives women the courage to ask their potential husbands to meet their needs before entering marriages. In contrast, women in traditional marriages in China would seldom think of their own needs, let alone ask for them to be met. In the ways in which traditional marriages function, women are invisible, ignored and taken for granted. But contract marriages bring women's desires and needs centre stage, so that they cannot be ignored any more.

The online spaces created through organising contract marriages provide lesbian women in China a space not only for articulating their desires and declaring their needs, but for identifying social problems, forming communities, designing strategies for engagement, and being part of the lesbian movement.

Finally, the act of organising contract marriages online goes beyond everyday LGBT and feminist concerns; it is also a broader social movement, which has an impact on many social and political fronts. Contract marriages show that women or people with disadvantaged social identities can take the initiative to control and change their lives.

The internet makes this possible. Using the internet to organise pushes lesbian women into the political arena, enabling them to become negotiators, leaders and organisers, both online or offline. It allows them to play a key role in social life, not only changing their own lives, but the lives of many others.

Action steps

Organising contract marriages online started on a small scale, but is quietly growing in China. It is welcomed by the lesbian and gay communities, as well as people who do not wish to or cannot get married. However, the practice goes far beyond LGBT issues or meeting LGBT people's needs only.

Internet users in China exceeded 630 million in 2014. Because of this, the number of people who enter contract marriages will grow.

This raises the following concerns for internet activists:

- At the level of legislation, many people who enter contract marriages choose not to register with the authorities, which means their rights are not protected by law. Internet activists as well as human rights activists should raise the concern that written contracts should be validated by law, so that those who enter into contract marriages enjoy their rights like any other citizen.
- For LGBT activists and feminists, contract marriages provide a great example on how to fight for sexual rights and gender equality. They uncover the great inequality and patriarchal practices that the institution of marriage brings to society and human lives, which, so far, neither the LGBT movement nor the feminist movement has been able to effectively address. Promoting same-sex marriages not only strengthens the unequal system, but also reinforces patriarchy. Activists could use contract marriage as a case to raise awareness about how the institution of marriage in itself is a problem, which should not be the goal of any sexual rights movement.
- For activists and theorists, contract marriages can provoke many interesting issues. It is a practice that requires urgent theoretical analysis. Theory could in turn serve practice. For example, the new and growing phenomenon of gay and lesbian kinship (or LGBT families) could be a subject for research, which will contribute to the theory of how human societies evolve.

COLOMBIA

LGBT RIGHTS, FREEDOM OF EXPRESSION, HATE SPEECH AND PRIVACY: THE CASE OF SERGIO URREGO



Colnodo

Ana María Acosta
www.colnodo.apc.org/index.shtml

“My sexuality is not a sin; it is my own paradise”
Anonymous phrase used by Sergio Urrego

Introduction: It started with a kiss

A 16-year-old boy – Sergio Urrego – was found dead on the streets of Bogota after committing suicide by jumping from the rooftop of a mall. Sadly, a teenage suicide in this world is not something out of the ordinary. Nonetheless, his death received the attention of Colombian media and society.

The suicide happened after a friend took a picture of him and his boyfriend Horacio kissing, and a school teacher witnessed it. Sergio was forced to declare he was not heterosexual,¹ and that he had a romantic relationship with a classmate. Later the teacher, together with the school therapist and the school director, started to systematically harass Sergio. They considered Sergio’s homosexuality sick behaviour that deserved to be punished and corrected.

Colombia is one of the countries with the most internet users in Latin America² and one of the most active in social media in the world, occupying 14th position in the world ranking of Facebook users. It has 17 million Facebook users,³ and six million Twitter users.⁴ Consequently, Colombian politics, news and public debate make significant use of social media.

During the series of events that surrounded Sergio’s death, online social media from both sides came out in favour and against lesbian, gay, bisexual and transgender (LGBT) rights. There were thousands of tweets with the hashtag “Sergio Urrego”, some of them including homophobic expressions like “All queers should do the same as

Sergio, kill themselves.” Activists meanwhile tweeted Sergio’s favourite quote, “My sexuality is not a sin, it is my own paradise.” They also created the trending hashtag #yotambienfuisergio (“I was also Sergio”) to express how others had also suffered discrimination because of their sexual orientation.

These exchanges on online social platforms are a reflection of LGBT struggles against discrimination offline. Here it is worth posing the following questions: Is the internet a medium that can be used to strengthen LGBT rights? Or, conversely, has it become a place where discriminatory practices are reinforced? The internet is a space where people may speak their mind freely; but how far can freedom of expression go when it attacks groups or individuals that have been systematically discriminated against (like LGBT people)? Furthermore, before committing suicide, Sergio used social media to express the possibility of killing himself. He even published posts on Ask.fm⁵ where he expressed the possibility of committing suicide. Again, what are the limits of freedom of expression online? If someone shares his or her intention to commit suicide online, should anyone intervene?

Currently Sergio’s case is under criminal review.⁶ The regional education agency⁷ took action against the school based on Sergio’s mother’s motion that her son was persecuted and harassed without legal grounds. At the end of August 2015, the Constitutional Court issued ruling T-478/15⁸ where it was decided, among other things, whether or not Sergio’s right to privacy and good name were violated by his school.

LGBT rights: Policy and political background

Historically LGBT groups have been discriminated against by different actors: civil society, the

1 On social media Sergio presented himself not as homosexual, but as a person who did not care about the gender of the person he liked. Roldan, S. (2014, 31 October). Los Gritos de Sergio Urrego. *Las Dos Orillas*. www.las2orillas.co/los-gritos-de-sergio-urrego
2 www.internetlivestats.com/internet-users-by-country
3 www.internetworldstats.com/south.htm
4 www.mintic.gov.co/portal/604/w3-articulo-2713.html

5 ask.fm/SergioDavidRiot/answer/53056573013#_=_ask.fm/SergioDavidRiot

6 The General Prosecutor has accused the school director of discrimination and of altering legal evidence. www.elespectador.com/noticias/bogota/sergio-urrego-tambien-denunciaron-falsamente-fiscalia-articulo-560879

7 Noticias RCN. (2015, 26 March). La Secretaría de Educación diseñó un plan correctivo que el colegio debe cumplir en un plazo de seis meses. *RCN*. www.noticiasrcn.com/nacional-justicia/secretaria-educacion-cundinamarca-suspension-y-multa-al-colegio-sergio-urrego

8 www.corteconstitucional.gov.co/?bMD

government, the Catholic Church⁹ and even violent right-wing political groups. Among other reasons for this discrimination is the fact that a representative part of the population is conservative and is heavily influenced by the Catholic Church – which openly opposes the LGBT community.¹⁰ It is no surprise then that earlier this year, when a national survey asked whether Colombians supported or were against same-sex marriage, 62% of the survey respondents said they were against it.¹¹

Sometimes this conservatism is violent. Anti-LGBT pamphlets have been distributed in the streets and online by so-called “social cleansing groups” associated with violent and extreme right-wing politics, and operating in poorer neighbourhoods of cities.¹² In these pamphlets LGBT people are told to leave the neighbourhood or change their behaviour, or they will be attacked or murdered. According to the country’s leading LGBT rights NGO, Colombia Diversa, in 2012 there were 87 deaths directly attributed to sexual orientation and associated with the social cleansing groups¹³ (this data was collected directly through field work because there is no governmental agency that gathers it).

In the government, some prominent public servants have openly accepted they are homophobic,¹⁴ while others have used covert strategies to discriminate against LGBT persons.¹⁵ According to

Colombia Diversa’s latest report, policemen have intentionally attacked LGBT groups without any legal justification.¹⁶

On the other hand, a more progressive part of the population has grown in number and voice over the last 15 years. For example, some top-tier politicians who are in same-sex relationships have publicly declared their sexual orientation.¹⁷ These public declarations have provoked responses on social media both against and supporting them.

From a legal perspective, the Colombian Constitutional Court has protected same-sex relationships through its rulings: same-sex couples have the right to a pension plan¹⁸ and to register their partners as family members to access health services.¹⁹ The court has defended the right to express affection publicly to someone of the same sex as part of the individual freedom that every Colombian has.²⁰ Nonetheless, same-sex couples are not able to get married or adopt children if neither of the couple is their biological parent.²¹ In 2011 the Law Against Discrimination²² was enacted. It holds that a person who commits or fosters acts that discriminate against another person because of their sexual orientation – among other forms of discrimination – can be jailed for up to 36 months.

While some legislation entitles LGBT persons to certain rights, and despite the constitutional rulings, there is still no full recognition of LGBT rights. This, coupled with open and implicit homophobic practices by the government, has created a policy vacuum when it comes to the full realisation of sexual orientation as a right.

The legal framework regarding privacy

Under the Colombian legal system, privacy as a fundamental right is protected in the constitution²³ and in case law. The Constitutional Court has defined privacy as: “The sphere that belongs exclusively to

9 Vida/Iglesia. (2015, 17 February). ‘Corte no puede experimentar con el bienestar de los niños’: Iglesia. *El Tiempo* www.eltiempo.com/estilo-de-vida/gente/iglesia-rechaza-adopcion-de-parejas-del-mismo-sexo/15263097

10 The Colombian Catholic Church was predominant in education and significantly influenced government policies related to sexual education until the 1990s when the state was able to secularise the sector in 1993. Guerrero, P.G. (1998). Pasado, presente y futuro de la educación sexual en Colombia. *Rev. Col. Psiquiatría, Vol. XXVII, No. 4*, 303-314. psiquiatria.org.co/web/wp-content/uploads/2012/04/VOL-27_4/Pasado,%20presente%20y%20futuro%20de%20la%20educaci%C3%B3n%20sexual%20en%20Colombia.pdf

11 Sección Política. (2015, 4 March). Mayoría de colombianos se opone a matrimonio gay: encuesta. *El Tiempo*. www.eltiempo.com/politica/segun-encuesta-de-gallu-colombianos-se-oponen-a-matrimonio-gay/15340079

12 Comisión Colombiana de Juristas. (2008). La expresión de la violencia política y social a través de panfletos paramilitares. Boletín n.º 37: Serie sobre los derechos de las víctimas y la aplicación de la ley 975. Unión Europea. www.coljuristas.org/documentos/boletines/bol_n37_975.pdf

13 Sánchez, M., Lleras, C., & González, M. (2012). *Cuando el prejuicio mata. Informe de derechos humanos de lesbianas, gay, bisexuales y personas trans en Colombia*. Colombia Diversa. colombiadiversa.org/documentos/informes-dh/colombia-diversa-informe-dh-2012.pdf

14 Senator Gerlein from the Conservative Party in a Congress session stated: “Sex between men... deserves repulsion.” www.elespectador.com/noticias/politica/homofobica-intervencion-de-gerlein-articulo-388192 Public Prosecutor Alejandro Ordoñez has also openly opposed the recognition of LGBT rights. sinetiquetas.org/2014/12/08/colombia-el-procurador-y-su-cruzada-homofobica

15 A Bogota councilman demanded a list of LGBT employees at a government TV channel. www.semana.com/nacion/articulo/tras-pedir-lista-lgbti-canal-capital-concejal-ramirez-dice-amarlos/267170-3

16 Sánchez, M., Lleras, C., & González, M. (2012). Op.cit.

17 Sección Nación. (2014, August 28). Debemos ser juzgadas sólo por nuestro trabajo. *Revista Semana*. www.semana.com/nacion/articulo/cecilia-alvarez-su-pareja-gina-parody-piden-respeto/400696-3

18 Ruling C-336/08, Constitutional Court. www.corteconstitucional.gov.co/relatoria/2008/c-336-08.htm

19 Ruling C-811/07, Constitutional Court.

20 Ruling T-909/11, Constitutional Court.

21 Ruling C-071/15, Constitutional Court.

22 wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley48230112011.pdf

23 The Colombian constitution protects the right to privacy in the following way in its Article 15: Every individual has the right to personal and family privacy and to his/her good reputation, and the state will respect these rights... and ensure they are respected. Correspondence and other forms of private communication are inviolable.

the individual, related to his or her private possessions, of his or her own tastes and behaviour that are truly personal and that the individual is not willing to exhibit publicly and where there are no legal grounds for external interference.”²⁴

The Constitutional Court has divided the right to privacy into three levels. The first is personal information (also known as personal data) such as contact information, religious and political beliefs, and sexual and medical information.²⁵ The second level relies on the private communication that people exchange with others (also known as the inviolability of private communications),²⁶ and the third level is linked to the interaction between the private and public sphere, where people have the right to keep personal information private that they do not want to share with others. The right related to this level involves the right to a good name²⁷ and honour. The court has also stated that there are three ways to breach an individual’s privacy.²⁸ The first one is to monitor, surveil or intercept the individual’s information and/or communications. The second is to reveal or publish the information that a person has gathered without the authorisation of the person who owns the private data. The third kind of breach happens when such information is altered or misused to humiliate the person and hurt the person’s reputation or good name.²⁹

The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has said that offensive speech – speech that is disturbing to a group of people – is allowed and is in line with the right of freedom of expression, as long as that speech does not promote potential violence against a specific group or individuals.³⁰ According to the Special Rapporteur, in unacceptable hate speech the threat cannot be abstract, it needs to be specific and it needs to be almost certain that the violent act against the victim will occur.

Unlike many other Latin American countries, Colombia does not have a specific hate speech law. The Law Against Discrimination mentions hate speech, but only indirectly, by criminalising “any

harassment that fosters acts of discrimination”. Last year, a proposal to prohibit hate speech was shelved.³¹ Therefore freedom of expression including offensive speech is protected in Colombia, but hate speech is not allowed, even though the country lacks a specific law that punishes it directly.

When privacy does not matter

To understand the implications of having one’s privacy violated, we need to return to our story of Sergio. Sergio and Horacio were boyfriends. One day they kissed at school and a friend took a picture. A teacher witnessed the act and took Sergio’s friend’s phone without her permission. The teacher forced Sergio’s friend to erase the picture,³² and reported the incident to the school director and the school psychologist. Afterwards, the three of them were called to a meeting where Sergio and Horacio were told: (i) they could not be together anymore, and (ii) they had to confess their sexual orientation to their parents. After their parents found out about the relationship, Sergio’s mother supported him. As an act of reprisal against this support, the school director temporarily suspended Sergio from school and forced him to speak to a psychologist. Meanwhile, Horacio’s parents removed him from the school and started legal proceedings against Sergio, claiming he had sexually harassed their son.³³ Sergio was served papers by the attorney general to stand trial for sexual harassment. Four days later he killed himself.

When Sergio’s teacher took his friend’s phone without her permission and looked at her photos, he clearly breached both Sergio’s and his friend’s right to privacy at a first level. The Constitutional Court, analysing Sergio’s case, concluded that his right to intimacy at the first level was intentionally disrespected by the school staff after they started a disciplinary process³⁴ against Sergio, accusing him of excessive public affection based on evidence that was clearly private (the photo).³⁵

Sergio left a goodbye letter to his mother, and this letter was published on the internet by the media without her authorisation,³⁶ breaching her right to private communications and disrespecting

24 Ruling T-552/97, Constitutional Court; Ruling T-916/08, Constitutional Court.

25 Ruling T-748/11, Constitutional Court.

26 Ruling T-916/08, Constitutional Court.

27 Ibid.

28 Ruling C-787/04, Constitutional Court.

29 Ruling T-405/07, Constitutional Court.

30 Botero, C. (2009). *Marco Jurídico Interamericano del derecho a la libertad de expresión*. Relatora Especial para la Libertad de Expresión. Comisión Interamericana de Derechos Humanos. Organización de Estados Americanos. www.oas.org/es/cidh/expresion/docs/cd/sistema_interamericano_de_derechos_humanos/index_MJIAS.html

31 www.elespectador.com/noticias/politica/maria-fernanda-cabal-pidio-hundir-proyecto-de-ley-prohi-articulo-519701

32 Interview with Viviana Bohórquez, Colombia Diversa lawyer, 13 July 2015.

33 www.laszorillas.co/recogiendo-los-pasos-de-sergio

34 In Colombia, schools are allowed to begin a disciplinary process involving a student when they do not comply with the school rules.

35 Ruling T-478/15, Constitutional Court. www.corteconstitucional.gov.co/?bMD

36 Interview with Viviana Bohórquez, Colombia Diversa lawyer, 13 July 2015.

Sergio's memory and privacy. When Horacio's parents used the couple's conversations as evidence they violated Sergio's right to private communications. When the director along with other school personnel publicly condemned Sergio and Horacio's relationship, telling other students that it was something "sick" and punishable, they violated Sergio's right to a good name.

The Constitutional Court ruling held that after Sergio's death and the subsequent public debate, the school staff gathered all personal and private information about Sergio from his social media profiles – including his sexual orientation and political beliefs – in order to construct a narrative of him as an outcast and insane, justifying his decision to end his life. The court concluded that the school had no right to share Sergio's private information publicly. It said the school also did not have the right to disrespect Sergio's good name.³⁷

Finally, one's sexual orientation is private data. In Colombia, it is considered "sensitive data" and in fact requires higher levels of protection than other private data. Access to the details of a person's sexual orientation must be restricted at the highest level.³⁸ "Coming out" as LGBT is a private process that should be respected, even more so when homophobia is still rampant in society. For all these reasons it is clear that Sergio's privacy was violated at all levels.

The LGBT community and cyberspace

Like any teenagers, young LGBT people are particularly vulnerable to other people's opinions. Because of the taboo associated with homosexuality, LGBT teenagers tend to be even more vulnerable than most.³⁹ In this regard, the internet is not a safe space. A study found that LGBT youth are nearly three times as likely as non-LGBT youth to say they had been bullied or harassed online (42% vs. 15%).⁴⁰ In fact, the Constitutional Court noted in Sergio's ruling that school bullying was systematic in Colombian educational institutions, and was creating stress among students of diverse sexual orientations.

On the other hand, the internet is a space that fosters freedom of expression because it allows its users anonymity. Sergio expressed his emotions and opinions regarding his sexual orientation online,⁴¹ because he felt safe in that space where there would not be any judgement.⁴² Many teenagers like Sergio start to explore their sexuality and sexual orientation on the internet, on social networks, public forums, and through online searches for information. In this context, the web becomes a public space that offers privacy through the use of nicknames, anonymous blog posts, and private chats for those who are not ready to come out or are in the process of doing so.⁴³

The internet helps groups traditionally discriminated against to speak up and use their voices to defend their rights. According to the latest GenderIT.org survey, 98% of respondents pointed out that the internet was a crucial tool for LGBT activism.⁴⁴ After Sergio died, many bullied LGBT teenagers tweeted #yotambienfuisergio (I was also Sergio) to say that they had been discriminated against and persecuted. While it allows anonymity, the internet has also helped to empower the young LGBT population to speak openly and assertively, and even to come out. For example, Juan Pablo Jaramillo, the most followed YouTuber in Colombia, who has nearly three million followers, came out through a YouTube video.⁴⁵ Since then even more people have started to follow him on YouTube.

As suggested, the internet is also a space for haters. Sergio – during his life and after his suicide – was harshly criticised for his homosexuality. Are those online homophobic expressions considered hate speech in Colombia? Yes, when they deliberately hurt and discriminate against a person and are likely to lead to an act of violence against them. However, as explained, offensive speech is protected by the right to freedom of expression. In this sense, it is legal to aggressively criticise LGBT people and to bully them online when the opinion expressed does not nurture violence that can become real. Thus the line between hate speech and offensive speech is blurred.

37 Ruling T-478/15. Constitutional Court. www.corteconstitucional.gov.co/?bMD

38 Ruling C-748/11. Constitutional Court.

39 According to the Gay, Lesbian & Straight Education Network, youth who experienced both online/text and in-person bullying and harassment reported lower grade point averages (GPAs), lower self-esteem, and higher levels of depression than youth who were bullied only in person or online/text, or not at all.

40 GLSEN, CIPHR, & CCRC. (2013). *Out online: The experiences of lesbian, gay, bisexual and transgender youth on the Internet*. New York: GLSEN. www.glsen.org/press/study-finds-lgbt-youth-face-greater-harassment-online

41 ask.fm/SergioDavidRiot

42 www.las2orillas.co/los-gritos-de-sergio-urrego/

43 Ruszczyńska, A. (2007). *Living 'la vida' Internet: Some Notes on the Cyberization of Polish LGBT Community*. www.mirovni-institut.si/data/tinymce/Publikacije/beyond%20the%20pink%20curtain/07%20-%20Gruszczynska.pdf

44 Shaikh, R. (2015, 15 September). How crucial is anonymity for sexual exploration and promoting sexual rights activism? *GenderIT*. www.genderit.org/feminist-talk/how-crucial-anonymity-sexual-exploration-and-promoting-sexual-rights-activism

45 <https://www.youtube.com/watch?v=tSpE2pYA264>

Should the intention to commit suicide online be taken seriously? Should the government intervene? As mentioned, Sergio published his intention to kill himself on Ask.fm⁴⁶ and it passed without notice. There is no current literature or legislation on the matter; for now, Facebook and other internet-related companies are offering services to assist people who are feeling suicidal.⁴⁷

LGBT teenagers are especially vulnerable to online and offline bullying as well as hate speech once they have come out or been forced to come out. Expressions of this vulnerability by LGBT teenagers can be seen on social networks. There is a strong tendency for these teenagers to develop depression.⁴⁸ Because of this it is necessary to pay special attention to teenagers when they express suicidal thoughts online.

Sergio's story spread throughout Latin America and the world,⁴⁹ and in a few months became a symbol of the battle against discrimination in educational institutions.⁵⁰ The story shows that there is a lack of specific public policies and laws to protect the LGBT community, although partial protection is offered by the rulings of the Constitutional Court and the Law Against Discrimination.⁵¹ The Colombian government and society should take immediate action to correct this and to prevent the repetition of a similar tragedy.

For now, discrimination can be fought in the classroom. A study by the Colombian sexual health governmental agency showed that when people under 25 years old are educated about diverse sexual orientations, 60% of them support the rights of same-sex couples.⁵²

Action steps

The following advocacy steps can be suggested for Colombia:

- Design public policies that raise awareness about online bullying and monitor the online bullying of LGBT people, especially teenagers who are the most vulnerable group. This includes developing school-level programmes on human rights and sexual orientation.
- Educate teachers about sexual diversity and sexual rights, as well as their obligation to protect a minor who reveals his or her sexual orientation and becomes vulnerable to bullying and hate speech.
- Monitor schools closely regarding actions taken against LGBT students, and ensure that their right to privacy is respected. Sexual orientation is part of the private sphere and this should be respected if the student does not want to reveal it.
- Take measures against schools whenever they persecute a minor because of their sexual orientation.
- Launch campaigns to raise awareness about the Law Against Discrimination. Such campaigns should speak out against discrimination, but without compromising freedom of expression. They should teach people about the difference between offensive speech and hate speech, and call on people to report discrimination when it is encountered.
- Start a public debate on the issue of freedom of expression and the legal obligation to protect life when someone expresses suicidal thoughts on the internet. What counts as a private expression online, and when is intervention necessary?
- Internet service providers (ISPs) should actively promote the use of their services as being free from discrimination. They should not monitor the content of their users, unless there is a legal basis to do so, but they can promote campaigns in which they invite users to use their services in a positive way and which show the consequences of discrimination. They can also set up call centres for counselling assistance to address online bullying or hate speech. ISPs should be fast enough to take down content that amounts to hate speech based on a court order, but should always give notice to the owners of the content. Only a judge should decide whether the content is discriminatory or not.

46 ask.fm/SergioDavidRiot/answer/53056573013#=_ and ask.fm/SergioDavidRiot

47 www.facebook.com/help/594991777257121/

48 GLSEN, CiPHR, & CCRC. (2013). Op.Cit.

49 Sergio's case was written up for Wikipedia just two months after his death. www.elespectador.com/noticias/bogota/sergio-urrego-tambien-denunciaron-falsamente-fiscalia-articulo-560879

50 Interview with Viviana Bohórquez, Colombia Diversa lawyer, 13 July 2015.

51 School regulations are intended to protect students independently of their sexual orientation, but in Sergio's case these were not applied.

52 www.profamilia.org.co/images/stories/afiches/encuestas-investigaciones/bitacora.pdf

COSTA RICA

THE ROLE OF THE INTERNET IN EXERCISING THE HUMAN RIGHTS OF SEX WORKERS IN DOWNTOWN SAN JOSÉ: A CASE STUDY



Sulá Batsú

Kemly Camacho with the Sulá Batsú team,
translation Firuzeh Shokoh
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Introduction

One of the most vulnerable groups in Costa Rican society are women sex workers in the northwest sector of the centre of the capital, San José.

We decided to work with this group of women because our mission as an organisation is focused on the use of technologies for the exercise of the rights of vulnerable and excluded populations. Sulá Batsú also seeks to develop new lines of action with regard to their interests, needs and vision, which have been identified through the participatory research we conduct annually for GISWatch.¹

As Amnesty International has declared: “Sex workers are one of the most marginalized groups in the world who in most instances face constant risk of discrimination, violence and abuse.”²

There are around 400 women working in the streets or in small hotels in what is called the “red zone” of the capital. They live in poverty, and many of them are single mothers with low levels of education. They are a mix of immigrants and Costa Rican citizens from around the country, and their ages range from 30 to 65. Some of them live in the street, while others live in the slums of the capital. They are discriminated against, stigmatised, abused – even in health centres – and are subjected to police repression.

The sex workers are organised in an association called La Sala (The Room).³ Founded more than 20 years ago, La Sala is led by the sex workers themselves, with the objective of defending their rights and improving their quality of life. La Sala provides a meeting place for sex workers, where they find mutual support, receive training, and discuss the leadership of the organisation, amongst other things.

MISSION OF LA SALA

Our mission is that sex work be recognised in labour laws in Costa Rica, including the rights that we have as women sex workers, because although they are not recognised, we know we have rights as women and citizens.

In 2010, the Constitutional Court of Costa Rica declared internet access a fundamental right of citizens. The court also ordered the state to promote and guarantee universal access to new technologies.

On the other hand, sex work is not legally recognised in the country. There are regulations on other issues associated with sexual exploitation, such as trafficking⁴ and procuring, as well as legislation on women’s rights, the right to information, and the right to health and education for all Costa Ricans.⁵

The Sulá Batsú team aimed to interrogate the role of the internet in the exercise of the rights of the sex workers in the context in which they live and work. Our research design included content analysis (reading news about La Sala, reviewing research and reports on the organisation, as well as another similar organisation in Latin America),⁶ a participatory workshop with women from La Sala⁷ on the rights to information and communication and the internet’s role in the exercise of these rights, and an in-depth interview with a member of La Sala, a former sex worker who narrates her experience with social networking. We will call her Maria in this report.

1 www.giswatch.org/country/costa-rica

2 Amnesty International. (2015, 11 August). Global movement votes to adopt policy to protect human rights of sex workers. <https://www.amnesty.org/en/latest/news/2015/08/global-movement-votes-to-adopt-policy-to-protect-human-rights-of-sex-workers>

3 www.facebook.com/organizacionlasala

4 www.migracion.go.cr/institucion/Trata/Ley%20Trata%20de%20Personas%20%28difusion%20digital%29.pdf

white.lim.ilo.org/ipcc/documentos/ley_contra_la_esc_cr.pdf

5 www.constitution.org/cons/costaric.htm

6 www.redtralsex.org

7 Report on participatory workshop with 40 women sex workers in La Sala.

Case study: The right to the internet and sex workers

Conditions of access

The women who participated in this case study work and live in one of the places in Costa Rica with the best connectivity and access to technology: downtown San José. However, they have no possibility of accessing or using the internet. This shows once again that the exercise of the right to the internet cannot be addressed only from the point of view of infrastructure. According to our regulations and laws, these sex workers, as citizens of our country, have the right to internet access.

The main reason for not being able to access the internet is the high costs. Usually all of the sex workers have mobile phones that use prepaid services, and not smartphones, because of the price. They mostly use their mobiles for messaging, such as the service WhatsApp, to communicate with people close to them, especially their children. They also use their phones to take family and personal photographs, and use applications on their phones for entertainment, such as radio apps.

Most of them do not have access to computers, besides the ones that are publicly available in La Sala. Overall, research participants did not feel that they had the skills to leverage the internet to strengthen their rights and improve their working and living conditions.

We found that younger women use the mobile phone more than older women. Some women use mobile phones for contacting and managing clients, but they are in the minority. Most of the work is done by demand on the street, and in small hotels in the zone.

Mobile phones can function as tools for seeking help in moments of danger, violence or abuse. However, this is not always the case, as sometimes making a call has led to more violence and risk to the sex worker.

The use of social networks is associated with stigma and discrimination as evidenced in Maria's case, which exemplifies the situation of many sex workers in the zone.

The case of Maria⁸

Maria represents the story of many sex workers in San Jose's "red zone". She is a former sex worker in a stable relationship with a partner, who decided to quit sex work some time ago. Maria used to work in small hotels in downtown San José.

One day at dawn, after working during the night, she took public transport to go home. The bus driver did not want her on the bus, because he and some fellow passengers knew Maria was a sex worker. She made the driver stop the bus and climbed on. She was furious, she protested, insulted the driver and passengers, and refused to get off the bus. Passengers insulted her, using her work, her condition as a poor woman, and her migrant status (she is Nicaraguan) to humiliate her.

One of the passengers recorded this entire scene on a mobile phone, and it was posted online without María's authorisation. The video went viral, not only in Costa Rica but in other parts of the world where Maria has relatives who did not know she was a sex worker, including her teenage daughter and the rest of her family in Nicaragua. In addition, a TV programme with high ratings in Costa Rica featured the video, and called it "What happens in San José at night".

This had many painful repercussions in Maria's life: an intense depression that almost led to suicide, alcoholism, an inability to work and leave her room, and a very delicate family situation with the most painful consequence related to her daughter who did not know the work her mother was doing.

Maria's case is evidence of how discrimination for being an immigrant, a woman and poor, in addition to the stereotypes associated with her work and the violence that sex workers experience, were multiplied by the disregard of privacy on social networks and the unauthorised use of online content by traditional media.

Maria managed to get out of this situation due to her personal resources, her personality, her intelligence, the support of other women in her network, and some friends. Especially important was the support of her daughter. But this situation could have led Maria to her death.

Maria's case shows how new technologies may lead to more vulnerability, or exacerbate existing unequal conditions for communities that are in a position of exclusion in our countries.

Needs that were identified

The women in La Sala clearly indicated that the internet should be a useful and practical tool, and a medium for exercising their rights – otherwise they would not consider it necessary to learn how to use it. Making online transactions, reporting violence, accessing health services, and helping their children with their homework are some examples of practical uses of the net.

8 Based on an in-depth interview with a female sex worker.

For the women who took part in this research, a better understanding of technology, as well as of English, may be necessary but not sufficient to improve their working conditions. With increasing age, sex work is more and more difficult. The pressure for knowledge in English and technology increases as these women get older, impacting the possibility to get a different job in the future.

Their current priority is to access better information about their rights as women and as citizens, and to be promptly and appropriately informed about different opportunities available for them and their children. Information about health care, and friendly and safe spaces where they can get medical assistance, as well as information about their rights in this key area is extremely important for these sex workers.

Another of their major concerns is being able to advise their children about the uses of technology, especially social networks. Their children live in extremely vulnerable situations, and there have already been several situations in which technology has put them at greater risk. Due to the little knowledge the sex workers themselves have of technology, this represents a major challenge in their role as guides to their dependants.

The work of La Sala

For women in vulnerable situations, access to technologies, and the appropriate use of them, is not only a right but a way of exercising their rights generally.

La Sala makes very good use of the internet, and plays an intermediary role in the dissemination of information. For this, they receive the support of young professionals who they contact through international cooperation projects. They circulate information on the rights of sex workers, and keep sex workers informed about new initiatives, policies, research, and other organisations related to their work. La Sala also positions the opinions and demands of female sex workers in different spaces and helps them network with peers and supportive organisations. La Sala offers training and leadership, and engages in advocacy, pushing for the improvement of the living conditions of the women. Sex workers from downtown San José find a supportive space in La Sala, a resting place of comfort and warmth, and a place to fight for their rights using technologies..

Conclusions

Based on this case study we can conclude:

- That the digital divide increases the social distance and gap in understanding between more privileged communities and more vulnerable communities, even when connectivity rates increase overall.
- That there is a need to foster technological appropriation in favour of the human rights of the most vulnerable populations -- specifically for sex workers who as poor women, immigrants, single mothers and heads of households constitute, as Amnesty International says, one of the most vulnerable population groups in our countries. Technology must be appropriate for them, and be useful in their exercise of fundamental rights.
- That the excellent work of La Sala as infomediaries, as promoters of political participation, and of positioning women's voices must continue to be supported.
- That more cases like Maria's must be discussed in order to combat discrimination, violence and the violation of the privacy of communities living in vulnerable conditions. The video is still online.

Action steps

Based on the results of this research we propose:

- To present this case for public discussion.
- To use technologies to inform others about women's rights, especially if they are vulnerable to discrimination and violence, as is the case with sex workers.
- To develop a project that uses technology for the sex workers of La Sala – especially for those who, because of their age, cannot continue to engage in sex work.
- To support the work of La Sala in their process of communication, information sharing and advocacy, and their struggle for a life free of stigma and discrimination for sex workers.

CROATIA

CAMPAIGNS AND COUNTER-CAMPAIGNS: THE RISE OF CONSERVATISM ONLINE



Prostor rodne i medijska culture K-zona, Vox Feminae and One World Platform

Gabrijela Ivanov and Barbara Gregov

www.voxfeminae.net and www.oneworldplatform.net

Introduction

Over the past several years, sexual rights in Croatia have been attacked through a number of conservative campaigns and actions. These have primarily targeted the right to sexual equality, the right to sexual autonomy, sexual integrity and the safety of our bodies, and the right to free and responsible reproductive choice.

To become a member of the European Union (EU), Croatia was obligated to synchronise its legislation with the EU's *acquis communautaire* – or body of EU law – and implement the recommendations of the Council of Europe. This brought an impressive, positive change at the level of legislation which was and is now in line with EU standards and ahead of legislation in the Western Balkans. The annual survey conducted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Europe ranks Croatia in fifth place (out of a total of 49 states covered by the survey) in 2015, achieving 71.05% of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) rights measured by the index.¹ The biggest problem is the fact that this implementation is neither controlled nor supervised.

The reality on the ground is of strong and well-organised conservative civic initiatives. Among them the most effective is “In the Name of Family”² (*U ime obitelji*) which succeeded in delaying the adoption of the law on same-sex marriage for more than two years, and managed to insert the definition of marriage as “lifelong union of one man and one woman” in the country’s constitution. On 1 December 2013, the country held a referendum promoted by In the Name of Family on the constitutional definition of

marriage, with 66% of the population voting in favour. The effect of this victory was that the promised Law on Life Partnership for Persons of the Same Sex was passed only in July 2014,³ and that at the constitutional level Croatia has prohibited the possibility of naming a same-sex union a marriage.

This report offers an overview of both progressive and conservative online campaigns in Croatia that impact on the sexual rights of its citizens. It suggests that a thorough review of the country’s education curriculum is necessary to achieve progressive sexual rights in the country.

Policy and political background

The legislation that provides the best protection to the rights of sexual and gender minorities include the constitution, which guarantees freedom of expression and the freedom of media, the laws on gender equality, same-sex unions, and the prevention of discrimination, as well as the criminal code and the media and electronic media laws.⁴

The work and operations of the Croatian media are regulated by the media law, the law on electronic media, the Croatian radio and television law, and legislation on the right to access information. The media and electronic media laws⁵ reiterate the

1 ILGA-Europe. (2015). *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People*. Belgium: ILGA-Europe. www.ilga-europe.org/sites/default/files/Attachments/01_full_annual_review_updated.pdf; see also the country ranking at www.ilga-europe.org/sites/default/files/Attachments/country_ranking.png

2 uimeobitelji.net

3 The parliament adopted the Law on Life Partnership for Persons of the Same Sex in July, granting same-sex couples similar rights to married different-sex couples. The law had been promised two years earlier, but had been slowed down by the constitutional referendum to outlaw same-sex marriage in December 2013 (where 66% of voters opted to constitutionally forbid marriage equality). After the referendum took place, the government announced it would accelerate work on the Life Partnership bill. Source: ILGA-Europe. (2015). Op. cit.

4 See the clause on freedom of expression at www.constitution.org/cons/croatia.htm; see also www.zakon.hr/z/444/Zakon-0-javnom-okupljanju. On the freedom of media see www.zakon.hr/z/38/Zakon-0-medijima; the media and electronic media laws www.zakon.hr/search.htm?searchString=elektronski+mediji; and the laws on gender equality www.zakon.hr/z/388/Zakon-0-ravnopravnosti-spolova, same-sex unions www.zakon.hr/z/732/Zakon-0-%C5%Beivotnom-partnerstvu-osoba-istog-spola, the prevention of discrimination www.zakon.hr/z/490/Zakon-0-suzbijanju-diskriminacije; and the criminal code www.zakon.hr/z/98/Kazneni-zakon

5 For the county’s media law see www.zakon.hr/z/38/Zakon-0-medijima; the law on electronic media www.zakon.hr/search.htm?searchString=elektronski+mediji; the radio and television law www.zakon.hr/z/392/Zakon-0-Hrvatskoj-radioteleviziji; and legislation on the right to access information www.zakon.hr/z/126/Zakon-0-pravu-na-pristup-informacijama

constitutional guarantee for freedom of expression and freedom of the media.

The Croatian law that is most discriminating against the rights of sexual and gender minorities is the Law on Family.⁶ Because of this, equality in marriage and equal rights for all couples remains the current preoccupation and aim of LGBTIQ activists, including the right to adopt children⁷ under the same conditions allowed for heterosexual couples. At this time, in the light of a traditional stereotyping of motherhood, it is much “easier” for lesbian couples in Croatia to become parents⁸ than for male gay couples, which is another thing that activists want to change.

The constitutional court has clearly stated that the addition of a provision in the constitution that defines marriage as a lifelong union of one woman and one man should not have any effect on the future development of a legal framework for same-sex or civil unions. This is in accordance with the constitutional principle that every person in Croatia is entitled to the right to have his or her personal and family life and human dignity respected and legally protected.

One of the biggest problems in the process of adopting European standards for the protection of human rights is the practical implementation of legislation. To improve the effectiveness of existing legislation, Croatia needs to implement radical and thorough reform of its judiciary and public administration.

The rise of conservatism online

Before the 12th Pride March of LGBTIQ people and families, the Zagreb Pride Association⁹ announced its call for the “Selection of a Homophobe and Homofriend for 2013” on its official website.

These rankings have been published by the Pride March since 2011, with the aim to point out which public personalities contributed, with their actions in the previous year, to the advancement of LGBTIQ rights, as well as the public actions of

persons who discriminated against the LGBTIQ community.

It is important to note that the final outcome and ranking are decided by the public with an online vote. The nominees, as a general rule, include political figures, representatives of the church and, to a lesser extent, journalists.

Rankings of this kind are not an exception in Croatia, and are often done by journalists. They are part of the standing tradition of exposing the actions of public personalities. However, many who are exposed through these lists find them contrary to the interests of the citizens. Two of the best known lists of this kind are the “Greatest Shits” that ran for many years in *Feral Tribune*¹⁰ magazine, and the “*Stup Srama*” (Pillar of Shame) list, published by the Libela.org web portal.

Željka Markić, the founder of the civic initiative In the Name of the Family – which initiated the referendum that introduced the definition of marriage as “lifelong union of a man and a woman” in the constitution – was named the 2013 Homophobe of the Year. The Homofriend of the Year award went to Mirela Holy, the president of the OraH political party (*Održivi razvoj Hrvatske* - Party for Sustainable Development of Croatia).¹¹

In 2013, Zagreb Pride nominated,¹² among others, Karolina Vidović Krišto, a journalist working for Croatian Radio and Television, for the Homophobe of the Year list, for the report “Paedophilia as Foundation of Sexual Education?” included in her “Image of Croatia” (*Slika Hrvatske*) programme which aired on 29 December 2012 on the broadcaster HRT.¹³

The programme was dedicated to the subject of introducing a health education curriculum in the educational system in Croatia. The programme included video footage for which HRT failed to secure the copyright, and which promoted conservative views on health education.

It was because of the airing of this video that the programming council at HRT moved to terminate the *Slika Hrvatske* programme.¹⁴ On nominating her for the Homophobe of the Year award, Zagreb Pride commented that the disputed programme was a “piece of propaganda and biased programme that

6 www.zakon.hr/z/88/Obiteljski-zakon

7 According to Wikipedia: “Full LGBT adoption in Croatia is not legal, but a single person regardless of sexual orientation is allowed to adopt. However, the Life Partnership Act recognizes an institution similar to step-child adoption called partner-guardianship.” https://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Croatia

8 According to Wikipedia: “Since the introduction of the Life Partnership Act in 2014, same-sex couples in Croatia have been equal to married couples in everything except adoption. However, the act provides same-sex couples with an institution similar to step-child adoption called partner-guardianship. Same-sex couples were first recognised in 2003 through a law on unregistered cohabitations.” Ibid.

9 www.zagreb-pride.net and www.zagreb-pride.net/izbori

10 feral.hr

11 <https://www.orah.hr>

12 La, B. (2013, 4 June). Homozbori 2013: Tko će biti homofob, a tko homofrend godine? *Index*. www.index.hr/black/clanak/homozbori-2013-tko-ce-bit-homofob-a-tko-homofrend-godine/681339.aspx

13 www.youtube.com/watch?v=TlaCwh2Xtco

14 CroL. (2015, 10 July). Karolina Vidović Krišto dobila spor protiv Zagreba: udar na slobodu govora u Hrvatskoj. *CroL*. www.crol.hr/index.php/vijesti/6831-karolina-vidovic-kristo-dobila-spor-protiv-zagreb-pridea-udar-na-slobodu-govora-u-hrvatskoj

has nothing to do with journalism and is rather misused for radical activism.¹⁵

The Zagreb Pride Association, established in 2002, is the leading Croatian association that works on LGBTIQ issues. Its aims include the achievement of a free, democratic and emancipated civil society based on the fundamental values of freedom, peace, non-violence, individuality, justice, gender equality, tolerance, freedom of speech and thought, the preservation, promotion and acceptance of diversity, and the right to self-identification and self-definition.¹⁶

The mission of Zagreb Pride is to publicly expose homophobia, biphobia and transphobia, while one of its main activities is to continuously react to any action aimed against LGBTIQ persons, their children and families, as well as the LGBTIQ community in general.

Krišto sued Zagreb Pride over their nomination of her for the Homophobe of the Year award. In July 2015 the District Court in Osijek upheld the decision of the Municipal Civil Court in Zagreb that Zagreb Pride should pay her more than 40,000 HRK (close to USD 6,000) for “injuries to her dignity, honour and reputation”.

Zagreb Pride and the CroL Association for Media Activism (publisher of the Crol.hr LGBT news portal)¹⁷ receive hate comments and threats on their respective social network profiles, and they have documented and reported these comments and threats to the authorities. Such incidents increase in frequency whenever some LGBT-related issue is more visible in the media. For example, this was the case with the adoption of the Law on Lifelong Partnership,¹⁸ the news of the first lesbian couple adopting a child, before and after the Pride Week during which the Pride March takes place, and especially during the constitutional referendum.¹⁹ Echoing the court action brought against Zagreb Pride, independent news websites run by women that often cover sexual rights (such as Libela.org, a website dealing with sex, gender and democracy; the already mentioned Crol.hr; muf.com.hr, a website focused on feminist pop culture; and the VoxFeminae.net website) were exposed over the past two years not only to hate speech, but to legal

action by prominent right-wing actors in the public sphere.

There have also been instances of violations against young girls on the internet. In June 2013, a person with the handle “Mr. Nobody” opened a Facebook page on which he posted photographs of girls from Eastern Croatia, calling them pejorative names and insulting them. The page was named “*Vikovačke kurve*” (Vinkovci Whores) and was active for several months before the successful intervention by the police to shut down the page. At the time, the case was a sensation in the media and the local community and caused serious trauma to the girls.

Soon after the Facebook page was shut down, in October of that year, the same person launched a new page on Facebook called “Vinkovci Whores II” and continued to publicly link to profiles of the girls. The criminal code treats such behaviour on the internet as an offence against honour and reputation. Private legal action by the targeted persons was necessary to prosecute. However, in October, some of the targeted girls were not of legal age,²⁰ in which case different rules apply and no private lawsuit was necessary to prosecute. Police could start the investigation and ultimately apprehend the perpetrator.

In this case, it was the action of a single individual, condemned by the media and the general public. A much greater and more serious challenge to the development of sexual rights takes place when certain groups, such as In the Name of Family, successfully mobilise one half of society (the traditionalists and the patriarchal), relying on the resources of the Catholic Church – the signatures for the referendum petition were collected, quite often, in churchyards and in the immediate vicinity of churches.

Reflecting the extent of the online mobilisation of conservative groups, a 40-day campaign of prayer against abortion held in front of hospitals in about a dozen Croatian cities was announced and advertised on the campaign’s website²¹ which was extremely well connected to social networks.

After a prolonged battle to introduce civic and sexual/health education curricula in Croatian schools, the “pro-life” forces decided to promote their “truth” through a website named “Health Education” (*Zdravstveni odgoj*).²² They did this anonymously, not releasing the name of the publisher. Zagreb Pride reacted to a series of discriminatory

15 arhiva.dalje.com/hr/hrvatska/zagreb-pride--udar-sudbene-vlastina-slobodu-govora-u-hrvatskoj/549747

16 www.zagreb-pride.net/o-nama

17 www.crol.hr/index.php/o-projektu

18 The law legalizing same-sex unions. www.zakon.hr/z/732/Zakon-o-%C5%BEivotnom-partnerstvu-osoba-istog-spola

19 Interview with Zagreb Pride public relations and programme coordinator Marko Jurčić and CroL editor-in-chief Iva Tomečić, 24 June 2015.

20 K.T. (2013, 15 October) Vinkovački zlostavljač se vratio, ovaj put krenuo na maloljetnice! RTL. www.vijesti.rtl.hr/novosti/935446/vinkovacki-zlostavljac-se-vratio-ovaj-put-krenuo-na-maloljetnice

21 www.4odanazazivot.com

22 www.zdravstveniodgoj.com

and disturbing articles published by the website with a complaint to the Council for Electronic Media over violations of the rules listed in the Law on Electronic Media. It also demanded the name of the website's publisher so that it could file misdemeanour charges against him or her.²³

The pro-choice campaign, led by the women's non-profit association CESI (Centre for Education, Counselling and Research)²⁴ and the RODA²⁵ (*Roditelji u akciji* – Parents in Action) association, responded by launching their own initiative called “Znaj znanje”²⁶ (Know the Knowledge) website. The key message of their campaign was that the only option is to educate the public that sexual rights are part of universal human rights.

The most visible online campaign that touched on sexual rights, at least in part (it included different forms of discrimination), was the “No to Hate Speech on the Internet”²⁷ national campaign, implemented from September 2013 through December 2014. The campaign was not developed in Croatia. Rather it was a campaign implemented all over Europe, and initiated by the Council of Europe. The implementation of the campaign was led by the Ministry of Social Policies and Youth and involved the non-governmental sector, the national television network and secondary schools. The Council of Europe commended the Croatian campaign as one of the best. However, for more thorough and long-term changes, the systematic education of new generations in schools is necessary.

Conclusions: Reforming education and raising awareness

It is evident that technology enables the mobilisation of both progressive values and conservative beliefs. The two sides are unequal, and the greatest threat to furthering the democratisation of society and the development of human and sexual rights is the indisputable power (social position, presence in mainstream media, money) enjoyed by members of the traditionalist faction.

That power was demonstrated by the fact that Krišto was represented in her litigation against Zagreb Pride by the office of one of the most prominent attorneys-at-law in Croatia, criminal law specialist

Zvonimir Hodak, who was engaged in some of the best-known political trials over the past several decades.

We should bear in mind that the deep democratic deficit of Croatian society reflects its education system – given the fact that various subjects of civic education, such as human rights, political literacy and participation, interculturality and communication with other cultures, are absent from the curriculum. Everyday experience suggests these issues are not part of the competence of students and the knowledge of citizens. As a result, the rights of national and other minorities in Croatia remain under threat.

The thorough reform of the curriculum for pre-school, elementary and secondary education that is currently under preparation is an opportunity to democratise the schools.²⁸ The GOOD²⁹ civil society initiative demands consensus on civic values from educational authorities, as well as a model and methodology for education.³⁰

A growing social mistrust is becoming dangerous in combination with a lack of confidence in political institutions. We see a strong polarisation of society that creates an unfavourable climate for democratic processes, in which opposition and ruling parties engage in constant altercations, to the effect that dialogue and a dedication to constructive solutions for social problems have been completely prevented.

There is the common view in Croatia that the laws are not as bad as the critical situation of the legislative system that fails to implement the laws properly. Citizens also do not know their rights or how to realise them. Ombudsman Lora Vidović, in her annual Report to the Croatian Parliament for 2014,³¹ warned that one of the greatest prob-

23 Zagreb Pride. (2013). #PinkMegaphone: From Anti-Discrimination Act to the Constitutional Ban of Marriage - Report of Zagreb Pride on the Human Rights of LGBTIQ Persons in Croatia 2010-2013. Zagreb: Zagreb Pride. www.zagreb-pride.net/new/wp-content/uploads/2015/02/report2014.pdf

24 cesi.hr

25 roda.hr

26 www.znajznanje.org

27 www.dislajkamrznju.hr/o_kampanji

28 The *Independent Balkan News Agency* reports that the reform of the education system is amongst the reforms that follow the entry into the EU: “This was confirmed to the media by the head of the national operational body for adoption of a strategy on education, science and technology, Neven Budak. According to this plan, junior classroom teaching should be extended from four years to five, and the mandatory school period would last nine years instead of the current eight years. Children would enroll in high school at the age of 15, and not, as is the case now, at 14 or 14-and-a-half. In secondary schools the reform means that the number of elective classes will increase and that should lead to the reorganisation of the network of vocational schools. The plan is to concentrate the schools in certain centres, [and to] make sure there are not many schools with the same curriculum.” See: Radic, N. (2013, 18 July). New reform of the education system in Croatia. *Independent Balkan News Agency*. www.balkaneu.com/reform-education-system-croatia-2/

29 goo.hr

30 GOOD Inicijativa. (2015, 22 May). Nije bitno koliko znanja će dijete steći, nego kako će ga steći. www.goo.hr/nije-bitno-koliko-znanja-ce-dijete-teci-nego-kako-ce-ga-teci

31 Pučki pravobranitelj. (2015). *Izvjescje pučke pravobraniteljice za 2014. godinu*. Zagreb: Pučki pravobranitelj. www.ombudsman.hr/index.php/hr/izvjescja/2014/finish/41-2014/562-izvjescje-pucke-pravobraniteljice-za-2014-godinu

lems citizens face is the judiciary, and called for immediate action by the Ministry of Justice, especially regarding instituting free legal assistance. She also mentioned, on several occasions, the lack of proper information available to citizens, something that she views as a major challenge for the effective work of institutions in the future.

Action steps

There are no special laws that regulate behaviour on the internet and the same rules apply to violations of law both online and offline. Because of this, legislation does not cover all the specific aspects of online violations and offences. Therefore, there is ample space to supplement and amend the legislation.

In this regard, we offer several recommendations for improving the current situation:

- Ensure the monitoring of online violations of sexual rights, as well as promotion of good practices in the area of sexual rights on the internet.
- Strengthen capacities to provide legal assistance to organisations working in the area of sexual rights, and allow them to file lawsuits. The grounds for this already exist, but few civil society organisations have sufficient resources at their disposal to engage in prolonged litigation.
- Ensure international support through the coordinated dissemination of news and reporting on attempts to restrict sexual rights in individual states in Croatia. This should primarily happen through independent media, but the mainstream media should also be encouraged to support this.
- Stimulate and promote the networking of existing online media dedicated to feminism, gender and sexual minorities, and the establishment of new, independent online media outlets.
- Support the development of policies, legislation and strategies for online protection that correspond to the actual needs of citizens using the internet.

DEMOCRATIC REPUBLIC OF CONGO

“IT IS NOT AN ISSUE UNTIL IT BECOMES AN ISSUE”



Si Jeunesse Savait (SJS)

Francoise Mukuku
www.mwasi.com

Introduction

In 2014, a well-known artist on the Kinshasa scene, who was also well-known as a gay man, was found murdered in his house. It was evident that he had been with a sexual partner.¹

The artist's house guard had told the police the name of his employer's last sexual encounter, and how his boss had asked him to give them some time alone to discuss an issue inside the house. This resulted in the community starting to investigate who the artist's young sexual partner could possibly be – a person nobody had heard of before.

It turned out that the man was a married father of three kids, who had been seeing the artist for a number of weeks; he had met him through the internet on the well-known Francophone dating website called PlanetRomeo.²

The murderer, who was convicted two weeks after the crime, also happened to be a serial killer who had been tried in the neighbouring Republic of Congo for the killing of two business partners. He had escaped from prison there and sought refuge in his home town of Kinshasa, the capital city of the Democratic Republic of Congo (DRC).³

This raised – if not for the first time, then at least very publicly and prominently – the risks that the gay community of the DRC take when hooking up with strangers on the internet. It also highlighted how they need to come up with a strategy to circumvent the risks they face online.

Political and legislative context

The DRC is a post-conflict African country. More than 50 years after its independence, it is plagued by poverty, unemployment, corruption and armed conflicts, as reflected in the most recent Human De-

velopment Index, where it is ranked 186th out of 187 countries and territories.⁴

According to the categorisation provided by UNAIDS,⁵ the DRC's legislation is said to be “neutral” in general when it comes to lesbian, gay, bisexual and transgender (LGBT) people. This is to say that it is neither protective nor prohibitive, since it does not punish people on the grounds of sexual orientation and gender identity.

Despite this, as in many other African countries, sexual minorities are victims of all kinds of prejudices, discrimination and stigma in the DRC.

In addition, the country's security services (police, army and intelligence services) frequently violate the rights of the most visible LGBT people, as shown in the shadow report on sexual rights in the Democratic Republic of Congo produced by the Sexual Rights Initiative (SRI) and Si Jeunesse Savait and submitted to the United Nations Human Rights Council.⁶

With the upcoming elections looming, President Joseph Kabila, who is meant to step down after 15 years in power, said he would try to change the constitution in order to stay in power for longer. This, together with the elections, led to a clampdown on free speech at the end of 2014, mostly affecting the internet and SMS services. Both were shut down for almost three weeks, while some independent radio stations were taken off the air for allegedly feeding the crisis linked to the electoral process and preparations.

Political candidates have raised concerns about their phones being tapped and pointed out that some internet services were not returned to normal after the three-week shut-down, raising the spectre of government surveillance.

1 maleboforce.blogspot.co.ke/2014/09/un-meurtre-au-sein-de-la-communaute-gay.html?sref=fb

2 <https://www.planetromeo.com>

3 www.lephareonline.net/deces-du-belge-yves-marie-les-informations-complementaires-lavocat-partie-civile-brady-tosta

4 hdr.undp.org/sites/all/themes/hdr_theme/country-notes/COD.pdf

5 www.unaids.org/globalreport/documents/20101123_GlobalReport_Full_Fr.pdf

6 Sexual Rights Initiative (SRI) and Si Jeunesse Savait (SJS) joint submission shadow report on sexual rights in the Democratic Republic of Congo for the 19th Universal Periodic Review evaluation of the Human Rights Commission. www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbt/rights-of-lgbt-persons-drc.pdf

The need to be safe online

The DRC is classified by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)⁷ among the countries that do not criminalise homosexuality. Sexual relations between persons of the same sex are not explicitly criminalised by the Congolese criminal code.⁸ However, homosexuality does fall under “indecentry” laws, but, as evidence of a lack of clarity in the text on homosexuality, no sanction is imposed.

Since 2010, the DRC has seen several attempts to criminalise same-sex relations. These proposed new legal texts claimed to cover gaps that existed in criminal law. They also contained provisions on the prohibition of organisations promoting the rights of LGBT people.

Despite the absence of a law, homosexuality is evoked implicitly in some legal texts. For instance, it is reflected in the new child protection law⁹ which does not allow homosexuals to adopt children.

Legislation in the DRC does not deal with transgender people in any way.

However, socially, same-sex relations are seen as devious, sinful and “imported behaviour” from the West. Although LGBT communities do exist, they live underground and keep a low profile, to avoid attracting unnecessary attention from both the community they find themselves in and the security services.

Disclosing your sexual identity as LGBT risks exclusion from society (work, family life, education, etc.), making it very difficult to be open about your sexual orientation.

Congolese LGBT are also victims of many forms of violations of their rights without having legal recourse. They are regularly tortured by the police, army or intelligence service, who at the same time extort money. They have also been victims of indecency trials, and are portrayed as deviant in the Congolese media, in complete violation of journalistic ethics. A report on sexual rights in the DRC presented at the 19th UN Human Rights Council Universal Periodic Review¹⁰ documented LGBT stories in local communities in the country.

In this context, because of the anonymity it allows and its transnational nature, the internet has become a powerful tool to link up various local and small LGBT communities, as well as individuals who may want same-sex relations but do not consider themselves as gay.

Facebook and WhatsApp are praised for their ease of use and, in the case of WhatsApp, because access to it is free of charge¹¹ on most of the telecom networks in the country.

Some other social media platforms and mobile applications are also used, one of them, as mentioned, being PlanetRomeo, a French-based dating website for Francophone gays. On PlanetRomeo, one can create an account and have both private and forum chats with people.

Malebo Force,¹² an online Congolese gay community, is another example of how the internet is used by the local community. It first targeted the diaspora gay community wanting to keep in touch with their home country, until local Congolese started to use it. It started off as a mailing list, but then grew in its use of technology. It now offers a variety of features on its website, including a blog on gay issues from both within the DRC and around the world, a closed Facebook group where people can exchange information that is of public interest, as well as a more erotic Facebook page called Mibali Afrika where people can let go of their most private gay fantasies.

Justice Walu, the founder of the website, said: “We were concerned about the rampant stigma related to being gay and we therefore thought the internet was a good way of doing activism and safely hooking up. I personally didn’t know there were some gays and lesbians, as well as transgender people, organising in small support groups. Now that I know them and take part in some of their activities, I still think there is a need for an online community, at least for all those people who are gays but will never take part in in-person activities for fear of being labelled and possibly losing everything they care for.”¹³

According to Walu, more and more people are using the internet, but are not aware of the security breaches to their privacy or exposure they may face: “Even I had to enrol in an online security class after 10 years of maintaining a blog followed by more than 20,000 people today. I thought adopting a pseudonym was enough, but I learned from my course that it was not enough.”

For his part, Foko¹⁴ is a leader of a LGBT youth group that has a public Facebook page. “The page has several administrators. We check the background of the people who follow or befriend us, so

7 old.ilga.org/Statehomophobia/ILGA_WorldMap_2015_ENG.pdf

8 www.leganet.cd/Legislation/JO/2004/JO.30.11.2004.pdf

9 www.leganet.cd/Legislation/JO/2009/L.09.001.10.01.09.htm

10 See footnote 6.

11 It can be used on some networks without a mobile internet package.

12 maleboforce.blogspot.com

13 Interview with Justice Walu, founder of Malebo Force, Kinshasa, February 2015.

14 Name changed for security reasons.

that everybody is safe,” he explained. “If many of the people who take part in our community page browse with their real profile, it is because they trust us, they have seen us in person and know who we are. But we come across some fake profiles added by administrators who were not really careful in their choices of friends. We never disclose this, to avoid panic from our members.”

Gays de la République démocratique du Congo, another closed group, is one of the most popular Facebook pages where gays in the DRC diaspora as well as anyone visiting the country can drop by. On the page some people leave their telephone numbers for anyone who might want to meet them. However, this is not advisable for reasons of privacy.

Once, a young gay activist left his home address so that gays and lesbians could visit him on his birthday.

When publicly advised by another group member to take down the address, he seemed to not get the point, saying that everybody knew he was gay already. However, someone pointed out that some of his friends were not openly gay and may not turn up to a publicly advertised gay birthday party for fear of exposure. He then took down the address.

One Facebook profile caused some suspicion amongst the gay community. The profile regularly asked its “friends” questions such as details about specific gay joints, or the most gay-friendly enterprise or university. It even shared an invitation to a gay porn film shoot, offering USD 5,000. Knowing that it is unlikely that an amateur porn star would be paid this amount of money for a day of shooting, many people advised others not to attend, pointing out that the invitation might be the work of the country’s security services.

With the electoral process on its way and many breaches of freedom of speech occurring, concerns have been raised by LGBT youth groups in the Congo. According to Foko:

Our fight is not seen as political or important in the eyes of the security forces, and most of the violations happening to LGBT people are in line with the massive human rights violations Congolese have suffered for decades now. Our community members do not think it’s important to use very strict online security strategies, but we are encouraging them by organising specific online security courses with Si Jeunesse Savait, a local organisation with expertise on communication rights, because it is not an issue until it becomes an issue.

Conclusion

With communications rights and, specifically, freedom of speech being at risk in the DRC during times of political trouble, and many internet-based services and platforms not paying attention or advising their users on security breaches, the LGBT community has to carefully navigate the possibilities that the internet offers them.

Unfortunately, many LGBT activists do not understand the extent of their online exposure. Online security trainings organised by local human rights groups do not often focus on their specific needs.

Mobile applications such as WhatsApp are used by the LGBT community as an organising tool, and for personal communications. But WhatsApp is known for being very weak on security, as one can copy and forward or email an entire conversation to a third person or add people to a group without any form of control by the people in the group already.

Although LGBT people who experience the dark side of hooking up on the internet are reluctant to report cases, the story of the well-known artist who met his lover on the web and ended up dead rings alarm bells in the community.

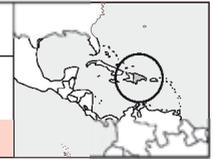
Action steps

The following advocacy steps are suggested for the DRC:

- The LGBT community should collectively discuss an online security strategy that is specific to their online safety needs.
- Local human rights organisations offering training in online security should offer solutions to concerns raised by the LGBT community regarding the risks of online dating.
- The LGBT community should be aware of the vulnerability they face if their real identities are revealed online. In line with the above, they should become skilled in the tools and tricks they can use to keep their identities private on the internet.

DOMINICAN REPUBLIC

THE ONLINE CAMPAIGN FOR ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC



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Introduction

The Dominican Republic, located in the Caribbean, shares the island of Hispaniola with Haiti. It has a population of 9.5 million inhabitants, according to the last official census in 2010.¹ As established by the new constitution, it is a free and independent state, which has a republican, democratic and representative civilian government.

As a result of the colonisation by the Spanish crown, most of the Dominican population considers itself Catholic.² During the dictatorship of Rafael Leonidas Trujillo (1930-1961), and for the sake of being recognised as a benefactor of the Catholic Church after international criticism of his government, in 1954 he decided to sign an agreement with the Holy See. This agreement, called the “Concordat”,³ governs church-state relations in the country, and its implementation has made the Dominican Republic, in practice, into a confessional state.

The Concordat, which has been maintained by all post-dictatorship Dominican governments, imposes the obligation of Catholic religion classes in public schools, nursing homes, orphanages and prisons, and has been the reason for the creation of an office in the Government Palace as a liaison between the Catholic Church and the Executive (President of the Republic).⁴ The interference of the Catholic Church is felt in both public and private deliberations in the country, especially in decision making by autonomous bodies like the judicial system, and organs of the state – such as the National

Congress. Its influence is reflected in areas such as women’s enjoyment of human rights, sex education in schools and abortion rights.

In the Dominican Republic, abortion was prohibited in all circumstances after the adoption of the Penal Code in 1897, and was decriminalised in cases of danger to the woman’s life, rape and malformations incompatible with life on 19 December 2014⁵ with the adoption of the new Penal Code. However, the new Penal Code is under review in the constitutional court.

From 2012 until the legalisation of abortion under certain conditions in 2014, feminists as well as conservatives used both social networks and the media to campaign for their positions on abortion.

Political background

The Dominican Penal Code is an adaptation of the French Penal Code of 1884 and was adopted in 1897. From then until 2014, the Dominican Republic was one of the six countries in the world where abortion was prohibited completely.⁶ This means that even when the mother’s life was in danger, it was not possible to provide this type of assistance.

In 1997, President Leonel Fernández ordered the modification and updating of the codes that make up the Dominican legislation. However, for more than 18 years the new Penal Code was not approved, both for lack of consensus in the legislative chambers as well as presidential vetoes and remarks. Constitutional reform in 2009 provided an opportunity for women’s organisations to fight for abortion rights. This was after religious sectors, and especially the Catholic Church, propelled the adoption of the current Article 37 of the Constitution which establishes the right to life from conception, which for conservatives would constitutionally prohibit access to abortion in all circumstances.

Feminists and women’s organisations mobilised against the approval of this article mainly on the streets. The coordinator of Resistance to

1 National Statistics Office, 2010 Census. censo2010.one.gob.do

2 The latest government figure is from the demographic and health survey of the year 2002, which indicates that 67% of the population consider themselves Catholic, but the Pew Research Center indicates that this figure had decreased to 57% by 2014. See Pew Research Center. (2014). *Religion in Latin America: Widespread Change in a Historically Catholic Region*. www.pewforum.org/files/2014/11/Religion-in-Latin-America-11-12-PM-full-PDF.pdf

3 www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19540616_concordato-dominicana_sp.html

4 While there is also a link to evangelical churches in the Presidency, a greater influence of the Catholic Church in the country is recognised.

5 On 9 and 23 January 2015, the organisations “Matrimonio Feliz”, “Fundación Justicia y Transparencia” and “Fundación Transparencia y Democracia” filed three motions of unconstitutionality before the constitutional court because of the articles that decriminalise abortion and the way the code was adopted. To date, the constitutional court has not ruled on this matter.

6 Together with Chile, El Salvador, Malta, Nicaragua and the Vatican.

Constitutional Regression⁷ created a campaign that united more than 30 civil society organisations, artists and representatives of the country's political powers at a cost of more than USD 80,000. At the heart of the campaign were public demonstrations, concerts and posters put up in crowded areas explaining the consequences of this constitutional reform.

Until 2011, the proportion of households with internet access in the Dominican Republic was 11.7%,⁸ which explains why the campaign saw no need to go online at that time. A study by the Research Centre for Feminist Action (CIPAF)⁹ in 2010 states that only 46% of women's organisations had a web page, indicating the lack of involvement of women's NGOs in cyberspace and new technologies.¹⁰

Esperancita and the Catholic Church's attack on Profamilia

Between 2011 and 2013, the country experienced a marked increase in media coverage, both offline and online, of the topic of sexual and reproductive rights. This was mainly due to two key events: the case of Rosaura Almonte – also known as Esperancita – and the Catholic Church's lawsuit against the organisation Profamilia. Both cases generated outrage in the media and, in the case of Profamilia, heated debate on social networks.

Sixteen-year-old Rosaura Almonte – known at the time as Esperancita¹¹ – was diagnosed with acute leukaemia and a pregnancy of nine weeks. The chemotherapy treatment that she should have been provided with urgently was incompatible with pregnancy. The public hospital where she was admitted to refused to supply the prescribed treatment because of her pregnancy, putting her life in danger. Following this case, the discussion about abortion was opened in the country again, because the girl's mother begged in the media for her daughter to receive one. On 17 August 2012, Esperancita died, causing an explosion of views on social networks. It bears noting that, up

until that point, people who supported the right to abortion contributed mostly to the online conversations, while conservative organisations had not yet entered the debate.

For its part, in 2012, the NGO Profamilia created a campaign called “Your Sexual and Reproductive Rights are Human Rights”, which included videos that showed different violations related to sexual and reproductive rights and invited the public to report them under the slogan “Know, act and demand”.¹² The videos were reported on in the media, and promoted widely on social networks, especially on YouTube and Facebook. After more than six months of the campaign, the Catholic Church sued Profamilia in court, demanding, among other things, that it delete the campaign's content from all social media.¹³

This lawsuit triggered debate in the media – especially online – about sexual rights. A new direction in the debate on abortion was also created, as one video refers to rape and the right to abortion in this context. Interest in the videos took the campaign's Facebook page from 120 to 978 views in two days.

The first counter-campaign that emerged on social networks against the videos used the hashtag #asinoprofamilia (“not like that Profamilia”), arguing that Profamilia's campaign was against the morals and good customs of the Dominican Republic. In response, feminist activists and other social organisations created the #yoapoyoaprofamilia (“I support Profamilia”) hashtag on Facebook and Twitter. These hashtags were intermittently trending topics, especially on the day of the hearing, which was covered extensively by the media online.

Because the Profamilia campaign opened the door to public discussion on issues of sexual and reproductive rights, after the campaign it became easier to take a public position on these rights, since it was a topic that had been covered by the media for months. At the same time, it became easier to publicly disagree with the Catholic Church, which had suffered a blow to its reputation with, amongst other things, revelations that a number of its priests had been paedophiles.¹⁴

In short, between January 2011 and October 2013, both journalists and political actors showed a

7 Resistencia al Retroceso Constitucional: <https://www.facebook.com/Resistencia-al-Retroceso-Constitucional-246001670462/timeline>

8 According to the National Multi-Purpose Household Survey (ENHOGAR), National Statistics Office (ONE): osicrd.one.gob.do/index.php?option=com_zoo&task=category&category_id=273&Itemid=211; ICTs were not included in the ENHOGAR surveys of 2008 and 2009-2010.

9 Centro de Investigación para la Acción Femenina: www.cipaf.org.do

10 CIPAF. (2011). ¿Otro techo de cristal? La brecha digital de género en la República Dominicana. issuu.com/cipaf/docs/generotic-web?e=5467836/2938159

11 When the case went public, to protect the girl's identity as a minor, the media called her “Esperancita” (Little Hope). After her death, her legal name, Rosaura Almonte, became known.

12 <https://www.youtube.com/user/profamiliaid>

13 In May 2013, a decision was handed down by the Fifth Civil and Commercial Chamber of the National District, based mainly on freedom of expression. The Catholic Church filed a constitutional complaint on 3 June 2013, which to date has not been decided.

14 Goodstein, L. (2014, 23 August). For Nuncio Accused of Abuse, Dominicans Want Justice at Home, Not Abroad. *The New York Times*. www.nytimes.com/2014/08/24/world/americas/whisked-away-vatican-ambassador-accused-of-sexual-abuse-of-minors.html?_r=1

growing interest in these issues. The media not only expanded their coverage, but also showed a higher level of interest by presenting these issues more frequently in front page headlines and editorial columns.¹⁵

After its study on the use of ICTs in women's organisations, CIPAF held several workshops with women and feminist organisations, encouraging the use of the internet and supporting the creation of profiles on social networks for cyber activism. Because of these workshops, around 30 female leaders of the feminist and women's movements opened new accounts on Twitter and Facebook, or learned to use the ones they already had more effectively.

The presidential veto

On 18 November 2014, the new Penal Code was approved, with abortion still illegal. Women's organisations, who were caught off-guard by the legislative agenda, took to social networks with the campaign "No to the Penal Code" and asked the president to veto it.

For the first time in the history of the country, on 28 November 2014, a president of the republic referred specifically to the right to abortion for women. President Danilo Medina vetoed the penal code,¹⁶ explaining that it violated women's rights, and called on the Chamber of Deputies to recognise that abortion should be a right if a woman's life is in danger, in the event of sexual violation, and in case of foetal malformation incompatible with life.

Twitter became the most widely used social media tool in the debate in those months, mainly by people with political power. A total of 30 deputies and senators joined the discussion, and there was a strong media campaign by the Presidency in support of the presidential veto.

The veto forced the Penal Code back to the Chamber of Deputies to be discussed again. As the pro-abortion campaign intensified, so did the hate speech and violations of privacy. Feminists were attacked with hate messages online. Six women's rights activists reported having lost all the information on their computers, including emails, during the two months of the campaign, and said that the hacking of their private data – all in the same week – occurred because of their political activity on social networks. One of the best known activists on Twitter said she had to censor herself on Twitter due to the insults received, although she said

she would not let this dampen her energy to push on with the fight. Organisations such as the Women and Health Collective¹⁷ revealed that their work accounts were hacked during this period too.

Reactionary versus progressive voices online

Given these facts, the feeling from the women's movement has been that the Christian fundamentalist and right-wing media have consolidated their strategy and invested large amounts of money in the organisation and management of internet counter-campaigns. This can be seen in the images and graphics used with hashtags like #NoalAborto ("No to abortion") and #DéjaloNacerRD ("Let him be born"), which are becoming more frequent.

The role of the media and social networks in all this has been crucial. One of the advantages of using the internet has been the possibility of uniting local campaigns and activists from around the world. During the campaign in support of the presidential veto, support was received from organisations such as Catholics for Choice,¹⁸ which has offices in several Latin American countries, as well as Women's Link¹⁹ and Amnesty International,²⁰ among others. This managed to get the demands of women on the right to abortion in the Dominican Republic heard beyond the island. Likewise, access to the internet has enabled activists to learn about similar campaigns in other countries, and to replicate good practices from those campaigns. For example, the postcards campaign in El Salvador that called for the release of 17 women imprisoned on charges relating to abortion²¹ served as a model for some of the local campaign.

While social networks were the most used communications tool in the campaigns, both for and against the legalisation of abortion, it remains a concern that online campaigns can only reach 51% of the population – the percentage of internet users among the population – of which 78% are in the wealthiest quintile in the country and only 33% live in rural areas.²² This is due largely to the fact that the cost of internet in the country is 5% of household income for 70% of Dominican households.²³

17 Colectiva Mujer y Salud: www.colectivamujerysalud.org

18 www.catolicasoporelderechoadecidir.net

19 www.womenslinkworldwide.org

20 <https://www.amnesty.org>

21 The 17 are a group of Salvadoran women sentenced to 30 years or more in prison on charges related to abortion, when in fact they had suffered miscarriages, stillbirths and other complications. www.las17.org

22 National Multi-Purpose Household Survey (ENHOGAR), National Statistics Office (ONE). osicrd.one.gob.do

23 Alliance for Affordable Internet. (2015). Case Study: Dominican Republic. a4ai.org/dominicanrepublic

15 Based on an analysis of coverage of information on sexual and reproductive rights in national print and digital media conducted by Profamilia between January 2011 and October 2013.

16 Presidential veto: www.7dias.com.do/file.php?id=177455

In November, just seven opinion articles on the issue of abortion and sexual reproductive rights were published by online newspapers; however, by December, there were 175 articles: 110 opinions in favour of the presidential veto, 38 against and 27 neutral or ambiguous.²⁴

The number of reactionary voices online is growing. A sense of organisation, fast responses to articles or comments posted, as well as the creation of new accounts on social networks, suggest the intervention of specialists in the design and implementation of their counter-campaigns. At the same time, feminist organisations became less proactive in the use of social networks, creating space for conservatives to set the agenda for the public debate.

On the other hand, the internet has allowed activists to keep the cost of campaigns and mobilisation low. With the Dominican Republic being a middle-income country, according to the World Bank,²⁵ development cooperation is limited and often subject to specific projects according to the global agenda. The possibility of implementing campaigns without a donor deciding the agenda opens a new era of possibilities for activism and new actors in the debate, as was demonstrated in the last months of 2014.

Action steps

The following advocacy is suggested for the Dominican Republic:

- There is a need for greater coordination between feminist organisations and more training on the strategic use of the internet to achieve social goals.
- We need to include more actors in the human rights debate. Until now, it is obvious that the conservatives and churches have been more coordinated in their online counter-campaigns, and have been more consistent in sharing their views online.
- The decriminalisation of abortion on specific grounds is still at stake. The Penal Code is currently under review in the constitutional court, and women's and feminist organisations should continue actively campaigning for abortion rights over the next months.

²⁴ Statistics from unpublished research circulated privately.

²⁵ World Bank, Country at a Glance: Dominican Republic. www.worldbank.org/en/country/dominicanrepublic

ECUADOR

LGBTI ACTIVISM AND SOCIAL NETWORKS IN ECUADOR



Red Diversidad LGBTI Ecuador

Silvia Buendía

www.matrimoniociviligualitario.ec

Introduction

Lesbian, gay, bisexual, transgender and intersex (LGBTI) activism has become increasingly visible in Ecuador in the last years. This is due to a stronger organisation of the groups that fight to defend the human rights of persons with different sexual orientations, and a more persistent presence of these organisations in the public arena. This might not have been possible before 1997, the year when homosexuality was finally decriminalised in the country. Before then, anyone who exhibited what could be considered homosexual conduct in public ran the risk of being incarcerated. How can you fight for equal rights when your identity is not only the source of discrimination but is also considered a crime?

In 2008, the new constitution furthered the rights of LGBTI people. The constitution required the protection of the family in all its forms and established “sexual orientation” and “gender identity” as “suspect categories” – which means that any legislative measure that makes distinctions based on these categories will be subject to scrutiny. In addition, the constitution recognised the right of common-law union for same-sex couples, which was, arguably, the most important victory in the constitutional debates.

Despite this progressive legislation, we face problems in achieving substantive equality for LGBTI persons. Discrimination is persistent. If the legal norms indicated above have no effective application, they are only a consolation prize, and worse, when it comes to same-sex union, a disguised attempt to evade the demands for marriage equality.

This report discusses a campaign called “Same Sex Marriage in Ecuador: The Same Rights with the Same Names” (*Matrimonio Civil Igualitario: Los Mismos Derechos con los Mismos Nombres*).¹ In

particular, it focuses on the possibilities that the use of social networks create both for outreach and visibility. I will also point out some limitations in using social networks for campaigns like this in a developing country, which need to be considered for the fight for equality to be more effective.

The current legal situation

The ultra-conservative groups that opposed the recognition of legal effects to same-sex unions in 2008 are the same groups that now oppose equal marriage rights. Back then, these groups argued that Ecuadorian society was not prepared to legally recognise same-sex unions. They anticipated that such recognition would mean the end of the institution of the family in Ecuador. Seven years later, common-law unions between same-sex partners are meant to produce legal effects and generate the same rights held by families constituted upon marriage, at least in theory. However, common-law union and marriage are not the same institution (note that we are not even talking about civil unions here).²

Those who oppose equal marriage are fighting a losing battle from the trenches: one that is symbolic and semantic. They know perfectly well that the term “marriage”, the institution, holds a symbolic meaning and a social recognition that even the “civil union” lacks; more so the *de facto* institution of “common-law union”. The right to marry and to call the ensuing contract “a marriage” will be an important victory in the struggle for equality.

¹ www.matrimoniociviligualitario.ec

² In Ecuadorian law, common-law unions are *de facto* conjugal unions while marriage is a legal contract. Same-sex couples can only aspire to have legal recognition under common-law union status, provided that they meet the legal requirements. Also, as opposed to different-sex couples, they are expressly not allowed to adopt children jointly. A temporal requirement for recognition of the legal effects to common-law unions demands a period of conjugal cohabitation (two years, in Ecuador). A civil union is a third category, not known in Ecuador, but in other jurisdictions (like the province of British Columbia in Canada), used by couples who reject marriage as a traditional institution but who want to sign a joint contract.

The same-sex marriage campaign

In 2013, a group of organisations and human rights activists for the LGBTI community – including ours – started the campaign for Marriage Equality in Ecuador.³ From the beginning we knew that our task would be a difficult one. We had to fight a legal battle that needed to change not only one law and reform the civil code, but the country's constitution too, which in its article 67 defined marriage as a union between a man and a woman. The situation was reminiscent of the Defense of Marriage Act in the United States (US), a law enacted by President Bill Clinton in 1996, which defined marriage on a federal level as the legal union between one man and one woman. This law was declared unconstitutional in the US in June of 2013, and we needed something similar to happen in our country.

But beyond the legal strategy, it was clear to us that the campaign had an even more crucial objective: getting issues faced by the LGBTI community in our country out of the closet and onto the public agenda. This entailed making ourselves visible and letting people know who we are, how we live, and what we are talking about when we raise the issue of sexual diversity. This was important, because one of the arguments of those who oppose us having the same rights in Ecuador is the theory that our society is not yet ready to tolerate homosexual “conduct” in public. Of course, that is not a plausible justification to violate our human rights. However, it is true that, in a profoundly chauvinistic and homophobic society such as ours, ignorance on the subject is a determining factor in the perpetuation of discrimination. So we were convinced that, as our first task, we needed to make sexual diversity more visible and, above all, create a culture of dialogue and information about what it means to be LGBTI.

We took action on two fronts: on one, we introduced lawsuits in order to push for same-sex marriage to be recognised; and on the other, we organised debates, picketed events and gave interviews in the media, in order to force the campaign onto the public agenda. We also trained spokespersons so they could be well-informed and talk about the issues assertively. The idea was to transform LGBTI rights into a human-interest issue that evoked empathy and solidarity. Little by little, we began educating our society on the fact that sexuality is diverse and everyone has the right – the human right – to exercise it without being subjected to discrimination or violence.

Social media has been one of our biggest allies in promoting the visibility of LGBTI issues. These new communication platforms are online tools that allow us to reach a broader and younger audience. That is exactly what we wanted: to reach those who can change society's tendencies and perceptions. And so we created accounts on Twitter, Facebook and Instagram (the three most popular social media platforms in Ecuador) and we developed an attractive website with details about our campaign activities. Social media has been one of the pillars of our campaign. Our experience in working with these tools has been excellent, since we were able to reach people – especially the young population – who wanted information about LGBTI rights and sexual diversity in an inexpensive, easy and quick way. We used social media to publish interviews with LGBTI people that captured different experiences from countries in our region and the world. News of how equality laws were advancing around the world began pouring in, and we shared this with our target audience.

On 14 February, Valentine's Day, an amazing incident happened. We wanted to organise something special on that date – which is dedicated to love and friendship – in order to celebrate same-sex marriage as a right for the LGBTI community. The previous year we had saved enough money to print fliers, buy balloons and organise a public gathering in a popular park in Guayaquil to hand out information and fliers to passersby.

But this year we did not have enough funds, so we decided to organise a contest to select the picture of the cutest same-sex couple using social media. It was a risky decision, because social media platforms have become tremendously popular and carry the risk of over-exposing people who participate. Facebook is considered the most used social media platform in the country – not only by young people, but Ecuadorians of all ages.

Our goal was to send the message that love does not necessarily begin and end with heterosexual couples. The pictures would be published on our Facebook page, and our fans would vote for their favourite. According to our predictions we expected five or, at the most, 10 same-sex couples to participate in the contest by sending their pictures. We thought we were being optimistic. We also thought that we would receive many anonymous photographs or some in which people did not show their faces or give out their names. Remember, this is Ecuador, a small country where people live in relatively tight-knit communities, where they know each other, and most of them use Facebook.

3 <https://www.facebook.com/matrimoniociviligualitarioecuador?fref=ts>

When the images started pouring in, we were surprised to see couples looking directly into the camera, smiling happily, being romantic with each other, giving us (and basically the entire country) their names. Voting was enthusiastic to say the least. People could not stop voting and commenting positively about the couples. There was a sort of euphoria happening with the contest.

In the end, when we got to the deadline, we had received 72 pictures from all over the country. The images showed loving couples; they were filled with romance and affection. The couples were not ashamed or shy about their feelings, and freely showed that they were in relationships. Aside from this, the couples told us how long they had been together and some of them shared their stories about how they had met, and the problems they had overcome because of discrimination.

But the comments and supportive words from our fans were the biggest surprise. Our page was overflowing with them; so we decided to share the pictures on Instagram and Twitter as well. In the end, our contest was so successful that we gave out three prizes instead of just one. That gave us another opportunity to measure the change of attitude towards LGBTI couples in our society. The three prizes were a romantic dinner for two in a restaurant in Ecuador's three main cities, Quito, Guayaquil and Cuenca. I was assigned to arrange the dinner in Guayaquil, so I had to go talk to the restaurant managers. I must confess that I was a bit scared that they would not agree to host the dinner, due to the rampant homophobia in our society, but once again, I was happily surprised. Not only did the restaurant's management welcome the event; they gave the couple the best table and flowers and took a photograph of the couple to commemorate the joyful occasion. Some of the waiters even told us they had seen the contest on Facebook!

Conclusions and suggestions

In general our campaigns on social networks have been pretty successful. They have been processes of trial and error from which we have tried to learn. Early on – and as an overall strategy – we decided to always use empathetic and simple language to convey our messages. This has been fruitful in unexpected ways: not only have we received a positive response from persons from all walks of life who have changed their minds – and, most importantly, their hearts – about an otherwise obscure issue, but we have also empowered LGBTI individuals. In the midst of the photo contest, we

received messages from a lot of young people who found the courage to come out to their families inspired by all those happy and assertive faces on our Facebook wall. For everyone involved, we have provided virtual spaces allowing support and encouragement, as well as dialogue and discussion (peaceful and otherwise).

At the same time, we have become aware of our limitations. Social networks are easy, relatively inexpensive ways for reaching a mass audience, but in developing societies like Ecuador, internet connectivity is not a given. The use of the internet is also not necessarily tantamount to the proactive use of social networks beyond communicating with friends and for entertainment. In addition, there is also an age gap in internet use that should not be overlooked. We are certainly reaching out to a growing audience: the current and future voters in a significantly young population; but we are not sure about our visibility among and capacity to persuade older audiences through our Twitter, Facebook and Instagram accounts.

We do not know the real extent of these limitations yet. However, even if it becomes evident that by concentrating our efforts on social media we are failing to reach out to persons who would be willing to change their minds if they only had more information and testimonies, we will not lessen our use of social networks. We will just find the ways – and resources – to reach those people using other forms of media and ways of engaging.

Our experience with the Facebook contest showed for the first time how social media can help us spread a message that defends and promotes LGBTI human rights in an evolving society, where young people have become such prominent actors for change. The fact that so many diverse couples made themselves visible on Facebook, Twitter and Instagram not only helped us reach a broad audience that was mainly supportive, but motivated a great number of other couples to come out of the closet. We received so many messages from people telling us how, thanks to the bravery of the participants in our social media contest, they had gathered the courage to speak to their parents and friends about their sexual orientation or gender identity. On the other hand, social media is a space for debate, dialogue and discussion amongst people who are eager to understand what is happening to them; people who no longer want to feel lonely and who are searching for support. Today, they can find all that using social media.

Acceptance of sexual diversity and LGBTI human rights is growing every day in Ecuador. We still

have a long road ahead, which definitely needs to take us through a change in legislation that gives us true equality: official and equal rights to marriage on paper. But we have achieved a lot in the fight towards making LGBTI issues more visible in the media and in public debate. We are getting closer to the level of acceptance found in other parts of the world. Even if progress towards equal rights is made in countries far away, this is close to our hearts and minds, and fuels the visibility of sexual diversity in Ecuador. Landmark events like the referendum in Ireland, where equal marriage was approved by popular vote,⁴ were widely covered by all media, including online media in this country.⁵

We can optimistically say that social media provides a strong ally to our struggle, and we have to use it as much as we can to help us in our battle and promote our message of equality.

Action steps

The following advocacy steps are suggested for Ecuador:

- Organise campaigns that call for the open participation of LGBT people on social media platforms, as a way to raise LGBT rights publicly, and in an entertaining way.
- Use social media platforms to call for creative and fun actions in the streets: kiss-a-thons, for example, or rainbow hugs.
- Promote straight-LGBTI alliances led by public figures dear to the general public.
- Raise LGBTI rights in public debates on more general political issues. Point out that LGBT rights are a matter of equality, freedom and multiculturalism. This is about politics, not just identities!

4 Johnston, C. (2015, 23 May). Ireland becomes first country to legalise same-sex marriage by popular vote - as it happened. *The Guardian*. www.theguardian.com/global/live/2015/may/23/counting-underway-for-irelands-referendum-on-marriage-equality

5 www.eluniverso.com/noticias/2015/05/23/nota/4901546/irlanda-vota-si-favor-legalizar-matrimonio-homosexual

EGYPT

SEXUAL VIOLENCE IN PUBLIC SPACES IN EGYPT: THE PARADIGM SHIFT IN USE OF TECHNOLOGY



Uprising of Women in the Arab World

Sally Zohney

<https://www.facebook.com/intifadat.almarza?fref=ts>

Introduction

Sexuality has been defined as being about “health, pleasure, bodies, violence, rights, identity and empowerment... about families, domestic space, intimate relations and public engagements...”¹ This definition carefully lays out the variables, the differences and layers that all together form our understanding of the term “sexuality”. In 1994, the Programme of Action of the International Conference on Population and Development² included “sexual health” under the definition of “reproductive health” for the first time; which means that any dimensions of sexuality that go beyond reproductive rights were given less attention – not even defined by the international community. The past few decades have witnessed a growing change in understanding the rising dimensions of sexuality in relation to discrimination, HIV/AIDS, minority rights and especially gender-based violence.³ The Egyptian intellectual Salama Mussa (1887-1958) is considered to be among the pioneering Arabs in modern history – if not the first – to discuss sexuality as a matter of public concern. His groundbreaking efforts drew attention to the importance of integrating sexuality in the context of the national Egyptian culture. He even called for the education of youth on sexual health, relationships and behaviour through an open and scientific debate.⁴

This intellectual Arab Renaissance was coupled with a strong feminist movement actively engaged in public life. The segregation of women from public life and the political sphere was the main drive behind the movement, which sought to accomplish a stronger status for women and also to underline

major concerns regarding female sexuality. This context cannot exclude the historic writings of Egyptian feminist Nawal El-Saadawi who had nurtured a new wave of awareness on female sexuality in general and on female genital mutilation (FGM) specifically since 1960.⁵ Her book was the first to be written by an Egyptian woman exposing gender discrimination on the basis of sexuality in Egypt.

Until 2005 sexual harassment was not identified as a social problem in Egypt, although it had been addressed by several NGOs and women’s rights organisations. In the same year, female journalists were sexually assaulted by police and paid thugs in front of the Press Syndicate (or union), on a day known as “Black Wednesday”.⁶ While no clear definition of the term “sexual harassment” had yet been made, women in Egypt were subjected to numerous forms of sexual assault with little or no means of protection, prevention or tools to document the social phenomenon. Women’s ability to stand up to this harassment was minimal, and civil society organisations were single-handedly leading the way to address the issue without any official response. It was not until early 2000 that tangible change was felt on the ground to combat sexual violence.

This report focuses on the transformation in the approach to combating sexual violence and creating a public debate on the issue, using technology to provide protection and support for women. It discusses how technology changed the equation and introduced innovative tools to combat sexual violence in Egypt and raise public awareness.

Egypt’s ban on pornographic websites

In May 2015, the administrative court ordered Egypt’s prime minister to take immediate action to ban pornographic websites in Egypt. This came just two years after the same court decided not to ban them in another case.⁷ The argument behind the ban was

1 Creating Resources for Empowerment in Action (CREA). (2006). *Sexual Rights and Social Movements in India: Working Paper*. New Delhi: CREA.

2 www.unfpa.org/publications/international-conference-population-and-development-programme-action

3 World Health Organization. (2015). *Sexual Health, Human Rights and the Law*. apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf?ua=1

4 Wahba, M., & Roudi-Fahimi, F. (2012). *The Need for Reproductive Health Education in Schools in Egypt*. www.prb.org/pdf12/reproductivehealth-education-egypt.pdf

5 El-Saadawi, N. (1972). *Women and Sex*.

6 Abdel Monem, A. (2015). Reconstructing Sexual Harassment in Egypt. *A Journal for Body and Gender Research*, 1(1).

7 In 2013, under former president Mohammed Morsi, the administrative court ruled against enforcing a ban on pornography websites. The case arose after Egypt’s former prosecutor general Abdel-Meguid Mahmoud submitted an official decree ordering Egypt’s Ministry of Telecommunications and Ministry of Interior to ban pornographic websites based on a 2009 case.

one citing the spread of “immorality among children and youth”.⁸ Earlier in 2009, under ousted President Mubarak, the court issued the first verdict to ban pornography online, but it was never applied. Under the short-term Islamist regime of Mursi in 2013, the prosecutor general at the time ordered the implementation of the 2009 court order to ban pornography websites, but this was also not carried out.⁹

It is interesting to note that the official reasons behind the ban were mainly about the social impact of pornography, particularly on the youth. Will the recent ban on pornographic content – if implemented – have a positive impact on the youth? Are there alternative online platforms challenging the mainstream sexual content on pornographic websites? And mostly, how are pornographic websites linked to the alarming rates of sexual violence in Egypt?

In 2014, Egypt’s penal code witnessed a historic amendment criminalising “sexual harassment” for the first time in Egypt, under article 306 (a). The definition is specifically important as it includes social media and the use of wireless communication as one of the mediums that can be used in sexual harassment.

The Egyptian authorities still have a long way to go to create an institutional structure that can provide immediate support and protection for women who suffer sexual violence, especially when it comes to technology-related violence against women. Yet the inclusion of social media and wireless communications in the legal amendment is a serious acknowledgment of the severity of the problem and the need to understand and properly address how information and communications technologies (ICTs) are used as means of sexual violence against women.

Pornographic content from a gender perspective: What do women in Egypt know of unwanted sex?

Ideas about sex and sexuality, many of them competing with each other, proliferate on the internet: everyone “Googles” everything. A young boy learns about sexual pleasure by watching commercialised pornographic videos teaching him how to be “pleased” by inferior, submissive female bodies. Young girls (or sometimes even women) are unluckier; they learn that male pleasure is directly

equivalent to personal pleasure. Submission and consent to violence are embedded in online pornographic content. Added to this are the lack of knowledge and access to proper educational and informative resources in mainstream conservative upbringing in Egypt. The question is, what do women of tomorrow know of unwanted sex? What does technology offer women when it comes to protection from violent pornographic content?

The impact of mainstream pornographic content on sexual relations is alarming – especially when it comes to a lack of proper online protection and offline support services for women and girls. Domestic violence is endemic: nearly half of married women aged between 15 and 49 reported that they had been hit, slapped, kicked, or subjected to some other form of physical violence at some point after they were married, according to the 2005 Egypt Demographic and Health Survey.¹⁰ The repercussions of violent pornographic content directly affect young people’s behaviour and understanding of sexual pleasure. Violent pornographic content mirrors an incomplete, gender-blind version of sexual pleasure, and affects both men’s and women’s understanding of sexual relationships and healthy, intimate partner behaviour. In my country, it is very rare to find women-to-women conversations objecting to or analysing online pornographic content, as a way of understanding their own situations, and as a way of understanding the impact of technology on their lives. You seldom, if ever, hear of a mother who discusses sexuality or sexual pleasure in an informed and open way with her daughters, aside from how her daughter can protect her virginity. For school students, sexual and reproductive health is addressed in science classes in a very limited way, and it is very common for students to skip these classes out of embarrassment.¹¹ According to the research conducted by the Population Research Bureau (PRB),¹² the 10th grade boys interviewed had no knowledge of puberty before its onset, and most female students from urban backgrounds referred to their mothers as the main source of sexual information, while surprisingly, girls in Upper Egypt depended on books and teachers for information. An interesting conclusion from the survey is that young girls wanted information that goes beyond reproductive issues; they wanted to know about their bodies and sexuality, the kind of information they did not know how to find.

8 Ahrām Online. (2015, 20 May). Egypt’s court orders ban on porn websites. Ahrām Online. english.ahram.org.eg/NewsContent/1/64/130768/Egypt/Politics-/Egypt%E2%80%99s-court-orders-ban-on-porn-websites.aspx

9 Egyptian Streets. (2015, 20 May). Egypt Court Bans Pornography. *Egyptian Streets*. egyptianstreets.com/2015/05/20/egypt-court-bans-pornography

10 www.dhsprogram.com/pubs/pdf/FR176/FR176.pdf

11 El-Zahraa Geel, F. (2012). Quality sexual education needed for adolescents in Egyptian schools. Population Research Bureau (PRB).

12 Ibid.

The feminist writer Naomi Wolf provided an important reflection on how technology changed the landscape of sexual education forever, describing this generation, born in the 1970s and 1980s, as “the last generation to experience that sense of sexual confidence and security in what we had to offer.”¹³ The notions of “sexual confidence”, “sexual consent”, and “pleasurable acts” are crucial and interlinked – and these can be used to analyse the impact that pornographic content has on personal relationships, as well as the understanding of sexuality among men and women.

The information found on *Maalouma*,¹⁴ Egypt’s first website to provide information on reproductive rights and sexuality, as well as online services for the youth, is important in understanding how technology has been used as a tool to provide alternative platforms for sexual education. *Maalouma* publishes articles, provides private counselling services through SMS, and offers e-learning modules and infographic material, amongst other web content on sexuality. According to its first annual report (in 2013), an article entitled “10 benefits of the female sexual orgasm” was listed as the third most viewed, with a total of 34,828 views, with an article on male masturbation receiving a similar number of page views. When it came to the SMS service, aggregators indicated that menstruation followed by intermarital sexual relationships were the top-ranking topics, while female virginity came last.¹⁵ According to these results, it is clear what kinds of information on sexuality are important to Egyptian youth; what matters is no longer keeping your virginity, but female sexual pleasure. This shows that society no longer dictates what kind of information is important to the youth, and the kind of information that should be online. *Maalouma* has successfully developed a model for using technology to address sexuality in an interactive way, listening to the needs of the youth and the kind of content on sexuality they require, and responding to these needs.

The evolution: Speaking up against sexual violence

Sexual violence is a growing threat to the everyday life of Egyptian women and girls, ranging from diverse forms of sexual harassment, to sexual assaults and even rape and mob attacks, a number of them occurring on national holidays, and, as suggested, during large demonstrations. In 2006, during the Eid holidays, a group of male teenagers sexually assaulted a group of young women in front of a cinema in downtown Cairo.¹⁶ Although mass media covered the event, the Egyptian Ministry of Interior issued a statement denying the event and declaring it a rumour.

Two years later, a woman called Noha Roushdy spoke up and decided to open a case against a man who physically harassed her in an upper class neighbourhood of Cairo. After a strong legal battle, she won her case and he was sentenced to three years in prison and received a EGP 5,000 (USD 640) fine. Noha became the first Egyptian to open a sexual harassment case (although legally, sexual harassment was not defined as a crime at this time). Again, despite this, the state did little to address the issue or even support Noha in her pursuit of justice. Also in 2008, sexual assaults involving large groups of men took place. In one instance 150 young men aged 15 to 22 gathered in Gamet el-Dewal¹⁷ on the Eid holiday, attacking women and tearing off their clothes in public. According to articles published in the media, the police arrested 38 of the attackers – only three were detained and the rest were released with no charges.

Another heartbreaking sexual harassment story that was reported on in the media concerned a 14-year-old girl called Heba who was attacked on her way back from school. She managed to escape her harasser after he cornered her and sexually assaulted her. She was able to injure him and run away. After this, the harasser escalated the situation and decided to come back for his “prey”. The second time he used another girl to lure her and kidnapped Heba. She was locked for three days in a room and beaten and assaulted, before she escaped. Her attacker was arrested later on, but it is unclear whether or not he was imprisoned.¹⁸

13 Women’s Weekly. (2015, 11 June). Lost innocence: Why girls are having rough sex at 12. *Women’s Weekly*. www.aww.com.au/latest-news/in-the-mag/lost-innocence-why-girls-are-having-rough-sex-at-12-20831

14 www.ma3looma.net; Facebook: https://www.facebook.com/ma3looma.net/info/?tab=page_info; YouTube: www.youtube.com/Ma3looma; Ask FM: ask.fm/Ma3looma

15 *Malouma Annual Report*, December 2013 (internal document provided by *Maalouma* national coordinator in Egypt Sarah El-Demerdash).

16 Eid is a national three-day holiday on the Muslim calendar that follows the holy month of Ramadan. In Egypt, families and the youth dress up, go to movies, have open-air picnics and take Nile cruises.

17 Gamet el-Dewal Al-Arabeya in Mohandessin, Cairo is famous as a meeting point for the youth, especially young men who go there to dine out, hang around the streets and also hire prostitutes.

18 Note that the sources of the news included are from the Masry el-youm and Sherouk newspapers’ special file 7/2/2013.

Although it seems obvious that most of the documented cases of sexual violence clearly identify the harasser or abuser, very little state action was taken to investigate the cases or protect the women. Although sexual harassment is criminalised under the 2014 Penal Code, several forms of sexual violence are not a crime on the statute books, such as rape with sharp objects, psychological abuse, domestic violence or marital rape.

Countless analyses and reports were produced on the use of technology and social media in Egypt and Tunisia as political tools throughout the revolution. It was often described as “digital revolution”, in some cases to highlight the strong contribution these platforms made to political change. Technology is making a similar contribution in combating sexual violence against women, especially in a context of minimal state intervention protecting women.

In 2011, 22-year-old Dina Emad was assaulted by a man on a motorcycle in front of Cairo’s biggest shopping mall. She was able to apprehend him with the help of bystanders and he was charged at the police station. Her “tweets” on Twitter sparked strong support from young men and women; she was featured in a number of media interviews and articles, and portrayed as a positive role model for young women.¹⁹ Shortly after this, Christine Leon, a student at the American University of Cairo, stood up against a contract worker who sexually harassed her on campus and reported him as well. He was later fired by his company and ordered off the campus. Christine also tweeted her story and the media dubbed her the “second heroine” fighting against sexual harassment.²⁰ Christine herself said she was inspired and motivated by what Dina did and felt she could do it herself. In both cases, young women were not only able to report and speak up against sexual assault using technology, but also provide immediate updates on their physical and emotional well-being: media coverage acted as a reaction to this social media frontline news. Youth were leading the agenda in addressing sexual violence, women were providing an informal network of support, and hashtags were created to document cases. And again, the state was silent – perhaps also not approving of its diminished role in the prevention of sexual violence.

Another important milestone was the groundbreaking hashtag campaign in 2012: “EndSH” or “End Sexual Harassment”. This was an online call

for action created by a number of women’s rights advocates to raise awareness and public dialogue on sexual harassment in Egypt using Twitter and Facebook. Little did they know that this hashtag campaign would gain momentum across Egypt in just a few days; women were courageously taking over virtual platforms and sharing shocking stories, accounts of bravery, and creating instant support networks. Women and even men worldwide were sharing testimonials and stories and voicing their stand against sexual harassment. An online dialogue on the topic was created involving NGOs, public figures, human rights advocates and everyday internet users, thanks to the power of social media. In a few days, #EndSH was a top-ranking Twitter hashtag worldwide.

In March 2014, a female student at Cairo University was sexually assaulted by male students. The new element in the story is that her attack was recorded on several phones and became an online story the same day.²¹ The video showed the attack clearly, and how security guards were unable to ensure her safe exit from where she was hiding. The University dean later blamed the student for her “indecent” clothing. Women’s rights advocates and social commentators harshly criticised the statement made by the dean. Facebook and Twitter were again the scenes of the public debate that ensued, and eventually pushed the dean to change his position and launch an investigation into the incident.

That incident opened the door to historic change: a few months later civil society organisations were behind groundbreaking amendments to the student code of conduct, making Cairo University the first public educational institution to issue a code of conduct forbidding sexual harassment on campus, and setting up an official investigation committee to deal with the crime.

Using digital technology to combat mob sexual assault

Mob attacks involving sexual assault have become a new form of sexual violence in Egypt, first targeting activists and female journalists in the 2005 demonstrations against the Mubarak regime. The first widely covered case of mob assaults was one involving Lara Logan,²² a female reporter from the United States who was covering demonstrations in

19 Lilian Dawoud, talk show host, and Dina Emad, guest. El-Soura Al-Kamelah (The Full Picture), ON TV, 28 June 2012. <https://www.youtube.com/watch?v=N1jNurQKUhU>

20 Online story of Christine Leon, El-Masry El-Youm, 20 July 2012. <https://www.youtube.com/watch?v=3TC8Y6tZ-5k>

21 Mada Masr. (2014, 18 March). Victim blamed for sexual assault at Cairo University. *MadaMasr*. www.madamasr.com/ar/node/2410

22 Moisse, K. (2011, 2 May). CBS Reporter Lara Logan Opens Up About Tahrir Square Attack. *ABC News*. abcnews.go.com/Health/MindMoodNews/cbs-reporter-lara-logan-opens-tahrir-square-assault/story?id=13492964

Tahrir Square on the night Mubarak stepped down. According to the NGO Nazra for Feminist Studies, there were at least 500 survivors of mob attacks involving sexual assault between February 2011 and January 2014.²³ And according to an International Federation for Human Rights (FIDH) report there were over 250 documented cases of mob sexual assaults during the period November 2012 to July 2013 – these were all incidents of women being targeted by men and boys, many carrying weapons.²⁴ On the day Abdel Fatah al-Sisi’s presidential victory was announced on 3 June 2014, and on the night of his inauguration ceremony on 8 June, at least nine women were violently assaulted sexually.²⁵ Not only were individual women attacked and threatened to prevent them from playing an active public role, but women-led marches and calls for action came under similar violent threats.

My personal testimony as one of the organisers of the 2011 International Women’s Day (IWD) peaceful stand in Tahrir Square in celebration of the international event – also coinciding with the rise of women’s engagement in political life during the revolution – is that the day ended dramatically. Groups of men started insulting and verbally harassing female demonstrators, who were few in number and with limited protection around them. Assaults escalated into physical attacks that forced us as organisers to call an end to the demonstration by early afternoon, fearing for the personal safety of the women around us. Several lessons were drawn from the experience. In 2012 the IWD march was much more prepared. There were a greater number of protestors, outreach ahead of the demonstration, and also media and online coverage of the event. Twitter and Facebook served as tools to document the demonstration, and were trusted to report attacks, including from undercover state security personnel. Demonstrators would share photos of suspicious men as a way of sending out an alarm to other women, and soon enough these

men would be forced to leave the march. The presence of livestream media and coverage of the march provided instant safety to female demonstrators who knew that thousands were able to know exactly what was happening on the ground. A sense of immediate protection was given using modern technology.

Mob attacks involving sexual assault are a horrific nightmare, not only for the survivors, but for women’s rights advocates on the ground. In November 2012 an independent initiative was formed by women rights advocates and feminists called Opantish (“Operation Anti-Sexual Harassment”). It has contributed the most to documenting mob attacks, and offering immediate intervention to rescue women from mob assaults, all of which have occurred in Tahrir Square. Formed by a diverse group of individuals with strong knowledge on sexual violence, it rallied NGOs to provide legal, psychological, media and other support to survivors. Male and female volunteers got together and divided themselves into teams. Each team dealt with different needs, such as intervention, safety kits, on-the-ground awareness raising, the operation room and a safe house.²⁶ Other volunteer-based initiatives offered support, such as the Tahrir Bodyguards, *Shoft Taharosh* (I Saw Harassment) and the Imprint Movement.²⁷

What is innovative about a group like Opantish is not only its flexibility, allowing diverse types of support to be offered and linking these together, as well as its capacity to count on volunteers’ efforts, attracting hundreds of male as well as female supporters and advocates, but its use of digital technology to combat sexual assaults. Volunteers on the ground were tweeting observations using the hashtag #Opantish or passing on the details of the Twitter account, while a dedicated team was documenting and compiling data from the tweets so that the intervention groups could act. Social media platforms were used to liaise with the other intervention groups (such as Imprint and the Tahrir Bodyguards) who would help provide assistance. At the end of each day a total count of the mob attacks was made indicating the number of women rescued and hospitalised, and the status of their cases. These reports are considered to be the only documentation available on these types of mob attacks

23 Nazra for Feminist Studies. (2014, 9 June). The Mob-sexual Assaults and Gang Rapes in Tahrir Square During the Celebrations of the Inauguration of the New Egyptian President is Sufficient Proof for the Inefficiency of the Recent Legal Amendments to Combat these Crimes. Joint statement. nazra.org/en/2014/06/mob-sexual-assaults-and-gang-rapes-tahrir-square-during-celebrations-inauguration-new

24 FIDH et al. (2014). *Egypt: Keeping Women Out – Sexual Violence Against Women in the Public Sphere*. https://www.fidh.org/IMG/pdf/egypt_women_final_english.pdf

25 Egyptian Initiative for Personal Rights. (2014, 9 June). At Least 9 Cases of Mob-Sexual Assault and Gang Rapes with Sharp Objects and Fingers this Week. eipr.org/en/pressrelease/2014/06/09/2144; Marroushi, N. (2014, 16 July). Tahrir sexual assault survivors recount their ordeals. *Mada Masr*. www.madamasr.com/sections/politics/tahrir-sexual-assault-survivors-recount-their-ordeals

26 Marroushi, N. (2015). Violence Against Women in Egypt: Prospects for Improving Police Response. *Saferworld*. www.saferworld.org.uk/resources/view-resource/904-violence-against-women-in-egypt-prospects-for-improving-police-response

27 <https://www.facebook.com/opantish?fref=ts>

in Egypt, offering a serious data set for research, investigation and reporting.

It was not until one video of a violent mob assault was recorded through a personal phone camera and streamed online, causing national and international fury, that President Sisi ordered an intensive investigation into the issue of sexual violence in public spaces in Egypt. He himself visited a survivor at her hospital bed. Shortly after this, Egypt's first department dealing with violence against women was created under the Ministry of Interior, and the first amendment to the penal code criminalising sexual harassment was approved.

Needless to say, these battles were won mainly due to the resilient efforts and long roads feminist and women's rights organisations have travelled throughout the years, either at the policy level or in creating grassroots awareness. Yet it cannot be denied that the leap made by recent generations using digital technology through tools like HarassMap²⁸ to report cases, encourage women to speak up, rally volunteers, create a social buzz, or attend to more violent cases that required immediate interventions through Opantish and other groups, played a radical part.

Action steps: What can we learn from this?

In a world driven by technology in every respect, securing the sexual rights of women is no exception. Simply banning pornographic content without providing alternatives is not guaranteed to combat

sexual violence or raise generations able to identify their sexual needs. Egyptian authorities need to take seriously the impact pornographic content has on the understanding of the youth when it comes to sexuality, providing alternative platforms for information and encouraging schools to do the same.

Although technology has had a serious negative impact on respecting women's sexual rights and silencing women's voices, it has been adapted to serve as a tool for information, support, protection and reporting in Egypt. Several initiatives have successfully demonstrated best practice in this field. However, these volunteer efforts are not enough to provide a comprehensive understanding of sexual violations against women, and to offer sustainable protection for women. The efforts of HarassMap and Maalouma are still limited in scope, and do not provide national data or reach women in marginalised communities. This weakens the representativeness of their findings on sexual violence.

Women in Egypt have a desperate need to understand their sexual needs separately from men's needs, so they can reclaim their bodies and differentiate between consensual acts and unwanted sex. Until then, countless cases of domestic abuse and violent sexual assaults will continue to exist. Without any intervention, another wave of sexual violence against women will wash away any rights that have been reclaimed.

28 harassmap.org/en

ETHIOPIA

INTERNET RIGHTS: A COLLISION WITH CULTURE AND RELIGION



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Introduction

Historically unique among African nations, the ancient Ethiopian monarchy maintained its freedom from colonial rule with the exception of a short-lived Italian occupation from 1935 to 1941. Ethiopia's current constitution, which was adopted in 1995, made a decisive break with Ethiopia's tradition of centralised rule. The new institutions are based on the principle of ethnic federalism, designed to provide self-determination and autonomy to Ethiopia's different ethnic groups. The country has a two-tier system of parliament, namely, the House of Federation and the Houses of Peoples' Representatives.

Ethiopia has a population of over 99 million (July 2015 estimates) which represents diverse ethnic and religious groups and languages. In terms of religious affiliation, Ethiopian Orthodox accounts for 43.5% of the population, Muslim 33.9%, Protestant 18.5%, traditional 2.7%, Catholic 0.7%, and other 0.6% (2007 estimates).¹ Ethiopia's economy is based on agriculture, but the government is trying to diversify into manufacturing, textile and energy generation, sectors that have been showing tremendous growth. Its average GDP growth between 2001 and 2012 has been 10.5% annually, which is forecasted to continue well through to 2016. The per capita income reached USD 410 in 2014, which is still one of the lowest in the world.²

However, Ethiopia's growth challenge is partly attributable to undeveloped infrastructure. In the information and communications technology (ICT) sector, access to and use of ICTs are still among the lowest globally. The percentage of the population using the internet was estimated at 1.9% in 2013 and fixed-broadband subscriptions were below 1%. While mobile broadband bridges this gap to an extent the issue of rights on the internet looks

less significant in the context of the development challenges of access and use of the internet.

This report therefore highlights some of the issues and challenges in the area of sexual rights that are inherent to the Ethiopian context.

Legal framework

The Ethiopian constitution³ provides a general statement about marriage and personal and family rights in Article 34: "[M]en and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable age as defined by law have the right to marry and found a family. They have equal rights while entering into, during marriage and at the time of divorce. Laws shall be enacted to ensure the protection of rights and interests of children at the time of divorce." There are important legal frameworks in this regard. The most important one is the Revised Family Code – Proclamation of 2000⁴ which states in chapter one with regards to "conclusion of marriage" that marriage shall be deemed concluded when a man and a woman have appeared in either of the three types of marriage-concluding institutions (namely office of civil status, religious institution or custom-related entity) and that the entities have accepted their respective consent. However, in its Article 13d on "Fundamental Error" it states that "error" includes "the behaviour of the spouse who has the habit of performing sexual acts with person of the same sex."

Similarly, the 2005 Criminal Code,⁵ in the part that deals with crimes against morality, includes a section on "sexual deviations". In Article 629 dealing with "homosexual and other indecent acts" it states that "whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment."

1 Central Intelligence Agency. (2015). The World Factbook – Ethiopia. Washington, D.C.: CIA. <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>

2 Ibid.

3 Federal Democratic Republic of Ethiopia. (2005). Proclamation no. 1/1995 – A proclamation to pronounce the coming into effect of the Constitution of the Federal Democratic Republic of Ethiopia. Addis Ababa: FDRE.

4 Federal Democratic Republic of Ethiopia. (2000). The Revised Family Code Proclamation of 2000, Proclamation no. 213/2000. Addis Ababa: FDRE.

5 The Federal Democratic Republic of Ethiopia. (2005). The Criminal Code of The Federal Democratic Republic of Ethiopia – Proclamation no. 414/2004. Addis Ababa: FDRE.

However, the punishment ranges from “simple” imprisonment (which means for no less than one year) to – in grave cases – imprisonment not exceeding 10 years. The punishment for performing “homosexual acts” with a minor is between three to 25 years of imprisonment depending on the age and gender of the victim.

Key issues

Ethiopia hosted the 16th International Conference on AIDS and Sexually Transmitted Infections in Africa (ICASA 2011)⁶ in Addis Ababa from 4 to 8 December 2011, attracting over 10,000 participants. Gathering some of the world’s leading experts to discuss trends in AIDS treatment and prevention, it was also the first time that Ethiopia witnessed sexual rights activists talk openly about issues such as homosexuality that are criminalised in the country’s laws. It was reported that over 200 activists attended the conference and had a plan to organise a side event on issues of homosexuality and the prevention of HIV/AIDS.

However, as the news became public that these activists at the conference planned to organise a meeting, Ethiopians began discussing the issue online, using digital platforms such as Facebook. Most of the statements on social media reflected a sense of public loathing against the proposed meeting, based on religious and cultural values. This was not surprising. An article published by the newspaper *Capital* during the event cited a 2007 Global Attitudes Survey that revealed that almost all (97%) of Ethiopians believe homosexuality should be rejected by society, which was the second highest percentage rejecting homosexuality among the 44 countries surveyed, exceeded only by Mali with 98%.⁷ Further to the online debates, prior to the conference religious leaders called for a press briefing with the intention to ask for the conference to be banned, leading to a dispute with government authorities. The news conference was cancelled and instead a meeting took place between the health minister and religious leaders from the Ethiopian Orthodox church, the Ethiopian Islamic Affairs Supreme Council, and Catholic and Evangelical churches. This meeting, however, ended in disagreement over whether or not to cancel the conference.

As indicated above, Ethiopia’s criminal law prohibits any form of homosexuality on grounds that

the behaviour goes against the country’s cultural and religious norms and that persons who engage in the activity would be sentenced to up to 10 years of imprisonment. Three years prior to the conference, Ethiopian religious leaders gathered at the African Union (AU) to lobby local lawmakers to enact a constitutional ban on homosexuality.⁸ The clerics stressed that the current laws were inadequate. The former Patriarch of the Ethiopian Orthodox Church had then said that Ethiopia’s special place in the biblical traditions means a firm stance is warranted. He added, “We strongly condemn this behavior; they have to be disciplined and their acts discriminated against.... They have to be given a lesson.”⁹ Furthermore, the head of a local NGO called United for Life Ethiopia also emphasised at the same meeting the need for a tough stance on homosexuality, given a rise in sex tourism and the fact that the prostitution business in the country was gaining momentum. According to him, homosexuality was a new phenomenon brought about with increased exposure to other cultures through globalisation, adding that orphans are especially at risk as they do not have proper family protection. At the end of the meeting the religious leaders deemed homosexuality part of “cultural colonisation” and a sign that the new generation is “loosening”. They cited preaching in religious institutions, schools and other institutions, as well as the ostracisation of homosexuals, as key to ensuring that homosexuality does not become widespread.¹⁰

These accounts reflect a country with a strongly conservative society that has upheld its beliefs and cultural values for centuries. In this context, the online environment is no different from the offline experience that people encounter in Ethiopia. The national ICT policy,¹¹ in its section on “ICT legal system and security” states as a strategic action to “develop ICT and related regulatory frameworks in order to address socially undesirable activities in the use of ICTs.” Furthermore, the ICT security strategy in the national policy states as one of its objectives the need to prevent, detect and respond to cyber crime and the misuse of ICTs so as to contribute to the fight against national, regional and

6 www.icasa2011addis.org

7 *Capital*. (2011, 8 December). Cultural collision. *Capital*. www.capitalethiopia.com/index.php?option=com_content&view=article&id=87:cultural-collision&catid=35:capital&Itemid=27

8 PANA. (2011, 29 November). Upcoming gay conference in Ethiopia may be banned. *Panapress*. www.panapress.com/Upcoming-gay-conference-in-Ethiopia-may-be-banned--13-8o764o-17-lang4-index.html

9 *Capital*. (2011, 8 December). *Op. cit.*

10 *Ibid.*

11 The Federal Democratic Republic of Ethiopia. (2009). *The National Information and Communication Technology Policy and Strategy*. Addis Ababa: FDRE.

international crimes such as prostitution, fraud, organised crime and terrorism.

However, the internet, particularly through social media and community websites, has been used as a platform to express different views from both sides – both for and against homosexuality. As indicated above, as soon as the news broke about the sexual rights activists planning to organise a side event during ICASA 2011, communities opposing homosexuality were discussing the issue and campaigning against the side event through online platforms. On the other hand, as indicated in an article¹² in the web-based news section of Ezega.com, despite homosexual communities in Ethiopia being forced to remain hidden, there are also an increasing number of websites where the communities express themselves publicly and make demands.

Two things can be derived from this story. Firstly, in recent years one of the thematic areas for the annual Internet Governance Forum (IGF)¹³ is “human rights and the internet” which addresses issues ranging from data protection and privacy to freedom of expression in the online environment, to surveillance and access to information. One of the ideas behind this agenda is that the rights protected in the offline environment need to be protected in the online environment too. The question is how this applies when such rights do not exist in the offline environment, even though the internet offers certain levels of freedom for exercising those rights.

Secondly, a point can be made regarding the AIDS conference and the call by religious leaders and NGOs like United for Life Ethiopia requesting that the government enforce the rule of law and protect the culture and traditions of the Ethiopian people. Although Ethiopia is signatory to international human rights principles, it acknowledges that these can be limited by the requirements of national peace and security, public health, education and societal mores and tradition. This clear recognition of social morality as an identity means that the Ethiopian government is constitutionally obliged to protect and serve the cultural, religious and traditional values of the nation. This issue suggests the need for further research on the real challenge on the way forward.

Conclusion

One of the commentaries in a local paper¹⁴ about the recent Africa visit of the president of the United States highlights how President Barack Obama respectfully chose silence on the right of homosexuality, while urging African governments to respect equality, and to allow people to live in dignity and freedom. The commentary added that in his Ethiopia visit, the president did not seem to have the enabling environment to raise the issue of homosexuality as a human right in a country where it is criminalised, where moral failure is not an issue and where cultures and different religious institutions strongly denounce homosexuality. While Ethiopia’s Criminal Code already punishes homosexual practices with up to 10 years in prison, in March 2014 Ethiopia’s lawmakers proposed legislation that would make same-sex conduct a non-pardonable offence, so that homosexuals convicted under the law could not be granted early leave from prison. However, in April the government dropped the proposed legislation.

Given the existence of the legal framework that prohibits homosexuality, the internet offers an alternative platform for online debates among concerned people. On the other hand, it seems evident that the topic of sexual rights and the internet is not particularly significant to a country like Ethiopia. Firstly, as indicated above, the legal framework does not allow and grant this right in the first place, and secondly the internet, which is a powerful technology that provides different avenues for networking, is limited in penetration in the country. Thirdly, one of the reasons that some organisations promote access to the internet and human rights is based on the principle that the protection of the rights of the people online must be protected in the same manner offline. The challenge comes when these rights are legally prohibited in the offline environment.

Further to some of the experiences indicated above, the internet provides a gateway for people to express their views and needs, for networking and discussing issues regardless of it being illegal. As stated by academic Howard Mehlinger,¹⁵ technology is not only a product of a given culture, it also shapes the culture that created it. In this regard, the challenge ahead lies with the growing access to in-

12 Tekleberhan, M. (2011). Revelation of Homosexual Life in Ethiopia – Part 2. *Ezega.com*. www.ezega.com/News/PrintNews.aspx?newsID=2814

13 www.intgovforum.org/cms

14 162.242.195.248/index.php/other-sections/law-and-politics/law/item/10501-%E1%8A%A6%E1%89%A3%E1%88%9B-%E1%88%B5%E1%88%88%E1%8B%B4%E1%88%9E%E1%8A%AD%E1%88%AB%E1%88%B2-%E1%8A%A0%E1%88%8D%E1%89%Bo%E1%8A%93%E1%8C%88%E1%88%A8%E1%88%9D%E1%8A%95

15 Mehlinger, H. D. (1996). School reform in the information age. *Phi Delta Kappan*, 77(6), 400-407.

ternet, and the extent to which this technology will impact on future generations.

Action steps

Internet diffusion in Ethiopia is slow and costly. However, increasing mobile penetration in the country, which was 27.3% in 2013, is helping to bridge the gap. With 4.9% of the population using wireless broadband subscriptions, a large number of people can now use mobile technology to access the internet. The internet has a great potential, and provides all kinds of social forums and platforms in

different fields of interest or concerns, where people can network based on common interests, or create support groups.

In this regard, the following two action steps could be suggested:

- The need to deploy further infrastructure and services that enhance internet access and use in the country.
- The need for further empirical research to provide evidence-based suggestions and recommendations.

THE GAMBIA

THE ONLINE FIGHT AGAINST FEMALE GENITAL MUTILATION IN THE GAMBIA



Front Page International

Demba Kandeh

www.frontpageinternational.wordpress.com

Introduction

The Gambia is surrounded by Senegal on all sides, except to the west where it meets the Atlantic Ocean.¹ It has had only two presidents since political independence in 1965.² The former British colony was led to independence by Dawda Kairaba Jawara, who was deposed in a military coup in July 1994 by current president Yahya AJJ Jammeh.³ The latter has since ruled the country with an iron fist and continues to limit basic human rights and restrict fundamental freedoms.

Freedom of expression both offline and online has suffered seriously under Jammeh. The internet is strictly regulated in The Gambia. According to the authoritative annual Freedom on the Net report by global human rights institution Freedom House, The Gambia is among the most restrictive countries in Africa and worldwide. In 2014, the country was ranked as the second most repressive in Africa, falling a few points below Ethiopia, which is considered the worst in Sub-Saharan Africa.⁴

Internet policy and regulation

Information and communications technologies (ICTs) in The Gambia are regulated as public utilities by the Public Utilities Regulatory Authority (PURA),⁵ which was established by an act of parliament in 2001. In order to create a sound and level playing field for the development of ICTs in the country, the government introduced a policy framework in 2009. The Information and Communication Act 2009⁶ was passed by parliament and regulates

the telecommunications sector. The act, among other things, restricts freedom of speech online, and it was amended in 2013 to include even harsher punishments. Government officials argue that the Information and Communication Act was adopted with a view to addressing the convergence of the telecommunications, broadcasting and information technology sectors, including the internet. However, the July 2013 amendments are notorious for stipulating a 15-year jail term or a fine of three million Gambian dalasi (approximately USD 75,000), or both a fine and imprisonment, for the offences of spreading “false news” on the internet, for “caricatures” of government figures or public officials, and for posts deemed “derogatory”.⁷

What is FGM?

Female genital mutilation (FGM) – also referred to as female circumcision – is defined as the procedure of intentionally altering or causing injury to female genital organs for non-medical reasons.⁸ The practice is an ancient means of initiation into adulthood when young girls are taught and prepared for greater responsibilities in society. It is a widely practiced cultural phenomenon in The Gambia and other parts of Africa, Asia and now Europe. As a tradition, FGM is often supported by both men and women. In some highly conservative societies, its critics are considered outcasts and face public condemnation and harassment. According to the United Nations Population Fund (UNFPA), people practise FGM for one or more of five major reasons, which it classifies as hygiene, psychosexual, religious, sociological and cultural.⁹ Moreover, in some communities it is a prerequisite for marriage and inheritance, and it is a source of income for practitioners.¹⁰ The World Health Organization (WHO) found that it is often

1 History of The Gambia, History World. www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ad47

2 The Gambia, Wikipedia. https://en.wikipedia.org/wiki/The_Gambia

3 Jobarteh, J. (2014, 17 April). Gambia 1994 Coup D'etat: The Fall of Jawara's Civilian Regime. *Prezi*. https://prezi.com/8zobm_uqqmcc/gambia-1994-coup-detat-the-fall-of-jawaras-civilian-regim

4 Freedom House. (2014). Freedom on the Net 2014: The Gambia. <https://www.freedomhouse.org/report/freedom-net/2014/gambia>

5 www.pura.gm

6 www.wipo.int/wipolex/en/details.jsp?id=10478

7 Joof, M. S. (2013, 8 July). The Gambia's Internet Law: RSF very disturbed, Amnesty International shocked. *Front Page International*. frontpageinternational.wordpress.com/2013/07/08/the-gambias-internet-law-rsf-very-disturbed-amnesty-international-shocked

8 End FGM European Network. www.endfgm.eu/en/female-genital-mutilation/what-is-fgm/what-is-fgm/

9 United Nations Population Fund. (2015). Female genital mutilation (FGM) frequently asked questions. www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#why

10 Moges, A. (n/d). What is behind the tradition of FGM? www.african-women.org/documents/behind-FGM-tradition.pdf

practised even when it is known to inflict harm upon girls because the perceived social benefits of the practice are deemed higher than its disadvantages.¹¹

Yet survivors of the practice often suffer life-long trauma, as Jainaba's experience shows:

It is 18 solid years ago, but the memories of her experience on a cold winter Friday morning are still very vivid. She was wrestled down to the ground, her eyes and mouth covered while her legs were stretched apart; a sharp object was used to cut her clitoris. "That was the worst pain I ever experienced in my life," recalled Jainaba, a female genital mutilation survivor. "I screamed out for help," she added, but no one would respond with over a dozen other young girls already bleeding in similar pain. An old woman, Aja Jontang, used a single knife to cut all the girls as tradition demands.¹²

Thousands of young girls in The Gambia face the risks of FGM each year, with hundreds of others falling victim to the harmful cultural practice. In this tiny West African state, FGM is normally carried out on girls before the age of 18 and is typically done by a woman who does not have medical training.

There are up to four types of FGM practiced in The Gambia, including type 1 (also referred to as a clitoridectomy) where part or all of the clitoris is removed. There are no known health benefits of the practice and it sometimes causes death. Immediate consequences of FGM include bleeding, excessive pain, and an inability to urinate, while long-term consequences include pain during sex and lack of pleasurable sensation, and psychological damage, including low libido, depression and anxiety, among others.¹³

FGM in The Gambia

According to WHO estimates, the percentage of all women in The Gambia who have undergone one form of FGM or another ranges from 60 to 90%.¹⁴ The Foundation for Research on Women's Health, Productivity and the Environment (BAFFROW) reports that seven of The Gambia's nine ethnic groups

practise at least one form of FGM.¹⁵ Furthermore, it reports that among those who have undergone any FGM procedures, 20% were under the age of five at the time and 50% were between the ages of five and 18, with the average being approximately age 12. Official statistics are largely unavailable, but according to experienced health workers in the country, the effects of the practice are grim. A local medical doctor, with over two decades of experience, has documented that between 300 and 400 women die during childbirth every year from complications attributable to one form of FGM or another.¹⁶

FGM and online activism

Recently, however, there has been an unprecedented surge in activities geared towards ending this harmful traditional practice. Activists, including survivors of FGM, have taken on the responsibility to challenge the status quo. From offline conferences to online forums, campaigns have been launched across the country targeting families, both men and women, the young and the elderly. Some of these sexual rights movements are using the internet for community building, awareness raising and even advocacy for policy dialogue.

There has been significant progress to date in the anti-FGM campaign. Until about five years ago, The Gambia Committee on Harmful Traditional Practices was among the few organisations actively campaigning and sensitising people on FGM and other harmful practices. In 2009, with support from a Finnish development agency, a consortium of activists emerged. The Network Against Gender Based Violence (NGBV)¹⁷ aims to address harmful traditional practices such as FGM and forced and early marriages. Activists say NGBV serves as a platform for action and discussion on gender-based violence issues in the country. But of all the new groups, networks and consortiums, The Girls' Agenda¹⁸ is the newest and among the few that prioritise the use of the internet in their campaigns.

Established in 2011 by mostly survivors of FGM, the youth-led community organisation has since championed the cause of women and girls' sexual rights. Oumie Sissokho, one of the pioneers of the organisation, explains their work this way: "The Girls' Agenda has been engaged in awareness

11 World Health Organization. (2008). Eliminating Female Genital Mutilation: An Interagency Statement – OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO. www.who.int/reproductivehealth/publications/fgm/9789241596442/en

12 Interview with FGM survivor, May 2015.

13 Moges, A. (n/d). Op. cit.

14 Kaplan, A., et al. (2013). Female genital mutilation/cutting in The Gambia: long-term health consequences and complications during delivery and for the newborn. *International Journal of Women's Health*, 2013(5), 323-331. <https://www.dovepress.com/female-genital-mutilationcutting-in-the-gambia-long-term-health-conseq-peer-reviewed-article-IJWH>

15 Access Gambia. Female Genital Mutilation in The Gambia. www.accessgambia.com/information/female-circumcision-fgm.html

16 U.S. Department of State. (2001). The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC). 2001-2009.state.gov/g/wi/rls/rep/crfgm/10099.htm

17 www.networkgbv.org

18 www.girlsnotbrides.org/members/the-girls-agenda

creation and advocacy on promoting the reproductive health rights and concerns of girls and women by demanding investments in health and the education of girls, elimination of sexual violence, and combating harmful traditional practices such as FGM and arranged marriages, among others.”¹⁹ Despite the daunting challenge of a lack of regular funding, the organisation continues to make giant strides, especially through online activism and using new media. Through its pool of volunteers, the organisation is optimistic that they can turn the tide against FGM in a country where more and more people, especially the youth, are going online.

Members of The Girls’ Agenda believe that their ability to use the internet and reach out to thousands of Gambians is their greatest asset. “Because this new generation of young leaders and advocates has realised the crucial role the internet plays in advocacy, especially gender equality and social justice, we are relying heavily on this opportunity to champion the causes we believe in,” observed Isatou Bittaye, another pioneering member of the organisation.²⁰ According to her, the internet not only helps ensure that their advocacy messages reach a wider audience in a timely manner, but it “is a great resource and tool for interaction and engagement with policy makers and colleague advocates.”

“As advocates, we are always on the internet via social media to conduct online advocacy on issues affecting girls and young women, such as FGM, early marriages, gender-based violence, teen pregnancy, access to equal educational opportunities and sexual and reproductive health services,” Bittaye added.

The activists went further to describe how the internet has helped them. They recalled that in February 2015, at a community outreach youth forum on sexual violence, their communications team live streamed the event on social media (Facebook, Twitter and Instagram). “This contributed to the success of the activity in a way hitherto unknown, and on these platforms interaction with the audience ensued long after the end of the programme,” they noted.

But not all is well. “Although the online advocacy is effective in reaching a larger audience, delivering messages in a timely manner and enabling efficient interaction, experiences of provocation and hostilities from groups that support FGM are encountered by anti-FGM advocates, including The Girls’ Agenda,” Isatou Jeng, another founding member,

pointed out. She revealed that they are often condemned for their advocacy for an anti-FGM law in The Gambia. “The insults, curses and condemnations can be stressful and hard to bear, especially for new volunteers and inexperienced members,” Jeng added.²¹ Furthermore, the lack of online presence of a large part of the rural population makes it impossible to reach out to this “critical population” via the internet.²² “The Gambia has poor rural telecommunications infrastructure. Access to the internet by most people in the rural communities is difficult, and that makes it difficult for us to get our messages to such groups of people via the internet,” Jeng concluded.

The practice of FGM is an old tradition that has lost its place in modern society – but as a practice highly valued and promoted by the elderly, it is not going away easily. The internet is seen as one of the most powerful tools in the 21st century, enabling unprecedented means of communications across cultures and among people. However, different parts of the world face different challenges as far as internet connectivity and policies are concerned. The continent of Africa is still home to the world’s most disconnected communities, despite the progress registered. Behind the issues of connectivity is the very important but also controversial matter of regulation of the internet. Whereas some progress has been registered towards a realisation of internet rights on the continent, analysts believe there is still a long way to go. In The Gambia, the strict regulation of freedom of expression offline is reflected online. The West African state is one of the few countries in the region where criminal defamation remains on the books.²³ Furthermore, strict regulations of the sector and harsh punishments – judicial as well as extrajudicial – have had a chilling effect on the use of the internet and ICTs in general.

Conclusion

As in other developing countries, ICTs have started to become an integral part of everyday life in The Gambia. The integration of ICTs and the internet into the daily lives of many is essential, since it gives more and more people a chance to be heard, in this way improving openness and public debate in society. This is all the more relevant for traditionally sensitive issues and harmful cultural practices such as FGM.

²¹ Interview with Isatou Jeng, member of The Girls’ Agenda.

²² Freedom House. (2014). Op. cit.

²³ ARTICLE 19. (2012). *The Gambia: Analysis of Selected Laws on Media – Overview*. <https://www.article19.org/data/files/medialibrary/3043/12-04-17-LA-gambia.pdf>

¹⁹ Interview with Oumie Sissokho, member of The Girls’ Agenda.

²⁰ Interview with Isatou Bittaye, member of The Girls’ Agenda.

However, the discussions online, just like those held offline, are affected by the general legal and regulatory framework. ARTICLE 19, an independent international NGO focusing on freedom of expression, has found that restrictions on the right to freedom of expression in relation to ICTs are on the increase worldwide. The London-based group noted that there have been “many warnings that more and more states are trying to increase their grip on the growing flow of data and how people express themselves online.”²⁴

Activists in general and human rights activists in particular are the most affected by restrictions to freedom of expression both online and offline. In their campaigns against FGM online, activists are compelled to adhere to regulations on free speech within their respective areas of jurisdiction. For instance, the July 2013 amendments to the country’s Information and Communication Act could be problematic. The amendments, which impose penalties of up to 15 years in prison or a heavy fine, have the potential to limit anti-FGM campaigns. The wide and vague terminology leaves users susceptible to a wide range of interpretations of their online activities.

There has not yet been any prosecution of online activism relating to FGM, but in March 2015, a child and women’s rights activist fled the country for her life after posting a video of a police officer beating a school child. Aminata Manneh, a third-year university student at the time, reportedly started receiving suspicious calls and messages shortly after her video went viral on Facebook.²⁵

In various discussions and evaluation sessions, individuals and groups have criticised the July 2013 amendments as severely flawed and a threat to the protection of freedom of expression online. It is clear that previous legislation and efforts to meet the international obligations of the country resulted in greater protection of free speech in general.

In January 2014, the African Union (AU) postponed a vote to pass a continental framework for the common regulation of ICTs.²⁶ The so-called Oliver Tambo Declaration²⁷ was passed in 2009 and

aims to harmonise various ICT regimes, particularly around cyber security laws. While some people are optimistic that a continental approach to ICT regulation is positive, especially given the poor state of regulation in many countries, many are of the opinion that the general lack of means of enforcement and political will are huge obstacles. Supported mostly by stakeholders from government and regional partners of the AU, the framework is criticised by many internet activists as not meeting basic international standards on freedom of expression online. International human rights organisations, including Access, have raised concerns over the provisions of the draft on some aspects of user rights such as privacy.²⁸ Given the apparent sense of fear of the internet among some African governments, a common regional framework bears the risk of watering down existing human rights standards in countries where these are legislated.

Action points

The following steps are recommended for activists in The Gambia:

- All online activists, including anti-FGM activists, should dedicate part of their efforts to campaigning for better regulation of the internet.
- All internet users, particularly activists, should maintain basic online security practices.
- Activists from different fields should collaborate on the issue of FGM to ensure greater impact of their campaigns.

24 ARTICLE 19. (2013). *Freedom of expression and ICTs: Overview of international standards*. <https://www.article19.org/resources.php/resource/37380/en/freedom-of-expression-and-icts-overview-of-international-standards>

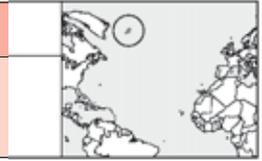
25 Azuakola, S. (2015, 23 March). Young activist flees Gambia after posting video of police assault. *This Is Africa*. thisisafrika.me/tag/aminata-manneh/

26 African Union. (2012). *Draft African Union Convention on the Establishment of a Legal Framework Conducive to Cyber Security in Africa*. au.int/en/sites/default/files/AU%20Convention%20EN.%20%283-9-2012%29%20clean_o.pdf

27 www.researchictafrica.net/multistake//African_Union_2009_-_Oliver_Tambo_Declaration.pdf

28 Kenyanito, E. P. (2014, 2 June). Africa moves towards a common cyber security legal framework. *Access*.

<https://www.accessnow.org/blog/2014/06/02/africa-moves-towards-a-common-cyber-security-legal-framework>



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Introduction

In 2013, the minister of the interior proposed a ban on online pornography in Iceland. His efforts sparked a furious debate online, with people from all over the world writing to the ministry both in opposition to the ban and in support. Supporters of the ban emphasised the harmful effects of pornography, especially on children, while opponents emphasised issues of free speech and the dangers of censorship.

Feminist ideas are influential on all levels of society in Iceland, but these ideas tend to be homogeneous. Feminist thinking in Iceland is heavily influenced by the women's liberation movement of the 1970s, whose influence in the country has been oversized due to its formation of a political party, the Women's List, which sat in Alþingi, the Icelandic parliament, from 1983 to 1998. The stunning success of anti-pornography feminists in the political arena in the 1980s and 1990s and the strong influence of the neoliberal school of feminist thought in the 1990s and 2000s have ensured that competing ideas of intersectionality, sexual agency and sexual freedom have been marginalised in Icelandic political discourse, and were not heard in the debate surrounding the proposed ban on online pornography in 2013.

Pornography: Banned in Iceland since 1869

The printing and distribution of pornography have been illegal in Iceland since 1869. Article 210 in the general penal code, which deals with pornography, has only been substantively amended twice in the 150 years since it was first enacted. In 1940 a paragraph banning pornographic lectures and performances was added, and in 1996 a paragraph banning child pornography was added.¹

The age of the legislation is reflected in the archaic language of the article in the penal code. For example,

the language added in 1940 prohibits individuals to produce, import, sell, publicly display, or distribute pornographic books, pornographic pictures, or other such things, as well as hosting public lectures or performances which are “immoral in such manner”. The Icelandic word used to denote “performance” is especially archaic. “Leikur” now refers to games or play, but at the time could be construed as meaning theatrical plays or performances. There is no reference to online distribution, and the only reference to pornographic videos or films is found in the section of the article added in 1996, banning child pornography.²

The production and possession of pornography for private use is not addressed in the law, and can be regarded as legal, with the exception of child pornography.

The lack of legal reform to the penal code regarding pornography is unusual when placed in the context of legal reform in neighbouring European countries, where pornography has become increasingly accepted. Iceland is now the only Nordic country to ban the production and distribution of pornography. Denmark was the first to legalise pornography, in 1967, and Norway the last, when in 2005 a ruling by the country's supreme court effectively legalised it.³

Before child pornography was added to article 210 of the penal code, the article was seldom used in Icelandic courts of law. In fact, it was only in 1973 that the first case of pornography reached the supreme court of Iceland, when two men were convicted of distributing calendars with silhouettes of heterosexual couples in sexually explicit positions.

One reason that people were rarely prosecuted for pornography is that the law does not define what constitutes pornography. It was only in 1990 that the supreme court issued a decision confirming the conviction of a local television station for violating article 210 by broadcasting pornographic films, and affirming a definition of pornography which had been used by the district court.

Pornography, since 1990, is by this legal precedent defined in Iceland as “aggressive representation of sex to make money, without love, tenderness or

1 Helgadóttir, Á. (2014). *Permitting Pornography: A Critical Review of the History of Pornography Censorship in Iceland in a European Perspective*. BA Thesis at the Faculty of History, University of Iceland. skemman.is/stream/get/1946/18430/42706/1/Helgadottir_BA_Permitting_pornography.pdf

2 Althingi. (2015). *Almenn hegningarlög (1940 nr. 19 12. febrúar)*. www.althingi.is/lagas/nuna/1940019.html

3 Helgadóttir, Á. (2014). Op. cit.

responsibility". This was defined in contrast to erotica, or the "sexual art of literary or artistic expression of love".⁴ This definition has been used by the district courts in several cases in the last quarter century, and confirmed by the supreme court in at least three cases.

Efforts to reform the pornography legislation have been rare and ineffectual in the last decades. In 2001, the Left-Greens submitted a bill before parliament proposing heavier punishment for the advertising of pornography. The minister of justice Sólveig Pétursdóttir, a member of the centre-right Independence Party, ordered a report on legislation in the other Nordic countries regulating prostitution and pornography,⁵ and formed a follow-up committee tasked with issuing recommendations to improve legislation on prostitution and pornography. The committee issued a report recommending that the ban on the distribution and publication of pornography be lifted, but with restrictions on child pornography and animal pornography.⁶ Despite these reports and recommendations, no reform on the pornography legislation was enacted.

The latest serious effort to reform the pornography legislation took place in 2013, in the last years of a government coalition consisting of the Left-Greens and the Social Democratic Alliance, and, in contrast to neighbouring countries, this reform was meant to further restrict access to pornography rather than liberalise it.

How to govern as a feminist...

Iceland is politically a fairly conservative society, at least when compared to other Nordic countries, and political parties right of centre have historically been very successful. The Independence Party, a centre-right political party, has been a member of the ruling government for 54 of the 71 years since Iceland gained its independence from Denmark in 1944.

The financial collapse of 2008, when all the major banks of Iceland collapsed and the Icelandic state came close to bankruptcy, shocked the electorate to temporarily abandon the policies of the neoliberal wing of politics. The Independence Party, for the first time since it was founded in 1929, did not receive the largest share of the electoral vote in an emergency election held in 2009.

The emergency election held in 2009 also saw a huge rise in the number of women elected to Alþingi, the Icelandic parliament. In 2007, women won 31.7% of the seats in parliament. In 2009, the number of women in parliament jumped from 20 to 27, constituting 42.9% of elected members of parliament.⁷

Two left-wing parties were voted into power in 2009, the Left-Green Movement of Iceland (or Left-Greens) and the Social Democratic Alliance. The latter had been formed 11 years earlier with the merger of several political parties, one of which was the last women's-only political party in Iceland, the Women's List. This government, which served from 2009 to 2013, was the first explicitly feminist government in Iceland.

Several key feminist legislative reforms were enacted during the coalition's time in government. In 2009, the parliament passed new legislation, based on a Swedish model, criminalising the purchase but not the selling of prostitution.

In 2010, the parliament passed legislation requiring a gender quota for boards of all companies with more than 50 employees. The same year, the parliament effectively banned commercialised stripping by passing a law which prohibited employers from profiting from the nudity of their employees. Overall, 54.1% of the general public agreed with this ban. However, while 76% of women approved, the approval rate among men was only 33%.⁸ Feminist groups in Iceland were unanimous in their approval, since the law did not restrict women's agency, only prohibiting external parties from profiting from women's bodies and sexualised labour.

In 2011, the so-called Austrian model was passed, through legislation allowing authorities to remove domestic abusers from the home at their own discretion, and, that same year, the government began implementing gender budgeting in the domestic budget.

The government was voted out of power in the elections of 2013, but during its last days in office, its members attempted to push through a reform of the pornography legislation.

Banning online pornography?

In October 2012, Gail Dines, an academic and anti-porn activist from the United States, visited Iceland and participated in a high-level conference on pornography. The conference, entitled "Legislation, Sexuality, (Un)Culture, Self-Image and Intimacy",

4 Ibid.

5 Althingi. (2000-2001). *Skýrsla dómsmálaráðherra um samanburð á lagaumhverfi á Íslandi og annars staðar á Norðurlöndum varðandi löggjöf og eftirlit með klámi, vændi o.fl., samkvæmt beiðni*. www.althingi.is/altext/126/s/0625.html

6 Ingvarsdóttir, S., et al. (2002). *Skýrsla nefndar sem falið var að gera tillögur um úrbætur vegna kláms og vændis*. Reykjavík: Dóms- og kirkjumálaráðuneytið. www.innanrikisraduneyti.is/media/Skyrslur/vaendioegklam.pdf

7 www.althingi.is/thingmenn/althingismannatal/konur-a-althingi/tolfraedi

8 www.mmr.is/frettir/birtar-neurstoeur/137-rumur-helmingur-fylgjandi-loegum-um-bann-vie-nektardansi

was hosted by the Icelandic Ministry of Interior, the Ministry of Welfare, the Ministry of Education and Culture, and the faculty of law at the University of Iceland.⁹

The conference was the culmination of work done within the Ministry of the Interior since the autumn of 2010 to reform pornography legislation in Iceland, as well as the first salvo in an effort to ban internet pornography. Before the conference took place, several meetings were held where governmental and non-governmental institutions discussed ways to streamline cases of sexual violence in the justice system. Issues which were repeatedly raised during those meetings were the increased availability of pornography online, the “pornification” of Icelandic society, and its potential effects on the rates of sexual violence.¹⁰

The minister of the interior, Ögmundur Jónasson, opened the conference, and closing remarks were given by the minister of education and culture, Katrín Jakobsdóttir. In his opening remarks, Jónasson placed the conference in an explicitly political context. He did not claim a correlation between pornography and instances of sexual violence, but stated that it would be difficult to claim “that people – or as the case may be, young boys – watch pornography without being affected by it.”¹¹ Jónasson expressed hope that this conference would address issues such as the effect that pornography has on its consumers, what pornography says about human beings and relations between the sexes, and, finally, what role the state should play, with particular regard to legislation.¹²

In January 2013, Jónasson presented a memo at a government meeting, commissioning a committee to review the penal law code and draft a proposal for new pornography legislation. Counter to the reforms enacted in neighbouring countries, this legislation would not liberalise the distribution of pornography, but rather find ways to restrict its distribution.

The memo itself has not been released to the public, but a description of the role of the committee is still available online at the website of the Ministry of the Interior.¹³ The committee was tasked with mapping the available resources of the police in combating the distribution of pornography online, and issuing recommendations for improvement. The

committee was also tasked with researching the technical possibilities of restricting online pornography, especially focusing on how to prevent children’s access to online pornography. Finally, the committee was tasked with writing a legal definition of pornography, using the Norwegian definition as a template.

The Icelandic media reported on the memo and the formation of the committee, but public discussion was muted until February 2013, when the international media picked up on the story after the British newspaper *Daily Mail* published an interview with Jónasson and his assistant, Halla Gunnarsdóttir.¹⁴

On 28 February 2013, 42 security, privacy and human rights advocates and organisations around the world sent an open letter to Jónasson, expressing deep concern with his attempt to restrict internet access to pornographic content in Iceland, stating that this effort was an “affront to basic principles of the society”. Signatories included Jillian York, the director for international freedom of expression at the Electronic Frontier Foundation, Sjón, the president of Icelandic PEN, and Richard Stallman, the president of the Free Software Foundation.¹⁵

Jónasson published a response to this letter, clarifying his effort to reform the pornography legislation. Most notably, his letter emphasised that while research into the detrimental effects of pornography in Iceland was limited, indications were that “watching violent pornography can have harmful effects on children,” and that policies must both “be aimed at protecting children from the damaging effects of pornography” as well as “take into account the potentially harmful effects of pornography on adult consumers and those who work in the porn industry.”¹⁶

A month later, another open letter was sent to Jónasson, this time in support of his efforts to ban internet pornography, especially commending “[his] government’s commitment to protect children from the harms of pornography.” Among 110 signatories were feminist writer Gloria Steinem, actress Rosanne Barr, anti-sexist activist and author Jackson Katz, and feminist activist and academic Gail Dines.¹⁷

The effort to reform the pornography legislation died with a whimper, not with a bang. Following the

9 www.menntamalaraduneyti.is/utgefid-efni/vefrit/20121510/nr/7145

10 Helgadóttir, Á. (2014). Op. cit.

11 Jónasson, Ö. (2012, 16 October). *Klámvæðing – Ávarp Ögmundar Jónassonar innanríkisráðherra á ráðstefnu um samfélagsleg áhrif kláms í Háskóla Íslands* 16. október. www.innanrikisraduneyti.is/radherra/raedur-og-greinar-ogmundar-jonassonar/nr/28268

12 Ibid.

13 www.innanrikisraduneyti.is/raduneyti/nefndir/timabundnar/nr/28558

14 Carey, T. (2013, 13 February). Iceland’s bid to ban web porn: Nation could become first western country to block filth over fears of effects on children. *The Daily Mail*. www.dailymail.co.uk/news/article-2277769/Iceland-bid-ban-web-porn.html

15 Ministry of the Interior, Iceland. (2013). Re: Open Letter to Ögmundur Jónasson, Icelandic Minister of Interior, regarding Internet censorship. www.innanrikisraduneyti.is/media/frettir-2013/Bref-til-radherra-28-februar.pdf

16 Jónasson, Ö. (2013). Re: Response to open letter on measures to combat violent pornography. www.innanrikisraduneyti.is/media/frettir-2013/Vidbrogd-vid-opnu-brefi---enska.pdf

17 Dines, G., et al. (2013). Letter of Support for Iceland’s Anti-Pornography Initiative. gaildines.com/2013/03/letter-iceland

elections of 27 April 2013, the Left-Greens and the Social Democratic Alliance were voted out of office and a new coalition government was formed by the centre-right Progressive Party and the Independence Party.

The committee formed by Jónasson wrote a draft of a policy resolution on the intent and submitted it to the new minister of the interior, Hanna Birna Kristjánsdóttir, a member of the Independence Party. According to information from the ministry, the resolution included proposals to inform the public about the social responsibility to protect children from harm on the internet, and that internet providers provide by default filters for harmful materials, but that consumers could deactivate those filters at will.¹⁸ However, Kristjánsdóttir refused to sign the resolution and it has never been made public. While the committee has not been officially disbanded, a formal request to the Ministry of the Interior revealed that it has not held a meeting since 2013.¹⁹

Lack of diversity in Icelandic feminist discourse

Iceland has ranked at the top of the World Economic Forum's Global Gender Gap Report since 2008, as the country with the smallest gender gap.²⁰ For all intents and purposes, Iceland is a state where feminist theories and ideas have been mainstreamed into national and local policy making. Iceland is a feminist state, not because of its radical ideas or cutting-edge feminist thinkers (in fact, there is a glaring lack of feminist philosophers in the country), but because of legislation which ensures that gender equality be maintained and enforced in all areas of society.

The so-called third wave of feminism, with its ideas and questions about intersectionality and multiculturalism, has only recently arrived in Iceland in any meaningful way. Following the successes of the second-wave feminists in the 1970s and 1980s, which culminated in the election of the all-female Women's List to Parliament, feminists in the 1990s and 2000s were more likely to look backwards to the politically successful and popularly accepted ideologies of their predecessors rather than explore new ideas from abroad.

New ideas about the intersectionality of discrimination found infertile ground in Iceland, and women's groups formed around the turn of the 21st century were more likely to borrow new ideas from the neoliberal wing of feminist thought, with an emphasis

on women's empowerment and individual freedom, devaluing the power of social collective action which had informed the work of the women's groups which came before. It was only after the financial collapse of 2008, after the bankruptcy of neoliberalism in Iceland, that women and men began to discuss the intersectionality of all forms of discrimination, a discussion which is still very much in its infancy.

Several new groups have been founded in the new century, which offer a competing view to the established feminist groups in Iceland. The Women of Multicultural Ethnicity Network in Iceland (or W.O.M.E.N. in Iceland) was founded in 2003, Trans Iceland in 2007, Tabú (a group for women with disabilities) in 2014 and Intersex Iceland in 2014. The discussion of gender rights and women's rights between the established women's groups in Iceland and these new groups has barely begun.

This lack of diversity in feminist ideologies in Iceland has ensured that the debate on pornography sparked by the efforts to ban internet pornography in 2013 has not yielded any fruitful results. The lack of a pornography industry in Iceland has also ensured that proponents and opponents of the ban on online pornography have been able to avoid discussing moral issues of workers' rights and sexual agency.

The opponents of the online pornography ban focused on the issues of free speech and the limitations thereof, while the proponents of the ban argued from the position of the harmful effects of pornography. This discussion was not helpful, and did not evolve.

Key conversations about marginalised groups of people, marginalised sexualities and genders, and sexual rights never took place. Many questions therefore still remain not only unanswered, but unasked in this debate in Iceland.

Action steps

The current ban on pornography dates from 1869 and has only twice been substantively amended since its enactment. This ban is rarely enforced, and, with the rise of new technologies, perhaps unenforceable. A comprehensive reform of the pornography legislation is needed in Iceland, to bring the legislation up to date with international treaties and European legal norms.

Any reform of the pornography legislation must be preceded by an open and frank debate amongst the public in Iceland, where all voices are heard. We need to incorporate the voices of marginalised people into the larger feminist debate in Iceland, to allow the viewpoints of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, people with disabilities and people of colour to influence Icelandic feminist thought and public discourse.

¹⁸ Email from Vera Sveinbjörnsdóttir, senior legal adviser at the Icelandic Ministry of the Interior, 21 May 2015.

¹⁹ Ibid.

²⁰ www.weforum.org/reports/global-gender-gap-report-2014



SPACE

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Internet in the world's largest democracy

The theme of sexuality and the internet is particularly relevant to India. Being an emerging democracy with a population of approximately 1.27 billion people,¹ the advancement of both human rights and internet rights such as access to information and freedom of expression is important. This report discusses the impact on the online behaviour of sexual minorities following the Section 377 verdict by the Supreme Court of India in late 2013 that recriminalised homosexuality.

The new Indian government that came to power with an overwhelming majority in 2014 is openly majoritarian in approach, and is comprised of right-wing Hindu nationalist forces. Their recent decision to ban a BBC documentary titled *India's Daughter*,² on the widely reported gruesome gang rape in New Delhi in December 2012,³ revealed the patriarchal mindset of Indian males. At the same time, a rise in the number of verbal and physical attacks against religious minorities⁴ is indicative of a dangerous trend of stifling minority voices. In such a situation, the internet has become the last bastion for the free expression of alternative voices.

Homosexuality: A criminal offence in India

In India, homosexuality was never considered a criminal offence until the advent of British rule. Lord Macaulay introduced the Indian Penal Code, which was based on Judaic-Christian principles, in 1860. Section 377 of the Indian Penal Code criminalises “carnal intercourse against the order of nature”, with imprisonment for up to 10 years, or for life, and also makes the offender liable to pay a fine.⁵

Section 377 remained in force for close to 150 years, until 2009, when the Delhi High Court in *Naz Foundation vs Government of NCT of Delhi & Others*⁶ struck down the provision for violating various constitutionally guarded fundamental rights. It was held to be discriminatory and arbitrary (violating the right to equality under Article 14 of the Constitution of India),⁷ an unreasonable restriction on citizens' fundamental right to privacy (under Article 21), and a curtailment of the right to free self-expression (Article 19), of which free sexual expression is an essential part.

The high court decision was, however, overruled by the Supreme Court of India,⁸ which questioned the “so-called rights” of the lesbian, gay, bisexual and transgender (LGBT) community in India, and said that a “mere possibility” of abuse of a statutory provision is not adequate grounds to question the legality of Section 377. The Supreme Court left the onus on the legislators to take a final call on whether to limit the provision by excluding sexual relations between two consenting adults from its ambit.

Conflicting judicial decisions and their impact on sexual expression

On 2 July 2009, the Delhi High Court bench of Justices AP Shah and Muralidhar, in a watershed judgement, decriminalised consensual homosexual relations between adults by limiting the scope

1 PTI. (2015, 11 July). India's population at 5pm today – 127,42,39,769. *Times of India*. www.timesofindia.indiatimes.com/india/Indias-population-at-5pm-today-1274239769/articleshow/48033866.cms

2 Plunkett, J. (2015, 5 March). India's Daughter: nearly 300,000 watch BBC's Delhi rape documentary in UK. *The Guardian*. www.theguardian.com/media/2015/mar/05/indias-daughter-bbc-delhi-documentary-complaints

3 Mandhana, M., & Trivedi, A. (2013, 18 December). Indians Outraged Over Rape on Moving Bus in New Delhi. *India Ink*. www.india.blogs.nytimes.com/2012/12/18/outrage-in-delhi-after-latest-gang-rape-case

4 Akkara, A. (2014, 1 October). India Under Modi Sees Increase in Attacks on Christians, Critics Charge. *Aleteia*. www.aleteia.org/en/world/article/india-under-modi-sees-increase-in-attacks-on-christians-critics-charge-5784411530330112

5 Section 377 in The Indian Penal Code can be accessed here: www.indiankanoon.org/doc/1836974

6 www.indiankanoon.org/doc/100472805

7 The Constitution of India can be accessed here: www.lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm

8 *Suresh Kumar Koushal & Anr vs Naz Foundation & Ors*. www.indiankanoon.org/doc/58730926

of Section 377 of the Indian Penal Code.⁹ In the immediate aftermath of this decision, the internet exploded with newly launched gay pride magazines, prominent among them being *Pink Pages* and *Gaylaxy*.¹⁰ Apart from these, mobile apps like PlanetRomeo, Grindr and Badoo skyrocketed in popularity amongst the LGBT community.¹¹ Newly created WhatsApp and Facebook groups enabled more personalised interaction in LGBT communities in cities like Ludhiana,¹² Mumbai,¹³ Delhi¹⁴ or Chennai.¹⁵

It seemed that sexual minorities in India had finally found their freedom and voice.

But just as a new India was settling into an era of liberal sexual tolerance, in December 2013, the Indian Supreme Court took a step backwards by reversing the Delhi High Court judgement on appeal.¹⁶ As a result of this reversal, the LGBT community in India – thousands of whom had come out into the open – were immediately put in a state of risk as they could now be re-branded “criminals” and arrested by the police.¹⁷

Offline haunts

Offline spaces or “haunts” fall into three categories: proudly gay spaces (gay venues such as restaurants or bars, which are non-existent in India), gay-friendly spaces (quite a few exist), or public spaces that are frequented by the gay community. Apart from these, there are also “cruising” sites that are used for the specific purpose of finding sexual partners. It is with these cruising sites that problems emerge.

One of the main problems with offline solicitation, given the criminalisation of homosexuality, is that there is lack of safety for LGBT persons. Since cruising sites are public spaces, there is constant

risk of police intervention. This in turn leads to harassment, illegal detention, forced sexual intercourse and blackmail, with threats being made to “expose” the sexual orientation of those victimised to family members or otherwise making their identities public. Another huge issue is that due to the fear of being caught, participants “rush” sex and in the process do not use condoms, leading to increased prevalence of sexually transmitted diseases (STDs), particularly AIDS. This health threat, in fact, was the basis of the 2009 Delhi High Court petition, that criminalising homosexuality through the existing penal provision of Section 377 infringes upon the right to health which is a fundamental right under the right to life and liberty.¹⁸ The high court noted that 8% of the men who have sex with men (MSM) population is infected by HIV compared to less than 1% of the general public.¹⁹

Moreover, the impact of the Supreme Court reversal of the high court judgement has resulted in many sexual health awareness drives by NGOs being adversely affected. As homosexuality is a criminal offence, health activists face restrictions in engaging in face-to-face interaction with homosexual AIDS patients who are afraid to reveal their identities and prefer only phone counselling.²⁰

Online spaces: Pros and cons

The online space is a hugely popular advocacy platform²¹ because it is usually the quickest and cheapest way to communicate with many people at once. The internet, accessed increasingly through smartphones, has a rapidly expanding user base in India.²² Today most news stories break online first, and only then move to traditional media platforms.²³ In the early days of the internet the LGBT community used mailing lists or email to connect. Now social media is the primary way to find new sexual partners. Facebook is the most popular, followed by WhatsApp and, lastly, Twitter, as ways to connect directly as a “community” are limited for

9 *Naz Foundation vs Government of NCT of Delhi & Ors.* www.indiankanoon.org/doc/100472805

10 Homegrown. (2014, 21 May). 6 Indian LGBT Magazines You Should Know. *Homegrown*. www.homegrown.co.in/5-indian-lgbt-magazines-you-should-know

11 Nerurkar, S. (2013, 15 September). Indians hit mobile apps to find love. *Times of India*. www.timesofindia.indiatimes.com/tech/apps/Indians-hit-mobile-apps-to-find-love/articleshow/22597148.cms

12 www.facebook.com/ludhianagaysonwhatsapp

13 www.facebook.com/pages/Mumbai-Gay-Boys/482523425180439

14 www.facebook.com/Gaywhatsappdelhi

15 www.facebook.com/pages/Whatsapp-chat-chennai-gays/772501609450924

16 *Suresh Kumar Koushal & Anr vs Naz Foundation & Ors.* www.indiankanoon.org/doc/58730926

17 Monalisa. (2013, 12 December). Supreme Court upholds Section 377 criminalizing homosexual sex. *Livemint*. www.livemint.com/Politics/FHDQ9yBzrJMSOINCQrkgL/Supreme-Court-to-rule-on-legality-of-gay-sex-today.html

18 *Naz Foundation vs Government of NCT of Delhi & Ors*, paragraph 60. www.indiankanoon.org/doc/100472805

19 *Ibid.*, paragraph 17.

20 *Ibid.*, paragraph 16.

21 Wikipedia, “Internet activism”. https://en.wikipedia.org/wiki/Internet_activism

22 Tech Desk. (2015, 21 July). IAMAI says India will have 500 Million Internet users by 2017. *Indian Express*. www.indianexpress.com/article/technology/tech-news-technology/iamai-says-india-to-have-236-million-mobile-internet-users-by-2017/#sthash.H7ZOTKEN.dpuf

23 “One can say the Internet and digital media are surely and steadily replacing television as the primary news sources.” Saha, D. (2015, 16 June). Digital Versus Television: The Battle Begins. *NewsLaundry*. www.newslaundry.com/2015/06/16/digital-versus-television-the-battle-begins

the latter, according to activists.²⁴ Most of these online communities that focus on finding sexual partners are regionally based, while groups offering general support²⁵ to the LGBT community are national. Interestingly, some websites like Gaydar²⁶ started dying out once they started charging for their service, leading to a rise in popularity of younger rival Grindr, which operates through its mobile app.²⁷ Unpaid Gaydar members known as “Gaydar Guests” had limits imposed on the number of messages they were allowed to send, which is a hindrance in this age of unlimited browsing.²⁸

Despite the many obvious positives of the online space as listed above in terms of expansive and immediate access to information, as well as the ability to connect marginalised communities, the sector is not without drawbacks. Blackmail and harassment are equally present both online and offline. In fact, many of the harassment and blackmail charges are levelled against the police. For example, NGOs running government-approved HIV prevention projects for sexual minorities face arrests and threats from the police,²⁹ who brand them as “accomplices” to homosexual “criminals” engaging in unnatural sex. Some of these NGOs succumb to these threats and disclose personally identifiable information of members sexual minorities who are then arrested at odd hours and charged under various penal provisions.³⁰

Similarly, finding sexual partners online also presents a health risk. Interestingly enough, in an email message to the author on 7 July 2015, Shruta Mengle Rawat, a human rights activist working with The Humsafar Trust³¹ in Mumbai revealed that “it’s actually an assumption that folks who

seek partners offline are at a higher risk.” A study was conducted by her organisation that directly investigated the adverse impact of the Supreme Court decision in 2014. It found that participants who met partners online were significantly more likely to report being asked for money after having sex (14.4% vs. 8.8%), theft (7.4% vs. 5.9%), or being forced to engage in unwanted sexual acts (14.7% vs. 10.3%) than those meeting sex partners offline. Reported rates of physical injury were 4.4% for both groups.³²

Challenging myths and perceptions

Advocacy is crucial in India because a legislative change is needed to amend or abrogate Section 377. This can only happen through consultation and the sensitisation of interest groups such as corporations, educational institutions, opinion leaders and political parties, along with the judiciary and police department. This is important in order to “dispel myths and misconceptions about gays, lesbians and transgender persons, and to create [an] enabling environment for sexual minorities.”³³ Some of the myths that are addressed through online interventions³⁴ include homosexuality as something “contagious” that can be “acquired” or “treated” as if it were a disease.³⁵ Another misconception is that homosexuality is the “cause” of AIDS – an archaic belief in line with AIDS being called a Gay-Related Immune Deficiency (GRID) when it first gained notoriety as a deadly disease in the 1980s. A large part of this misconception has been fuelled by naivety in the gay community itself. There is a perception that AIDS is caused through sex, and it is not “sex” if it is between two men. So some gay men do not use condoms, as condoms are supposed to be used only during “conventional sex”.³⁶

However, mainstream electronic and print media still steer clear of in-depth, open and regular discussions on these issues and instead only skim

24 “I would not look at Twitter as a platform as the ways to connect as a ‘community’ are limited.” Opinion expressed by Shruta Mengle Rawat, a human rights activist working with the Humsafar Trust in Mumbai, in an email message to the author on 7 July 2015.

25 Support could include helping LGBT youth come to terms with their identity, connecting them with others in the community, awareness raising on safe sex practices, assisting them on how to open up towards their friends and family who may have stigmas and prejudices towards the community as a whole, and letting go of resentment. See orinam.net/resources-for/lgbt/groups-and-lists

26 www.gaydar.net

27 Leach, A. (2010, 11 November). Gaydar Dating becomes an app, but will it unseat Grindr? *ShinyShiny*. www.shinyshiny.tv/2010/11/gaydar_dating_iphone_app.html

28 *Ibid.*

29 *Naz Foundation vs Government of NCT of Delhi & Ors*, paragraph 71. www.indiankanoon.org/doc/100472805

30 Alternative Law Forum. (2013, 3 November). 13 people arrested under Section 377 of the Indian Penal Code in November 2013. www.altlawforum.org/gender-and-sexuality/13-people-arrested-under-section-377-of-the-indian-penal-code-in-november-2013

31 www.humsafar.org

32 Mengle, S., Giani, S., Patankar, P., Soletti, A., Rosser, S. B. R., & Wilkerson, J. M. (2014). Harassment and violence after the reinstatement of India’s ‘sodomy law’. Paper presented at the International AIDS Conference 2014 in Melbourne, Australia, 20-25 July. www.pag.aids2014.org/flash.aspx?pid=4966

33 The Humsafar Trust. (2009, 31 Oct). Advocating legislative change: Taking the Delhi High Court decision forward. www.humsafar.org/ResDown/Advocating%20Legislative%20Change%20Taking%20Delhi%20High%20Court%20Judgement%20Forward_Write%20Up.pdf

34 For example, “India’s LGBT Answer Silly Questions About Being Gay”: www.youtube.com/watch?v=nX8V0fUrLTA

35 *Ibid.*

36 The Humsafar Trust. (n/d). *Safarnaama 1994-2004*. www.humsafar.org/ResDown/The%20Humsafar%20Trust%20Documentation%20Project%201994%20-%202004.pdf

the surface when there is a breaking story concerning LGBT people, to avoid ruffling feathers in our largely conservative society. So it is left to semi-formal online blogs and websites³⁷ to discuss these issues. YouTube has also been used successfully to raise debate. One YouTube sketch produced by a popular young Indian comedy troupe has a well-known Indian actor answering homophobic questions, and has received over one million hits.³⁸

LGBT rights: The next frontier

Over the last year or so, after the Supreme Court judgement, instances of online blackmail are on the rise. “Straight” individuals posing as “homosexuals” are luring LGBT people into online or offline encounters in order to extort easy money from them by threatening to expose their identities to their family, friends, the police or even publicly. Today, many of the Facebook groups for sexual minority communities that were visible to the public have been forced to convert into “secret groups” in order to avoid messages from being displayed openly on individual members’ Facebook walls. But despite these limitations, the online space continues to be a vibrant platform for discussing LGBT rights.

Prior to the Delhi High Court judgement, the issue was rarely talked about or debated on public platforms. After the judgement was passed in 2009, there were a couple of ads by an accessories company³⁹ targeting the LGBT community, and another ad funded by a mainstream national newspaper.⁴⁰ These went largely unnoticed. After the Supreme Court judgement, in 2014, a celebrated Indian movie actor featured LGBT issues on his critically acclaimed talk show *Satyameva Jayate* (Sanskrit for “Truth Alone Triumphs”), which discusses social issues of national importance. It received close to 700,000 hits on YouTube and over 1,000 comments.⁴¹ Many other Indian celebrities came out in support,⁴² while others were

compelled during talk shows to make their stance known when they tried to be non-committal.⁴³

LGBT rights are the next challenge for human right activists in India. Currently, their rights are not assured due to the continued lack of awareness and an unwillingness to let go of populist decision making. That said, keeping in mind the progressive decision by the Indian Supreme Court last year recognising transgender people as a “third gender”,⁴⁴ the recent decision of the US Supreme Court legalising gay marriages,⁴⁵ and the passage of a transgender rights bill in the Upper House of the Indian Parliament this April,⁴⁶ there is legitimate hope that it is a question of when and not if all sexual minorities will be given full rights on par with their heterosexual counterparts.

Action steps

The following advocacy steps are suggested for civil society in India:

- *Push for change in legislation and policy:* Interest groups, including political parties, must push for the decriminalisation of homosexuality, and a narrower interpretation of Section 377, keeping in line with existing international policies and United Nations resolutions.
- *Leverage both offline and online media to raise awareness:* After the government made corporate social responsibility (CSR) mandatory in 2013, companies have been spending their CSR money on progressive ad campaigns on a variety of social causes, which include preventive healthcare and promotion of gender equality.⁴⁷ Subsequently, in order to increase

37 Sheikh, I. (2014, 1 December). Watch India's LGBT Community Answer All Your Silly Questions About Being Gay. *BuzzFeed*. www.buzzfeed.com/imaansheikh/have-a-gay-old-time#_hp3jAxZnw

38 AlB: Imran Khan Answers Questions About Being Gay & Sec 377. www.youtube.com/watch?v=cXqH7_dYM_k

39 Fastrack - The Closet. www.youtube.com/watch?v=fmk9D53G6F8

40 Videos Posted by Hindustan Times Gay Facebook. www.youtube.com/watch?v=7swyJ0_RCbE

41 Satyamev Jayate, Season 3, Episode 3: Accepting Alternative Sexualities. www.youtube.com/watch?v=mHr87BxZYcw

42 Rajput, R. (2013, 15 December). Bollywood actors, musicians lend support to LGBT community. *The Hindu*. www.thehindu.com/news/national/other-states/bollywood-actors-musicians-lend-support-to-lgbt-community/articles462940.ece

43 Koffee With Karan, Season 4 - Anil Kapoor & Sonam Kapoor. www.youtube.com/watch?v=bYj3NwimYk; see also Sherlock Homo. (2014, 3 April). Review : Koffee With Karan & Hurricane Sonam Kapoor. *Gaysi Family*. www.gaysifamily.com/2014/04/03/review-koffee-karan-hurricane-sonam-kapoor/

44 Anand, U. (2014, 16 April). Supreme Court recognises third gender, glimmer of hope for gays. *Indian Express*. www.indianexpress.com/article/india/india-others/sc-recognises-third-gender-glimmer-of-hope-for-gays/#sthash.ALAWHjfx.dpuf

45 Agencies. (2015, 28 June). US legalises gay marriages: Indian LGBTs voice hope, apprehension. *Mid-day.com*. www.mid-day.com/articles/us-legalises-gay-marriages-indian-lgbts-voice-hope-apprehension/16326165#sthash.Ok7erNGw.dpuf

46 Express News Service. (2015, 25 April). Rajya Sabha passes historic private Bill to promote transgender rights. *Indian Express*. www.indianexpress.com/article/india/india-others/rajya-sabha-passes-private-bill-to-protect-the-rights-of-transgenders/#sthash.g6Hgl4Po.dpuf

47 Ministry of Corporate Affairs, Notification amending Schedule VII of the Companies Act, 2013, New Delhi, 27 February 2014. www.mca.gov.in/Ministry/pdf/CompaniesActNotification3_2014.pdf

brand goodwill, advertising campaigns are held that promote these CSR activities.⁴⁸ Major Indian brands were also appreciated for taking a strong stand against the Supreme Court verdict.⁴⁹ Recently, an ad by an e-commerce fashion company that used the idea of what it is like to be a lesbian in India in its campaign brought the public focus back onto LGBT issues.⁵⁰ This media attention needs to be sustained to ensure that awareness deepens and the clamour for equal rights reaches a critical mass.⁵¹ It is especially crucial to sensitise audiences using the internet, as mainstream television will take years to become as bold as other media platforms.

- *Judicial reading down*: Hearteningly, the Supreme Court judgement in some ways lacks force, as subsequent Supreme Court and high court decisions have limited its authority by reading down Section 377 and setting precedence.⁵² Such reading down should continue, and activists could consider creating awareness campaigns to further sensitise the judiciary.

48 Narain, R. (2015, 5 January). Dear Indian corporate: here is why you need to take social responsibility seriously. *Quartz India*. www.qz.com/321040/dear-indian-corporate-here-is-why-you-need-to-take-social-responsibility-seriously

49 Nashrulla, T. (2013, 13 December). 15 Heartening Ways Indian Brands And Bollywood Stars Are Fighting For LGBT Rights. *BuzzFeed*. www.buzzfeed.com/tasneemnashrulla/15-heartening-ways-indian-brands-and-bollywood-are-fighting#.mlwrQdVWVj

50 Das, D. (2015, 14 June). Video: Myntra's Anouk Lesbian ad is a good step but fails to look real. *Indian Express*. www.indianexpress.com/article/trending/video-myntras-anouk-ad-on-being-a-lesbian-in-india-is-a-good-step-but-fails-to-look-real

51 Ghobadi, S., & Clegg, S. (2015). "These days will never be forgotten...": A critical mass approach to online activism. *Information and Organization*, 25(1), 52-71. www.sciencedirect.com/science/article/pii/S1471772714000426

52 Chandrachud, C. (2014, 12 December). Limiting the impact of Section 377. *The Hindu*. www.thehindu.com/opinion/op-ed/limiting-the-impact-of-section-377/article6683396.ece



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Introduction

Children and adolescents between the ages of 10 and 19 make up 18% of the total population of 43 million people in Indonesia. In this age range, adolescents undergo crucial transitions, both physically and psychologically, and their need for information and knowledge about sexuality becomes very significant. Sex is a taboo theme in Indonesian society. The role of parents in guiding and educating their children on life issues is a strong part of traditional culture in Indonesia, but beyond traditional sexual roles, an exploration of sexuality is generally not a part of this conversation. Sex education is also not sufficiently available in schools, and is often considered a topic that is unhealthy and even dangerous.¹ For example, the sex education curriculum in high school is focused more on moral and religious discussions that are used as a way to control an exploration of sexuality. To understand themselves, young people need to turn elsewhere. A study conducted by UNICEF in 2014² stated that 80% of adolescents in the 15-19 age range access the internet. This means that the internet has become an important medium for young people accessing information and knowledge about sexuality.

A 2007 study of high school teenagers revealed that they mostly access the internet to understand the physical changes they are experiencing, rather than for information on sexuality and identity. A preference for young people to access visual information rather than text when looking for information on these changes was also observed.³ Although

these findings should be reviewed, especially after the growth in internet access, improved infrastructure and the availability of more online content generally, the study is at least a starting point in understanding how the internet addresses the information and knowledge needs of adolescents when it comes to the physical and psychological changes they are experiencing.

Given the limited exposure to information about teen sexuality, the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) movement in Indonesia offers a model for attending to this information and knowledge gap, both in print and online media. Besides HIV/AIDS prevention, they focus on content dealing with the diversity of sexual orientation and gender identity. The success of LGBTIQ organisations in Indonesia rests on the skilled use of social media, as well as on privacy and anonymity. This is how they increase their support base and offer encouragement for LGBTIQs who need it. Public campaigns combine online and offline media. These campaigns help to build alliances between like-minded groups. They also show the importance of the internet when it comes to the human rights of LGBTIQs.⁴

Policy and political background

Internet access is regarded as the “ringleader” of risky sexual behaviour amongst teenagers in Indonesia today. Since 2008 the Indonesian government has used the excuse of ease of access to sexual content online to justify blocking a number of sites that are considered “negative content”. There are at least two important issues related to the regulation of internet content that surfaced in 2008, where the actions by the Ministry of Communication and Information Technology were considered an excessive use of power,⁵ and remain controversial to this day. Firstly, the ministry decided that all internet content must go through filtering and could be restricted,⁶

1 Pakasi, D. T., & Kartikawati, R. (2013). *Between need and taboo: Sexuality education and reproductive health for teenagers in senior high school*. Gender and Sexuality Research Center, Faculty of Social and Political Studies, University of Indonesia. Health Series, 17(2), 79-87.

2 www.unicef.org/indonesia/id/media_22169.html

3 Nasution, N. (2007). Interpersonal communication relationships and the usage of internet for teenager sex education. Case study: Students of Bina Bangsa Sejahtera (BBS) High School Plus, Bogor Barat Regency, Kota Bogor. Study Programme of Community Development Communication, Faculty of Agriculture, Fakultas Pertanian, Institut Pertanian Bogor.

4 Alicias-Garen, M. D., & Jahja, R. (2015). *LGBT Programme Final Evaluation Report*. External Evaluation of LGBT Programme, Hivos Rosea, March 2015.

5 Djafar, W., & Abidin, Z. (2014). *Fetter expression: Case study on the filtering of internet content and the criminalisation of internet users in Indonesia*. Lembaga Studi dan Advokasi Masyarakat.

6 The regulations stipulate the blocking and filtering of specific content only, such as pornography, anti-religious content and hate speech. However, the scope of these regulations and mechanisms of appeal are not clear.

and secondly, that legal sanctions should be applied against users for the distribution of content, such as pornography, that is considered unlawful. Both issues use two legal instruments that were produced in the same year, namely Law No. 44 of 2008 on pornography and Law No. 11 of 2008 on information and electronic transactions (ITE).⁷ The existence of both these instruments seemingly overrides previous legislation, which was in line with the spirit of human rights, allowing, for example, freedom of expression and access to information, which is also found in the country's constitution.⁸

The practice of blocking and filtering internet content in Indonesia now works according to a blacklist of websites, as well as through reviewing public complaints.⁹ The most intense period of blocking and filtering sexually explicit content by the authorities occurred in 2010, after a slew of pornographic videos of Indonesian celebrities appeared online. As a result, a number of sites that use search keywords related to sex or sexuality were blocked, including websites that fight for LGBT sexual rights in Indonesia.¹⁰

At the same time, the Indonesian government has made some effort to improve the quality of reproductive health education. Last year, the president issued Government Regulation No. 61 of 2014 on reproductive health. An article in the regulations makes it the government's responsibility to provide reproductive health services to young people through the provision of communication technologies and educational information. Unfortunately, the educational material produced does not explore issues such as sexual diversity and identity, or make an effort to address the issue of neglected sexual rights.

The International Planned Parenthood Federation (IPPF) is an organisation that has members in 184 countries, including Indonesia. It became one of the pioneers in attending to the gaps at the policy level, and to the needs of youth in acquiring knowledge about sexual rights. An organisation that is known as the Indonesian Planned Parenthood Association (IPPA)¹¹ has been working in 26 provinces, covering 249 districts in Indonesia. Drawing on the spirit instilled by an IPPF declaration on

sexual rights,¹² it offers information and support on reproductive health issues, including family planning and risk behaviour, but also on issues such as stigma and sexuality. Given these kinds of initiatives – and despite the restrictions on online content from the state – there is a sense that a positive space for young people to explore their sexuality online is slowly being created.

Gaps in the school syllabus: Leaving out what is important to teens

A consensus reached by the international community at the International Conference on Population and Development in Cairo in 1994¹³ was that women's reproductive health is a right, and that the goals of population control should be integrated with the goal of broader social development and the reproductive health needs of women. The conference also agreed that reproductive health meant the physical, mental and social well-being of mothers, and that pregnancy should not merely be a condition monitored for the absence of diseases or disorders.¹⁴

Sexual and reproductive health education in schools in Indonesia is generally not taught as a subject on its own, but forms part of other subjects such as biology, physical education, health, and religious education. Research shows that the sexual and reproductive health syllabus is also not comprehensive, with learning materials focusing on the biological aspects of reproductive health (e.g. physical changes experienced and issues to do with our reproductive organs). Research also shows that a number of themes – such as the use of contraception – tend to be avoided in the discussion of reproductive health, because it is feared that discussing them would encourage teens to have sex. Other themes that are avoided included violence in relationships and in dating.¹⁵

The unavailability of more relevant sexual and reproductive health information that is actually needed by adolescents – such as a discussion on sex and violence – coincides with a high rate of sexual violence against children and adolescents in Indonesia. The National Commission for Child Protection received 342 reports of violence against children in the period January to April 2014 alone.¹⁶

7 Djafar, W., & Abidin, Z. (2014). Op. cit.

8 Ibid.

9 Ibid.

10 Manaf, K., et al. (2014). *Queering Internet Governance in Indonesia*. Institut Pelangi Perempuan with Association for Progressive Communications and Ford Foundation. www.genderit.org/resources/queering-internet-governance-indonesia

11 pkbi.or.id/tentang-kami/profile-pkbi

12 www.ippf.org/resource/Sexual-Rights-IPPF-declaration

13 www.unfpa.org/icpd

14 Wang, G., & Pillai, V. K. (2001). Women's Reproductive Health: A Gender-Sensitive Human Rights Approach. *Acta Sociologica*, 44(3), 231-242.

15 Pakasi, D. T., & Kartikawati. R. (2013). Op. cit.

16 <https://komnaspas.wordpress.com/2013/11/20/hari-anak-universal-2013-kasus-kekerasan-anak-indonesia-melonjak>

Ironically, given the lack of information on sex and violence in the syllabus, the school environment is one of the places where sexual violence against children and adolescents most frequently occurs.

As a new, interactive media, the internet becomes a space for teens to explore self-identity. A great curiosity about sexuality and the urge to explore the changes occurring in their bodies drives them into the virtual world, which they sometimes explore with a naive sense of confidence. Ross has observed that the internet offers young people the opportunity to create their own spaces, which are interactive and intimate, and allows them to explore their romantic and sexual fantasies.¹⁷ Furthermore, Ross believes the internet is an arena where profound social experiences can occur: for instance, the internet offers an opportunity for gay teens to “come out”, an opportunity previously not available to many young people. The internet allows people to explore sexual identity, by interacting with diverse kinds of content on sexuality – it contributes significantly to how teens learn about sexuality.

However, although it can be a medium that allows anonymity, many young people in Indonesia do not understand that the internet confronts them with real risks. For example, teenagers’ lack of knowledge about the need for safety in surfing the web is presumed to be one of the factors that facilitates cyber bullying, frequently reported by the national media in Indonesia.¹⁸ The problem is that online learning and exploration by young people sometimes involve openly interacting with people they may never have met before. In this way they may share personal information and images without being aware that this could make them the target of sexual violence.

Within a period of two months in 2013, for example, the National Commission for Child Protection found there were 31 cases out of a total of 83 cases of sexual violence in Jakarta and surrounding areas where the victim first interacted with the perpetrator on social networks such as Facebook.¹⁹ Facebook was reported as being most frequently used to lure potential victims into situations where sexual violations will occur. In 2013 there were several reports in the national media of adolescent girls that had been raped by gangs who approached them on Facebook.

The phenomenon where sexual violence offenders use the internet to find their victims shows the two sides of the coin when considering the value of information and communications technologies (ICTs). For instance, there is a view that the internet offers more diverse ways for bullies to harm their victims.²⁰ Facebook is a relatively open network, for example, despite the fact that users have to approve friend requests. Teenagers are often tempted to add strangers – some of whom might have made-up profiles – to their list of “friends” in an attempt to demonstrate their popularity among their peers.²¹

Nevertheless, the internet is positive in that it allows a space for teens for self-representation. Various studies on the benefits of the internet concluded that online communities help individuals to build social capital. Valkenburg and Peter²² found that many socially anxious adolescents felt the internet was valuable because it allowed them to disclose intimate details about their lives. The possibility to get advice, information or social support – through a network of relationships – is the social capital derived from the internet.

The presence of LGBT groups and those who support the diversity of sexual orientation is seen as a new wave of social movements in Indonesia. The LGBT movement is often considered among the new social movements because of its emphasis on building, asserting and carving spaces for identities to be explored, as opposed to the political and economic struggles of older social movements, such as those pushing for labour rights, or the rights of the poor.²³

An evaluation of 12 NGOs supporting LGBT rights found that there are two orientations in the LGBT movement in Indonesia. Firstly, there are the organisations that can be described as “inward-looking/on the defensive”: this is typical of LGBT communities that emphasise “coming out” in a safe context, and focus on exploring gender identity and building support groups among friends. Secondly, there are those organisations that are “outward-looking/offensive” or “strategic”: this includes the few groups that would publicly define themselves as activists or human rights defenders. This second

17 Ross, M. W. (2005). Typing, Doing, and Being: Sexuality and the Internet. *The Journal of Sex Research*, 42(4), 342-352.

18 www.beritasatu.com/ipitek/275905-58-anak-di-indonesia-tidak-memahami-cyber-bullying.html

19 metro.tempo.co/read/news/2013/03/19/064468019/Pelecehan-Seksual-Via-Facebook-Meningkat-Tajam

20 Miller, D. (2014). *A Study of retrospective and current cyberbullying experiences and their relationship with internet safety practices*. Doctoral dissertation, University of Hartford.

21 Ahn, J. (2011). The Effect of Social Network Sites on Adolescents’ Social and Academic Development: Current Theories and Controversies. *Journal of the American Society for Information Science and Technology*, 62(8), 1435-1445.

22 Valkenburg, P. M., & Peter, J. (2007). Preadolescents’ and adolescents’ online communication and their closeness to friends. *Developmental Psychology*, 43(2), 267-277.

23 Alicias-Garen, M. D., & Jahja, R. (2015). Op. cit.

category also includes groups that deal with sexual and reproductive health and rights and address the practical, everyday interests of LGBTs (such as the need for work, housing and food). Although it is not the focus in this evaluation, from the interviews with the activists it is clear that the internet and social media are effective tools to campaign for change, mobilising alliances online and offline, organising action and recruiting members. The effectiveness of the internet, in particular social media, to do this did not lessen even when the government began blocking content, an action which was thought to have had a negative impact on the LGBT movement. However, the positive contribution of the internet in fighting for sexual diversity and sexual rights cannot be seen in isolation. The threats of violence against women and LGBTs occurring online and offline – and both from criminals and religious fundamentalists – plus the lack of protection from the government and police guaranteeing sexual rights, must be part of our understanding.²⁴

Conclusions

The internet is a medium that offers comfort for teens exploring sexuality, especially given its capacity to answer the questions that are difficult to answer from the information sources available offline. This is also confirmed by Proudfoot,²⁵ who found that the internet is a key way that teenagers explore their sexuality, whether through offering answers to difficult questions or serving as a place to flirt and try out new sexual identities – something that is particularly important for gay and lesbian youth.

The LGBT movement in Indonesia responds properly to the information needs of adolescents. The stigmatisation experienced by this group has influenced the way they use the internet and social networks. They emphasise online privacy, but in a way that does not negatively impact on the space for self-expression and representation. For example, Facebook privacy settings are used effectively by LGBT activists. From this reality, the assumptions about the effectiveness of the internet and social media to build a social movement can be proved.

By supporting the LGBT movement in its demand for the right to freely and openly express itself online, adolescents will also have their information needs met when it comes to sexuality and sexual rights. The internet can be a positive medium in attending to the gaps in the educational system, which does not currently attend to the real-life needs of adolescents when it comes to sexual exploration. Fundamental to this is the struggle for freedom of expression online.

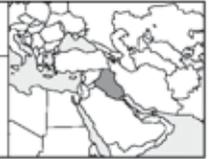
Action steps

The following advocacy steps are suggested for Indonesia:

- A discussion, involving all stakeholders, including LGBT groups, is needed on the education curriculum, and how the sex education syllabus can be revised. There is a need for a more in-depth assessment of online content on sex and sexuality, and how this is used by young people in Indonesia.
- There is also a need to assess the educational content available in the traditional media, such as newspapers and broadcast media, to understand the extent to which it supports diversity in sexual orientation. Recommendations could be made for developing content on sex and sexuality for both online and offline media.
- An educational syllabus should be developed focusing on online safety for adolescents, which explains the dangers of sexual violence and which includes technical advice on how to use the internet safely, such as the use of privacy controls.

24 UNDP. (2014). *Being LGBT in Asia: Indonesia Country Report*. Bangkok: UNDP. www.id.undp.org/content/dam/indonesia/docs/LGBT/Indonesia%20report%252c%20Final%252c%2019%20May.pdf

25 Proudfoot, S. (2011). Kids learn social skills online: Internet interaction among teens boosts self-esteem, study shows. *Edmonton Journal*.



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Introduction

Iraq today is a country facing numerous humanitarian crises, as well as war. Four years after the departure of US troops, the country is fighting for its own survival. Within this context, internet freedom, rights for lesbian, gay, bisexual and transgender (LGBT) people, and liberal sexual expression might seem like low priorities. However, as this report will demonstrate, they are all connected; the lack of such freedoms are actually symptomatic, if not a by-product, of a collapsing state.

It is an understatement to say that Iraq is a country in the grip of fear and violence. In 2015, the country is divided into three separate areas of contention, with multiple forces vying for control. The Kurdish north with its own regional government has been a semi-autonomous area since the end of the first Gulf War, when the UN declared a no-fly zone across the northern region, protecting the Kurds from Saddam Hussein. The national government holds its power in Baghdad and has control of much of southern and central Iraq. However, large swaths of the country in the north, west and centre are controlled by the Sunni Islamic State in Iraq and the Levant (ISIL), otherwise known as Daesh, the Arabic acronym for *al-Dawla al-Islamiya fil Iraq wa' al Sham*. ISIL considers the Kurds infidels¹ and the Shiites apostates.²

Advocates for LGBT and sexual rights in Iraq face overwhelming oppositional forces, including online and offline death threats. Various crimes related to sexuality, including the massacre of gays, “honour killings”, forced marriages, sexual slavery, and female genital mutilation (FGM) are facts of life in many parts of the country.

In Iraq the extremists are possibly more effective than liberal activists in using the internet to promote their cause. This report examines Iraqi sexual freedom and its connection to the internet, focusing on the deplorable situation in three regions of Iraq with three separate stories – two concerning LGBTs and one about women’s sexual rights in Kurdish Iraq.

In central and southern Iraq, the government has invited Iranian Revolutionary Guards as well as local Shiite militia to handle the war efforts.³ Shiite militia and fanatics are beyond the control of the central government.⁴ In their hunt for suspected gay men, they have taken to the internet. In areas under ISIL, extremists are using the internet to terrorise anyone opposing them. Their postings of terrifying executions of those suspected of being gay are used to maintain their brutal reputation. The third story here concerns Kurdistan, where many humanitarian NGOs can still operate. There, the NGO Wadi is helping Syrian and Iraqi refugees. In particular, Wadi is providing psycho-social support and food aid to Yezedi women and girls, who were formerly ISIL captives and sex slaves. Wadi is using the internet to appeal for international help in their efforts.

Political context

Iraq today is on the verge of collapse – a weak sectarian central government must deal with an ally in Kurdistan with its own territorial ambitions, while both face a hostile Islamic caliphate. Although ISIL originated in Iraq and has Iraqi leadership, it holds its power base in Syria and declared its capital to be the Syrian city of Raqqa. The Iraqi army has simply been ineffective in fighting ISIL and at the time of writing, ISIL forces are only a few kilometres from Baghdad.

Iraqi Kurdistan was long considered a relatively peaceful and safe region, but since the 2014 ISIL incursions into its territory and the April 2015 bombing of the United States (US) Consulate in Kurdistan’s capital Erbil, the Kurds are in crisis. In

1 Köver, C. (2014, 11 August). Europe Is Still Pondering What to Do in Iraq. *Vice News*. <https://news.vice.com/article/europe-is-still-pondering-what-to-do-in-iraq>

2 Martin, P. (2014, 26 June). Explainer: Shia-Sunni divide and Iraq’s deadly sectarian war. *The Globe and Mail*. www.theglobeandmail.com/news/world/sunni---shia-divide-explained/article19337058

3 Reuters. (2015, 26 May). Iraq Shi’ite militia take lead in campaign to reverse Islamic State gains. *Reuters*. www.reuters.com/article/2015/05/26/us-mideast-crisis-idUSKBN0B0K520150526

4 Habib, M. (2015, 14 May). Whose Side Are They On? *Niqash*. www.niqash.org/en/articles/politics/5009

mid-2015, however, the Kurdish state had halted the further advance of ISIL into its territory. Its Peshmerga troops seem to be an effective force against ISIL so far.⁵ Kurdistan has even taken over oil-rich Kirkuk, long controlled by the central government but claimed by Kurdistan. For many Kurds, an independent country of Kurdistan is an achievable outcome of the current conflict.

The seemingly impotent central government is widely seen as favouring the Shiites over the Sunnis,⁶ a policy that drove many Sunnis to join ISIL. Baghdad's regular army is toothless. Its soldiers have not stood their ground, evident in its collapse in the face of the advancing ISIL forces. Baghdad is depending on the support of its Iranian ally, specifically their Revolutionary Guard fighters, as well as on the Iraqi Shiite militia. The Shiite forces at times appear to operate as a state within a state and their brutality is outside the control of the central government. With so many different actors in the power struggle, many believe⁷ the country is on the edge of descending into anarchy.

Sexual rights and the internet in Iraq

In this context, it is hard to analyse the activism by those fighting for sexual and LGBT rights within Iraq. Those who have access to the internet and use it to promote freedom or human rights risk being killed. Even reporting about these issues poses a great danger as increasingly journalists are being targeted. Iraq is one of the most dangerous places to be a journalist.⁸

Advocacy for sexual and associated political rights, whether online or offline, presents great dangers for activists. From the Shiite militia in central and southern Iraq to the Islamic State in the north, extremists hunt for LGBTs,⁹ as well as advocates for sexual rights.

Internet freedom is not guaranteed in Iraq, nor is sexual freedom. The Global Justice Project in Iraq writes: "Contrary to some international media re-

ports, homosexuality per se is not illegal in Iraq."¹⁰ However, violence against sexual minorities or anyone advocating sexual freedom is rife, and the authorities take little action to stop such atrocities – even the police abuse and rape gay men.¹¹ In Iraq, anything outside the patriarchal norms is deemed unacceptable. Women who want freedom in choosing a partner as well as anyone who wants same-sex relationships could be subjected to so-called "honour killings" – murders performed by a relative to preserve the honour of the family.¹²

Internet access has only crept up marginally recently, with 9.2% of the population able to get online.¹³ But having access does not equate to having online freedom. In 2014, the Iraqi Ministry of Communications sent out an order to internet service providers (ISPs) to shut down internet service in five provinces and block virtual private networks (VPNs) – which allow web users to disguise their geographical location – and social media access in the rest of the country. The Iraqi government wants to block propaganda from the Islamic State, but in doing so it stifles any sort of dissent and non-conformist ideas. Following this censorship, Iraqis starting tapping Tor, which allows users to surf the web anonymously as well as access blocked sites, and usage of Tor jumped tenfold.¹⁴

Given the limited internet access that ordinary Iraqis have, why would Shiite militia, ISIL militants and Kurdish activists take to the internet to advocate their positions? They are in fact speaking to audiences largely outside Iraq. They know that international broadcasters such as CNN and BBC will pick up on their internet postings, and that, in turn, they will likely be replayed on Iraqi airwaves.

Violence continues unabated against the LGBT community and anyone advocating sexual liberation. In 2012, the Dutch government opened its country to any LGBT Iraqi who seeks asylum, recognising that no part of the country is safe for the LGBT community.¹⁵ The International Gay and

5 Silverstein, K. (2015, 13 May). How America's Chickenshit Foreign Policy Has Betrayed the Kurds. *The Observer*. observer.com/2015/05/how-americas-chickenshit-foreign-policy-has-betrayed-the-kurds-a-major-enemy-of-isil

6 Habib, M. (2015, 14 May). Op. cit.

7 Cockburn, P. (2014, 15 October). Iraq's Descent into Chaos. *CounterPunch*. www.counterpunch.org/2014/10/15/iraqs-descent-into-chaos

8 Reporters Without Borders. (2015, 11 May). Mounting Deadly Danger for Journalists in Iraq. en.rsf.org/iraq-mounting-deadly-danger-for-11-05-2015,47877.html

9 Hayden, S., & Oakford, S. (2014, 20 November). Caught Between the Islamic State and Shiite Militias, Gays Are Dying in Iraq. *Vice News*. <https://news.vice.com/article/caught-between-the-islamic-state-and-shiite-militias-gays-are-dying-in-iraq>

10 Global Justice Project: Iraq. (2009, 21 May). Homosexuality and the Criminal Law in Iraq. gjpi.org/2009/05/21/homosexuality-and-the-criminal-law-in-iraq

11 BBC News. (2012, 11 September). Baghdad's persecuted gays have nowhere to hide. BBC News. www.bbc.co.uk/news/world-middle-east-19525133

12 El, K. (2012, 9 March). Iraq: Homosexuals in Iraq Face Honor Killings Too. *Infidels Are Cool*. infidelsarecool.com/2012/03/iraq-homosexuals-in-iraq-face-honor-killings-too

13 World Bank statistics: data.worldbank.org/indicator/IT.NET.USER.P2

14 O'Neill, P. H. (2014, 18 June). Iraq Internet censorship boosts Tor usage tenfold. *The Daily Dot*. www.dailydot.com/politics/iraq-internet-censorship-tor

15 Potts, A. (2012, 14 July). The Netherlands opens its doors to LGBT Iraqis. *Gay Star News*. www.gaystarnews.com/article/netherlands-opens-its-doors-lgbt-iraqis140712

Lesbian Human Rights Commission (IGLHRC) produced two reports in 2014 which documented the atrocities against LGBTs in Iraq.¹⁶

While sexual identity/freedom and internet access may seem like unrelated problems, they are in fact related in the context of overall violence and a collapse of the rule of law. There cannot be effective online advocacy of sexual freedom because of the severe censorship issues in the country. Few dare to speak up because the authorities will not protect them. Shiite militia operate at will without constraints imposed by the central government. The Shiite militia sometimes punish people suspected of being gay the same way as the Sunni Islamic State – they throw them from great heights to kill them.¹⁷

There are in fact numerous Shiite militant groups, composed of volunteers from different Shia sects and neighbourhoods. The central government has at times sought to limit their influence and in 2014 created the Popular Mobilisation Units (*Hashed al-Shaabi*), an umbrella group for the different, mostly Shiite, militia groups.¹⁸

These Shiite armed groups have also been widely criticised for war crimes, from assassinations and summary mass executions to kidnappings and extortion.¹⁹ In Baghdad, the militia use the internet to find gay men to hunt and kill them.²⁰ Sometimes they pose as homosexuals to ferret out gays.²¹ They take photos at the executions to intimidate others. They know these images can get online without the perpetrators being prosecuted because, as mentioned, the policemen are also known to torture and rape gays.²² Coming out to family members and friends can lead to ostracism or being betrayed to the militia. Family members also kill gay relatives to preserve the family's "honour". Sometimes just

looking effeminate is enough to get one killed. In recent years, these militiamen hunted and killed young men identifying as "emos" because their long hair and Western fashion make them "unmanly".²³

Places of safety

Human rights groups have a hard time protecting LGBTs in Iraq. There are few places for LGBTs to hide, as even the one safe house set up for this purpose in Baghdad can only hold three people.²⁴ Although there are Iraqis who have used the internet to push for gender and sexual freedom, in a country where coming out could be a death sentence, advocacy for sexual rights appears to be next to impossible.²⁵ The Organisation for Women's Freedom in Iraq (OWFI) in Baghdad has publicly defended the rights of LGBTs in Iraq on Iraqi TV, but such on-air advocacy appears to be uncommon. Founded by Amir Ashour, the group IraQueer finds alternative ways to fight for the sexual and human rights of LGBTQ (lesbian, gay, bisexual, transgender, queer) people in Iraq and has members throughout the country. They offer training to other activists and use social media, blogging and internet news to push for these changes. Reporting on the atrocities against LGBTQs in Iraq, their website www.iraqueer.org lets the wider world know of developments in the country.

The Iraqi NGO Wadi, based in Kurdistan, has publicised the persecution of LGBTs. Working on the issue of LGBT rights is, however, not a focus of Wadi. On the broader issue of sexual rights, Wadi has been effective in protecting women in fighting against FGM, forced marriages and honour killings. Sexual liberation must surely also include one's right to choose a sexual partner as well as freedom from sexual abuse. Sadly, women who make their own sexual choices are sometimes killed by their relatives. There are no accurate statistics but such killings are thought to be one of the leading causes of death for women in Kurdistan.²⁶

Wadi builds women's shelters as well as offering aid to Yezedi refugees, some of whom were former captives and sex slaves held by ISIL. The Yezedis are a minority in Iraq who adhere to an ancient religion considered satanic by ISIL and are therefore an open target. Many of these Yezedi women have been greatly

16 IGLHRC. (2014, 19 November). Exposing Persecution of LGBT Individuals in Iraq. iglhrc.org/content/exposing-persecution-lgbt-individuals-iraq

17 MADRE. (2015, 21 January). IGLHRC and MADRE Statement on Men Allegedly Executed for Sodomy by ISIS in Iraq. www.madre.org/page/press-releases-217/news/iglhrc-and-madre-statement-on-men-allegedly-executed-for-sodomy-by-isis-in-iraq-990.html

18 Al-Kadhimi, M. (2015, 12 March). Will Sistani be able to control popular mobilization forces? *Al-Monitor*. www.al-monitor.com/pulse/originals/2015/03/iraq-sistani-righteous-jihad-fatwa-popular-mobilization.html

19 Amnesty International. (2014). *Absolute Impunity: Militia rule in Iraq*. www.amnesty.org.uk/sites/default/files/absolute_impunity_iraq_report.pdf

20 Burke, J. & Sarhan, A. (2009, 13 September). How Islamist gangs use internet to track, torture and kill Iraqi gays. *The Observer*. www.theguardian.com/world/2009/sep/13/iraq-gays-murdered-militias

21 CNN. (2009, 6 May). Gay Killings in Iraq. <https://www.youtube.com/watch?v=kDor6NDGSnU>

22 BBC News. (2012, 11 September). Op. cit.

23 IB Times. (2012, 13 March). Fear as Death Squads hunt Iraq Gays and 'Emos'. https://www.youtube.com/watch?v=li_d3ZqXqHW

24 BBC News. (2012, 11 September). Op. cit.

25 IGLHRC. (2014). *When Coming Out is a Death Sentence: Persecution of LGBT Iraqis*. www.madre.org/uploads/misc/1417532210_ComingOutDeathSentence_Iraq.pdf

26 Dosky, B. (2013, 17 March). My Broken Dream for Iraqi Kurdistan. *The Observer*. www.theguardian.com/commentisfree/2013/mar/17/broken-dream-iraqi-kurdistan

traumatised physically and mentally. Some have been systematically raped, physically tortured, and suffer from unwanted pregnancy as well as sexually transmitted diseases. Wadi provides psycho-social assistance as well as hygienic supplies, medicine, clothing, cooking supplies, and plastic covers for shelter.

Wadi is one of the first organisations on the ground to offer assistance to refugees fleeing ISIL. It currently assists 102 families residing in a compound and has three female-led mobile intervention teams (MITs). Given that Yezedis live in a deeply conservative society, they are often reluctant to discuss problems with outsiders. Because of this issue, Wadi has a policy to embed locals in MITs. Each team consists of two women, one of whom is Yezedi. They find that this approach facilitates interactions with Yezedis.²⁷

The international spotlight: The good and the bad

One way Wadi funds its humanitarian work is through international appeals online where donors can offer funding through direct bank transfer and PayPal. Thomas von der Osten-Sacken, the German co-founder of Wadi, noted that an online appeal for funding was particularly helpful in their efforts to help Yezedi women. Wadi also understands that its online campaigns reach a broad international audience and that when the international press covers stories about its humanitarian work, it drives visitors to the Wadi website and results in donations.

At the other extreme, ISIL also knows that their postings online get noticed by international media. Their “news” distributed via online videos and postings on social networks are covered or rebroadcast by international media outlets, serving as effective recruitment ads. Earlier this year, they uploaded photos of suspected gay men being pushed to their death from a tower.²⁸ One such gay person who survived his fall is nonetheless stoned to death.²⁹ Another report indicates that ISIL fighters pose “as gays to lure homosexuals to their death.”³⁰ As

mentioned, because of the limited internet access within Iraq, one can conclude that these internet postings have an international audience. Perhaps more so than rival extremist groups, ISIL has been effective in their international recruitment via online postings. Their extreme brutality differentiates the ISIL brand from other Islamists who are merely just fundamentalist. *The Guardian* reported that “videos showing British and American hostages being murdered by Islamic State fighters are stirring support among foreign jihadis who are excited by a new confrontation with the west.”³¹ US officials have warned that ISIL’s social media campaign is sophisticated and its recruitment “sells adventure, with murder and mayhem as fun.”³² ISIL would not exist without international recruitment, as half of its fighting force are foreigners, with an estimated 4,000 from Western nations.³³

Civilians living under ISIL’s rule can only fight back covertly. Some have taken to the internet to tell the world what is happening under ISIL occupation. The website Raqqa is Being Slaughtered Silently³⁴ has activists from within Raqqa secretly reporting on what is happening there because no journalists can operate in the area. Their site has reported on the execution of gays, as well as ISIL members posing as gay men to trap and kill real gays.³⁵ The Facebook page Mosul Eye reports on life and death inside an occupied city with anonymous postings by informants.³⁶ These postings are useful to the coalition forces trying to defeat the Islamic State.

Conclusion

At the time of writing, the US strategy to fight ISIL remains largely ineffective. Unsurprisingly, General Qassem Soleimani, the head of the Iranian Revolutionary Guard, criticised US President Barack Obama by blasting the US for having not done a “damn thing” to stop ISIL’s advance on Ramadi.³⁷

27 Wadi website: en.wadi-online.de/index.php?option=com_content&view=article&id=1163&Itemid=171

28 Siegel, J. (2015, 16 January). In Graphic Photos and on Twitter, ISIS Members Record and Tout Executions of Gay Men. *The Daily Beast*. www.thedailybeast.com/articles/2015/01/16/in-graphic-videos-and-on-twitter-isis-members-record-and-tout-executions-of-gay-men.html

29 Gerdes, S. (2015, 3 May). ISIS stone ‘gay’ man to death after he survived being thrown off a roof. *Gay Star News* www.gaystarnews.com/article/isis-stone-gay-man-death-after-he-survived-being-thrown-roof030515

30 Fox News. (2015, 12 May). Death hug: ISIS fighters reportedly posing as gays to lure homosexuals to their death. *Fox News*. www.foxnews.com/world/2015/05/12/death-hug-isis-fighters-reportedly-posing-as-gays-to-lure-homosexuals-to-their

31 Booth, R. (2014, 14 September). Isis videos ‘excite’ group’s supporters. *The Guardian*. www.theguardian.com/world/2014/sep/14/isis-videos-excite-groups-supporters-david-haines-syria

32 ABC News. (2015, 7 May). How US Officials Say ISIS Uses Social Media to Recruit. abcnews.go.com/Nightline/video/us-officials-isis-social-media-recruit-30892920

33 Weaver, M. (2015, 14 April). Her Majesty’s Jihadists. *The New York Times*. www.nytimes.com/2015/04/19/magazine/her-majestys-jihadists.html?_r=0

34 www.raqqa-sl.com/en

35 Mohammed, A. (2015, 25 April). The ISIS Hug of Death for Gays. *Raqqa is Being Slaughtered Silently*. www.raqqa-sl.com/en/?p=1022

36 <https://www.facebook.com/pages/Mosul-Eye/552514844870022?fref=nf>

37 Karimi, N. (2015, 25 May). Iranian Revolutionary Guard leader says US has ‘no will’ to fight Islamic State group. *The Globe and Mail*. www.theglobeandmail.com/news/world/iranian-revolutionary-guard-leader-says-us-has-no-will-to-fight-islamic-state-group/article24586423

He added that his country has been more effective in countering ISIL than the US has been.³⁸

Iraq is a country that is falling apart. The persecution of LGBTs and the deprivation of the sexual rights of women are symptoms of a failed state. When there is no one capable of protecting the persecuted, the state ceases to function properly. With multiple regions and factions vying for control, the breakdown in the rule of law in Iraq cannot be separated from the lack of internet freedom and the persecution of LGBTs and women.

This is not an optimistic report. While it is hard to imagine how an extremist group like ISIL can sustain itself and maintain power over the long term, Iraq is unlikely to find peace until the different sectarian and ethnic groups can live with each other. A possible scenario is the breakup of Iraq into three states: Kurdish, Sunni Arab and Shiite Arab.³⁹ But until peace comes, fighting for sexual rights and internet freedom takes a back seat to struggling for daily survival.

Action steps: What are the options?

In an anarchic environment where the national government has little control over the spiralling violence, activists are in a precarious situation with few options.

Activists working in Iraq for sexual freedom need to hide their identity. For now it must be a semi-underground movement to protect the safety of the activists. They need to tell the world what is happening there using the internet or sending SMS text messages.

If possible, they should work with international agencies as well as sympathetic locals to advocate for the rule of law. They should provide updates and news to international NGOs who can help them feed the news to the global press. These NGOs in turn can pressure governments around the world to respond to the humanitarian crisis.

Lastly, whenever possible, they also need to circumvent internet censorship with the use of software like Tor.

38 McDonnell, P., & Mostaghim, R. (2015, 25 May). Iran slams U.S. over comments on Iraqi troops fighting Islamic State. *The Los Angeles Times*. www.latimes.com/world/middleeast/la-fg-us-iran-islamic-state-20150525-story.html

39 Trofimov, Y. (2015, 26 March). Iraq Inches Toward 3-Way Split. *Assyrian International News Agency*. www.aina.org/news/20150326173302.htm



Eurovisioni

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Introduction

It was almost 40 years ago – 1976 – when the Supreme Court of Italy ordered the producer of Bernardo Bertolucci’s movie *Last Tango in Paris* to burn the negative of the film because it was considered pornographic and scandalous. Those times are over, and now legislation in Italy concerning sexually explicit material is in line with other progressive European countries, with only child pornography remaining a crime.

Despite this, Italy is lagging behind most other western European Union (EU) countries in the recognition of lesbian, gay, bisexual and transgender (LGBT) rights. While the crime of homosexuality was abolished in 1887,¹ the country lacks laws on same-sex marriages (or civil unions) and on homophobia (and transphobia). However, issues such as the recognition of same sex-marriage, which until a few years ago were marginal in mainstream public discourse, have recently and exponentially entered into public conversation, both online and offline.

This report considers two issues: the status of regulating online pornography, where it concludes that sufficient provisions exist to balance the need for free expression and the protection of minors from abuse; and the more troubling arena of hate speech online, targeted specifically at the country’s sexual minorities, where still no acceptable solutions have been found.

Sexual rights campaigns on the internet

The internet has become an important platform where public debate on controversial topics, such as same-sex marriage, takes place. LGBT activists use it regularly to tackle prejudices, to fight homophobia and to run campaigns in favour of their rights. Very often LGBT campaigns are conduct-

ed with the support of the women’s movement, especially when fighting against sexual violence.

In October 2014 the mayors of Milan and Rome decided to “stretch” administrative regulations by registering same-sex unions contracted abroad. This decision triggered a heated national debate, mainly led by cyber activists, on social networks and other online forums.

This momentum has continued over the last two years, foregrounding public debate on LGBT rights, to the point that the issue of same-sex marriage was debated in parliament – even though it has so far been ineffective in terms of a new law on civil union being passed. (Pro-gay rights legislation in the Italian parliament is often thwarted by the Catholic Church and political parties under its influence).

This shows the viral effect of online campaigns. In February 2013, ahead of a discussion in parliament on a draft law to recognise civil union, momentum supporting the draft was built through social media discussion and through an online petition on the Avaaz.org² platform. In a few days the petition gathered more than 10,000 signatures in favour of the new law.³

Among the most important activist websites dealing with LGBT issues are www.arcigay.it (the voice of the oldest gay activist movement in the country, called Arci Gay) and www.zeroviolenza.it (the website for the movement fighting to stop violence against women and LGBT people). A broader network has formed around these two websites. Each year it organises a number of initiatives in support of LGBT rights.

Since the first Gay Pride event organised by Circolo Mario Mieli⁴ in Rome on 1-9 July 2000 (in the middle of the Catholic Jubilee year), the rights of LGBT people have gained legitimacy, recognition and a political voice. The national Pride event has

1 https://it.wikipedia.org/wiki/Diritti_LGBT_in_Italia

2 https://secure.avaaz.org/it/petition/Matrimoni_omosessuali_in_Italia/?pv=20

3 During this campaign, popular videoblogger Carlo Gabardini published a video titled *Marmellata o Nutella – ci si innamora di chi ci s’innamora* (Jam or Nutella – We fall in love with who we fall in love with), which was viewed by more than 200,000 people on YouTube and was re-posted by several other popular web platforms. www.youtube.com/watch?v=axdRn-ai758

4 The oldest Italian gay association, founded in 1983. www.mariomieli.com

now been replaced by myriad local Prides (marches, camps, sit-ins, be-ins, etc.), events that take place in all major towns and cities of the country.⁵

Many other websites contribute to the LGBT cause, each one focusing on a specific challenge when it comes to sexuality and identity. These include: www.famigliarcobaleno.org, which is dedicated to help parents and children discuss homosexuality; www.agedonazionale.org, which offers positive examples of families where the coming out of a family member has been accepted; and websites focusing on assisting teachers and students deal with LGBT prejudices in schools (such as www.minorimedia.it, www.retedelledonne.it and www.tempi.it/gender-in-classe-ecco-i-libri).

Finally, two websites dedicate themselves to helping people facing sexual problems or questioning their sexual identity: www.sostegnogay.it and www.altereva.it.

Cyber harassment of sexual minorities

Unfortunately, as much as the internet is used as a vehicle to promote the rights of sexual minorities, it is also used by others as a tool to oppress and persecute them. According to statistics provided by Arci Gay, most hate speech against LGBTs occurs on the internet, specifically on public chats.⁶ Media attention on the issue of hate speech online peaked in 2013 following two cases of gay people committing suicide, both motivated partly by cyber harassment. In the first case a 14-year-old boy committed suicide in Rome (on 12 August 2013)⁷ and in the second, a 21-year-old man, Simone D., also killed himself in Rome (on 27 October 2013).⁸

The coincidence of the two cases occurring in a short span of time provoked a wave of attention from public authorities and in parliament. The result was that the deputy minister of communication at the time published a first draft of a new law called the Code of Self-Regulation to Prevent and Fight Cyber Bullying.⁹ A multistakeholder process was launched to develop this text. Those who participated were the related ministries (interior,

communication and education), the police, the authority on privacy,¹⁰ the communications regulator AGCOM,¹¹ internet service providers (ISPs), the media, telecommunications associations, companies like Google and Microsoft, and associations of internet users. The draft code was published on 8 January 2014 for public consultation, but the final version has never been adopted because – in the meantime – the government changed and the new minister did not consider the bill a priority.¹²

Online pornography and the law

The second part of this report deals with online pornography. There is no specific prohibition on the publication of pornographic material (produced by consenting adults) over the internet, but existing legislation regulates the publication of pornographic content in other media, such as the press, in cinemas, on DVD or TV. The legislation authorises the distribution of pornographic material on the condition that it is not made accessible to minors. The problem of how to prevent minors from accessing this material over the internet – the problem of age verification – is not dealt with by the law.

Legislation on child pornography

The only prohibition that is prescribed by law in Italy concerns child pornography.

Most of the legislation in this field derives from the adoption and adaptation of international treaties and conventions formulated by the United Nations (UN), the Council of Europe and the EU. Specifically, the main sources for Italian legislation in this field are the UN Convention on the Rights of the Child,¹³ the so-called Budapest Convention on Cybercrime,¹⁴ the so-called Lanzarote Convention of the Council of Europe against the exploitation and sexual abuse of minors,¹⁵ and the EU Directive on the fight against child abuse and sexual exploitation of minors.¹⁶

5 progettogayforum.altervista.org/chat

6 whenintime.com/HTimeline.aspx?ses=qttmum4v0321wz czjvyeu3vy&tlurl=/tl/vincenzo77/report_omotransfobia_maggio_2013_2fmaggio_2014; www.arcigay.it/wp-content/uploads/ARCIGAY_BullismoOmofobico_Report.pdf; www.risorselgbti.eu/blog/wp-content/uploads/2012/12/report_hate_crimes_ITA.pdf

7 ANSA. (2013, 12 August). Suicide of homosexual boy triggers concern. ANSA. www.ansa.it/web/notizie/rubriche/english/2013/08/12/Suicide-homosexual-boy-triggers-concern_9149897.html

8 terkinn.wordpress.com/tag/ethics/page/7

9 www.sviluppoeconomico.gov.it/images/stories/documenti/codice_cyberbullismo_8%20gennaio_2013.pdf

10 www.garanteprivacy.it

11 www.agcom.it

12 It is worthwhile to note a source of conflict that emerged during the debate to draft the code among ISPs, internet companies and telecoms providers: internet companies such as Google, Twitter and Facebook are accused by local service providers of abiding by their own corporate guidelines at the expense of national regulations.

13 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

14 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090001680080f0b>

15 www.coe.int/t/dghl/standardsetting/children/default_en.asp

16 Directive 2011/92/UE, based on the 2004/68 framework decision. eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32011L0093&from=EN

One of the laws adopted – No. 38 of 6 February 2006, called Gentiloni’s Law after the minister of communications of that time¹⁷ – is the main legislative tool used to regulate the internet, and to fight child pornography. It includes a section called “Norms against child pornography on the internet”, which establishes the creation of a National Centre to Combat Child Pornography Online (CNCPO)¹⁸ and a National Observatory on Paedophilia.¹⁹ The CNCPO falls under the Ministry of the Interior (because of the police), and the National Observatory on Paedophilia under the Prime Minister’s Office (which is in charge of analysing social trends).

The same piece of legislation served to modify the Italian penal code by introducing new crimes under several articles. These were Article 600 bis, concerning the sexual abuse of minors; Article 600 ter, dealing with the possession, exchange and acquisition of child pornographic material, including animations and cartoons; Article 19, which introduced the obligation for all ISPs to alert the CNCPO of any website containing child pornography or the sexual abuse of minors. A further article was introduced into the penal code in 2012: Article 414 bis, which makes it a crime to encourage or justify (in Italian law the word “instigate” is used to refer to this) paedophilia and child pornography, a change that came as a consequence of the ratification of the Lanzarote Convention. The introduction of this new crime – which can be punished by 18 months to five years in jail – specifies that this “instigation” can happen over any medium, including the internet, social media, smart phones and any future devices or media.

The last modification of the current corpus of legislation dealing with child pornography and the internet happened in March 2015 with DL28/2015. This changed the punishment of some crimes from jail sentences to fines. This possibility applies to all crimes punished through a maximum of five years jail term, including crimes linked to child pornography on the internet.²⁰

Filtering child pornography

Filtering of internet content in Italy is allowed when it concerns child pornography. Law 38/2006, already mentioned, obliges all Italian ISPs to filter

all websites included in a special list produced and regularly updated by the CNCPO. All websites included in this list have to be made inaccessible to internet users by their ISP. ISPs are also obliged to immediately inform the CNCPO of any websites they suspect may contain child pornography. A special form is published on the homepage of each ISP to allow users to alert the ISP of any suspected case of child pornography.

Websites that have been included in this list erroneously can appeal to the courts. If the website was wrongly included, it can be removed from the list by the courts. There is however no possibility of claiming damages for the cost of this court action.

Self-regulation

All ISPs and most fixed and mobile telecom operators offer their clients the possibility of activating parental control filters for devices used by minors to access the internet. When these filters are activated, a password is needed to access certain websites or telecom services (such as sex hotlines). Telecom operators produce their own blacklist of websites and services or adapt existing ones developed in other countries. Television and radio stations fall under the Media and Minors Committee,²¹ a self-regulatory body created by the Ministry of Communications and AGCOM²² with the mandate to protect children and to prevent their access to pornographic material.

Conclusions

The situation in Italy regarding the legislation of sexual behaviour and expression online is not particularly worrying given that no specific provisions exist, except for fighting child pornography. Up until now this legislation has been applied in a very strict and limited way, and has not created problems for freedom of expression. Civil society concerns are, however, focused on the newly introduced crime of instigation of child pornography, which potentially could be used to restrict freedom of expression.

17 www.camera.it/parlam/leggi/06038l.htm

18 Centro nazionale per il contrasto alla pedopornografia sulla rete. www.poliziadistato.it/articolo/23399

19 www.osservatoriodopedofilia.gov.it

20 The purpose was to reduce the number of inmates in the country’s overcrowded prisons.

21 Comitato Media e Minori. www.sviluppoeconomico.gov.it/index.php/it/ministero/organismi/area-tutela-minori

22 Activities of AGCOM on child protection can be found at this link: www.agcom.it/tutela-dei-minori. In 2014 a specific report on media and minors was published: www.agcom.it/documents/10179/0/Documento/574a3303-87d6-40b4-86d4-3c87a02aa6cb and the full text is available at: www.agcom.it/documents/10179/540191/Studio-Ricerca+24-01-2014/59c10eed-74b8-42e8-9701-b17d72cf0996?version=1.0

The use of the internet for activism is expected to experience a renewed peak in activity because the government has announced that it will submit a new proposal on same-sex unions to parliament before the end of the year. This will increase the debate on sexual rights issues.

On the issue of online hate speech in Italy, it is worth recalling what was argued once by one of the most prominent pro-LGBT activists and a former member of parliament, Anna Paola Concia, herself subject to intense homophobic cyber bullying on her popular Twitter profile. “That ridiculous idea of a nasty web in an otherwise ‘good world’,” she said, referring to the fact that Italy, because of its conservative and bloody historical and religious heritage, cannot simply be a better and more liberal country online.²³

Action steps

Civil society and public opinion are carefully following the debate on cyber harassment, currently monitoring if a new law on cyber bullying proposed in the parliament will be adopted or not. On 13 April 2015, the new minister of education, Stefania Giannini, announced her draft bill called Guidelines for Actions to Prevent and Fight Bullying and Cyber Bullying.²⁴ This is in line with the text produced in 2014 by the Ministry of Communication. Whatever final form the bill takes, a delicate balance will have to be reached between the interests of local communications service providers (telcoms operators and ISPs) and global companies such as Twitter or Facebook, who up until now tend to show resistance to local regulations and prefer to stick to their own global policies.

²³ www.donneuropa.it/opinioni/2014/02/11/ridicola-idea-del-web-cattivo-del-mondo-buono; follow the debate also on: www.osservatoriolgbt.eu

²⁴ Linee di orientamento per azioni di prevenzione e contrasto al bullismo e al cyberbullismo. www.istruzione.it/allegati/2015/2015_04_13_16_39_29.pdf



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Introduction

“Police probing Clarendon schoolgirl sex videos” was the newspaper headline reporting that the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), of the Jamaica Constabulary Force, was probing a pornographic video being widely circulated on mobile devices. The video showed school girls engaging in sexual acts with each other, as well as with an adult male. The police reported that the man depicted in the video makes pornographic movies for sale on DVDs. The article also stated that the matter was being addressed at the level of the education minister, Ronald Thwaites. The minister said that at least one affected high school had already responded to news of the probe by the police. The school pupils were brought together with guidance counsellors and a disciplinary committee had been established that would be meeting the following week. The Ministry of Education would be sending personnel to the school and its advisors would remain as long as necessary to assist the school authorities. Reports of pornographic images on mobile devices involving adolescent girls and boys as well as adults have become more frequent in recent years with increased smartphone access and mobile penetration in Jamaica.

Policy and political background

The article raises several policy issues linked to the advantages and risks associated with access to technologies.

Jamaica’s strong policy commitments to human rights and democracy over its 53 years of political independence (1962-2015) are reflected in the ratification of several international conventions to protect the rights of children and women, along with the adoption of laws and policies and development of institutional programmes to support these commitments.

The policy framework to protect children from sexual exploitation on the internet includes the Convention on the Rights of the Child (CRC),¹ the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),² the Millennium Development Goals,³ the Beijing Platform for Action,⁴ Jamaica’s strategic plan “Vision 2030 Jamaica”,⁵ the Child Care and Protection Act,⁶ the National Policy for Gender Equality,⁷ the Broadcasting Commission of Jamaica’s Children’s Code for Programming,⁸ the Trafficking in Persons Act,⁹ and reports from a National Anti-Trafficking Task Force¹⁰ which focuses on prevention, prosecution, and protection of women and girls who are most at risk from human trafficking for sexual exploitation. The Programme of Action of the International Conference on Population and Development (ICPD POA) (1994) also highlights the need for action to address the sexual and reproductive risks associated with sexual violence.¹¹

In Jamaica, as elsewhere, increased access to information and communications technologies (ICTs) has resulted from telecommunications policy reforms. The proportion of the population who are internet users now exceeds 50%¹² and access by children has also increased through a government programme to provide computer tablets and laptops to children in schools.¹³

Viral sex videos and Jamaican school girls

Behind the story of the viral video involving the Clarendon schoolgirls are Jamaica’s many contradictions,

1 www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

2 www.un.org/womenwatch/daw/cedaw

3 <https://www.un.org/millenniumgoals>

4 www.un.org/womenwatch/daw/beijing/platform

5 www.vision2030.gov.jm

6 moj.gov.jm/laws/child-care-and-protection-act-0

7 jcdc.gov.jm/uploads/advisories/NPGE%20BOOKLET%20web.pdf

8 www.broadcastingcommission.org/uploads/content_page_files/Childrens%20Code%20for%20Programming.pdf

9 moj.gov.jm/laws/trafficking-persons-prevention-suppression-and-punishment

10 moj.gov.jm/stophumantrafficking

11 caribbean.unfpa.org/public/Home/Countries/Jamaica

12 www.internetworldstats.com/carib.htm

13 Hutchinson, R. (2014, 18 August). Importance of Schools Tablets Programme Underscored. *Jamaica Information Service*. jis.gov.jm/importance-schools-tablets-programme-underscored

TABLE 1.
Jamaica internet usage and population statistics

| Year | Users | Population | Penetration (%) | GDP per capita |
|------|-----------|------------|-----------------|----------------|
| 2000 | 60,000 | 2,597,100 | 2.3 % | USD 3,056 |
| 2002 | 600,000 | 2,675,504 | 22.4 % | USD 3,229 |
| 2006 | 1,067,000 | 2,692,569 | 39.6 % | USD 2,900 |
| 2008 | 1,500,000 | 2,804,332 | 53.5 % | USD 3,710 |
| 2014 | 1,581,100 | 2,950,210 | 53.6 % | USD 5,220 |

Source: United Nations Department of Economic and Social Affairs

challenges and inequalities. These reflect a growing concern that warrants analysis and interventions by gender or child rights advocates, internet advocates, media researchers, and parents, as well as government policy makers.

The report of sexual exploitation of adolescent girls through online videos is linked to similar stories available online with the following headlines: “Footage of Another Jamaican High School Female Viral Video Exposed 2015”;¹⁴ “Footage of Teenage Female Gang-raped in Falmouth, Trelawny Jamaica 2015”;¹⁵ “Five in Jamaican Police Custody After 17 Year Old Sexually Assaulted on Camera 2015”;¹⁶ “15-Yr-Old Girl Becomes a Tragic Victim of Gang Rape in Clarendon”;¹⁷ and “Police Investigate Alleged Gang Rape of Pregnant Woman”.¹⁸

Other stories of missing children being highlighted on the nightly television newscasts also raise concerns about this vulnerable group who are also most at risk of becoming victims of sex trafficking.

Increased internet access

The convergence of telecommunications and computer technologies, the liberalisation of Jamaica’s telecommunications sector, and increased access to mobile devices have created both opportunities and risks for young males and females. Internet World Statistics¹⁹ reported in 2015 that over half the Jamaican population (54%) or about 1,581,100 persons out of a population of 2.9 million were online. Some 677,960 of these are Facebook users. Smart mobile phones are relatively cheap and easily available and

so mobile access is the leading means to interact online (table 1).

Youth are more active online and often more tech-savvy than parents and other adults. At the same time, a lack of maturity among some young girls and boys means that many are unable to discern the risks of sharing personal information and images with friends and strangers on the internet. Sharing “selfies” and sexually explicit images online, visiting chat rooms, and engaging in digital “sexting” (sex texting) are common. Many youth hide their online profiles from parents and are more at risk than adults from cyber stalking, resulting in several being lured online into human trafficking and other forms of sexual exploitation. Several studies report risks of women’s and children’s exposure to violence on the internet.²⁰

The state of gender inequality

It is clear that not enough is being done to create the policy environment to meaningfully tackle the problem. Gender inequality in political leadership is one such political constraint. Despite Jamaica having a female prime minister, and the International Labour Organization (ILO) in 2015 ranking Jamaica as having the highest number of female managers globally (over 50%),²¹ gender and social inequalities persist. Women make up only 13% of the parliament²² despite the gender breakdown of the population being 51% females and 49% males.²³

14 www.flexfeedz.com/index.php/2015/08/12/must-watch-footage-of-another-jamaican-high-school-female-viral-video-exposed-2015

15 jamaicansmusicz.com/footage-of-teenage-female-gang-raped-in-falmouth-trelawny-jamaica-2015

16 jamaicansmusicz.com/five-in-jamaican-police-custody-after-17-year-old-sexually-assaulted-on-camera-2015

17 jablogz.com/2014/01/15-yr-old-girl-becomes-a-tragic-victim-of-gang-rape

18 jablogz.com/2014/06/police-investigate-alleged-gang-rape-of-pregnant-woman

19 www.internetworldstats.com/stats11.htm

20 See, for example, e-Learning Network. (2013). *Technology-related Violence Against Women*. www.vawlearningnetwork.ca/issue-4-technology-related-violence-against-women; Baker, L., Campbell, M., & Barreto, E. (2013). *Understanding Technology-Related Violence Against Women: Types of Violence and Women’s Experiences*. London, Ontario: Learning Network, Centre for Research and Education on Violence Against Women and Children. www.learningtoendabuse.ca/sites/default/files/Baker_Campbell_Barreto_Categories_Technology-Related_VAW_.pdf

21 ILO. (2015). *Women in business and management: Gaining momentum*. www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_334882.pdf

22 Inter-Parliamentary Union website: Women in national parliaments. www.ipu.org/wmn-e/classif.htm

23 www.countrymeters.info/en/Jamaica; statinja.gov.jm/Demo_SocialStats/Newpopulation.aspx

This is quite a gap when compared with the 30% quota of women parliamentarians recommended by CEDAW. The gap denies the country a critical mass of qualified women who could help drive policy making and reinforce laws and policies to reduce gender-based violence and economic inequalities.

Regarding the economic context, Jamaica is ranked as an upper middle income country with a gross national product (GNP) of USD 5,220. However, a high inflation rate of 8.3% and a poverty rate of 19.9%²⁴ pose twin challenges to real growth and development. The reintroduction of a structural adjustment programme with the International Monetary Fund (IMF) in 2012, while designed to reduce high indebtedness and increase growth, has also meant job losses and reduced allocations for social spending.

Although a higher proportion of females have higher educational achievements than males, women earn less because fewer are in the labour force (46%). Women are primary family caregivers and are concentrated in low-wage occupations. The consequences of this inequality undermine national development goals such as reducing poverty and improving gender equality.

Jamaica's Reproductive Health Survey (2008-2009)²⁵ showed that 18% of births are to teenage girls; 20% of females aged 15-49 years experienced violence in their first sexual encounter; and females aged 15-19 years are three times more likely to be HIV-positive than their male counterparts in a population with an HIV prevalence rate of 1.7%. The profile of vulnerability to sexual exploitation online is linked to differences of gender intersecting with class, race, education and economic factors.

Gender-based violence using ICTs has been on the rise. The story of the Clarendon schoolgirls shows that technology is a two-edged sword that can help generate access but can also facilitate online sexual harassment, cyber stalking and other social pathologies such as interpersonal violence using photos, text or voice messages to threaten, intimidate, coerce and terrorise vulnerable females. The internet is also used for false advertising and to lure vulnerable individuals into illegal and dangerous activities. While many of these are not uniquely directed against females, women and girls are frequently the victims.²⁶

Girls who post sexual images on the internet may have low self-esteem, may be from poor

socioeconomic backgrounds or may be among the 30% of Jamaica's "unattached" youth. These are defined by the HEART Trust National Training Agency as youth "who are in the age group of 14-24 years, unemployed or outside the labour force, and not in school or in training."²⁷ They may be "pushed" to use unorthodox survival strategies because of high youth unemployment, which affects 39.3% of youth in the 14-24 age range. This youth joblessness is three times the national average of 13.8%. Unemployment among females is higher than for males – 18.1% versus 10.1% respectively.²⁸ The United Nations estimates that 95% of aggressive behaviour, harassment, abusive language and denigrating images in online spaces are aimed at women and come from current or former male partners.

A need to re-orientate policy

The sexual abuse of the girls on the Clarendon video also underscores unfulfilled national development policy goals and programmes and reflects increased sexual and reproductive health risks for young females. The last Reproductive Health Survey (2008)²⁹ reported early sexual initiation of boys and girls starting at 13 years and 16 years respectively; lack of risk perception; and an increased use of contraceptives overall, but still high levels of teen pregnancies (18%). A quarter of women in the survey reported that they were forced to have sexual intercourse at least once in their life.

The risk of increased HIV infection is also a factor in the increased sexual exposure of girls reflected in the video. This is cause for concern as the Caribbean has the second highest rate of HIV infection globally after countries in sub-Saharan Africa. While Jamaica's adult HIV prevalence rate is 1.7%,³⁰ as mentioned above, among youth 15-25 years old, the infection rate is 1% higher among females than among males. The ratio of AIDS among adolescents 10-19 years is significantly higher for females than for males (2.84 females to 1 male).

The Clarendon story also reflects high exposure of youth to violence through ICTs. This is prevalent not only in online videos, but also in films and video games which create a culture of acceptance of physical and sexual violence as a normal part of life for many young persons. Jamaica's Reproductive

24 data.worldbank.org/country/jamaica

25 catalog.ihns.org/index.php/catalog/1899

26 GuardChild statistics: www.guardchild.com/teenage-sexting-statistics

27 HEART Trust National Training Agency. (2009). *Unattached Youth in Jamaica*. www.mona.uwi.edu/cop/sites/default/files/Unattached%20youth_o.pdf

28 Economic and Social Survey of Jamaica 2014 (not available online).

29 catalog.ihns.org/index.php/catalog/1899

30 www.unicef.org/infobycountry/jamaica_statistics.html; www.unaids.org/sites/default/files/media_asset/20150714_FS_MDG6_Report_en.pdf

Health Survey (2008-2009) notes that one in 10 Jamaican youth (12% of boys and 10% of girls) reported being physically abused by their partners.³¹

The increasing number of reports in the Jamaican media of youth involvement in sexually explicit acts on mobile devices now requires that we pay attention to several ICT and social policy issues which impact on rights, responsibilities and freedoms. It is not just a matter for the police. Public education, greater social safeguards and more relevant policy reforms will also help to ensure a safer online experience for young people. An improved policy framework, increased public education and monitoring would help to ensure that the country's youth can gain access to and use technologies with a reduced risk of being sexually exploited.

Action steps

Among the emerging issues for policy makers and internet advocates are the following:

- Promote adolescent sexual and reproductive health rights and services to reduce risks for the most vulnerable.
- Guide educational institutions, parents and students regarding sex and mobile phone use to keep youth safe from the risks of sharing sexual content online.
- Increase prosecution of adult offenders to help reduce the risk to children and vulnerable women of being used for sexual exploitation in the commercial sex trade.
- Develop new policies and update legislation to govern the unauthorised disclosure of private videos and sexual content to minors online.
- Increase enforcement of international human rights commitments, current Jamaican laws, and the Broadcasting Commission of Jamaica's Children's Code
- Increase public awareness. Run campaigns to enforce regulations relating to sexuality, children and the internet as well as student guidance programmes and peer education programmes to help children to adopt new approaches to managing sexual expression and mobile phone usage.

³¹ catalog.ihnsn.org/index.php/catalog/1899

JAPAN

THE CENSORSHIP OF PORNOGRAPHY, MASCULINITY, AND NATIONALISM IN JAPAN



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Introduction

In 2014, artist Igarashi Megumi – who works under the pseudonym Rokudenashiko, and uses her vagina in works of art – was arrested twice by the Tokyo Police for violating the country’s obscenity law.¹

The case of Rokudenashiko is distinctive for the following reasons. Firstly, it was the first time that the police applied the obscenity law to a case involving 3-D data. Their charge was that Rokudenashiko had scanned her vagina and emailed a URL containing the scanned data to donors who had provided money for the art project, with the idea of letting them use the data to replicate her vagina on a 3-D printer. This means that the authorities, on the grounds of the country’s obscenity law, are now able to restrict not only content that includes images of genitals, but also online data that can reproduce genitalia as an image or object.

Secondly, the case showed how the police are more concerned about censoring artistic expression than targeting the commercial sex toy industry. Although there are many online shops, including Amazon.co.jp, which sell sex toys that look like genitalia, the police chose to target the scanned data of Rokudenashiko’s vagina. On her second arrest, in December 2014, they also arrested the owner of a Tokyo sex shop for allegedly displaying Rokudenashiko’s artwork in her shop window, but not for displaying sex toys.

In doing this, authorities exposed their double standards: while overlooking the mass production of sex toys for commercial purposes, they have used a legal technicality to intervene in artistic expression that is protected by the constitution. How and why has such censorship been accepted by Japanese society? In this report, I will analyse the online discussions on freedom of expression in Japan and consider how censorship, which is easily applied as a double standard by the police, is accepted by society.

The obscenity law in Japan

Japan has a complicated history of ideas regarding “obscenity”. The country’s obscenity law, in Article 175 of the Japan Penal Code,² restricts the sale and distribution of obscene materials:

A person who distributes or sells obscene writing, pictures, or other objects or who publicly displays the same, shall be punished with imprisonment... or a fine. The same applies to a person who possesses the same for the purpose of sale.³

Although there is no clause in Japan’s obscenity law that defines the term “obscenity”, the obscenity banned by the law is conventionally taken to refer to images of genitalia.

However, this law was challenged in post-war Japan under the Constitution of Japan,⁴ which protects freedom of expression and, under Article 21, prohibits any censorship. In 1957, the Supreme Court of Japan upheld Article 175 on grounds of morality, social order, and healthy sexual behaviour, and this decision has not yet been overturned.⁵

Online discussions supporting freedom of expression but against Rokudenashiko

What is notable in Rokudenashiko’s case is that many who argue for child pornography in comics – or *loli-con* – on grounds of freedom of expression, have defended the arrests and criticised Rokudenashiko on online chat boards and on Twitter. This phenomenon raises several issues regarding the logic of censorship and free expression in Japan at the moment.

2 For an English translation of the Penal Code of Japan, see: www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=02&dn=1&yo=penal+code&x=0&y=0&ky=&page=1

3 Alexander, J. R. (2003). Obscenity, Pornography, and the Law in Japan: Reconsidering Oshima’s ‘In the Realm of the Senses’. *Asian-Pacific Law & Policy Journal*, 4(1), 148-168. papers.ssrn.com/sol3/papers.cfm?abstract_id=2041314

4 For an English translation of the Constitution of Japan, see: japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

5 Itoh, H., & Beer, L.W. (Eds.). (1978). *The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961-1970*. Seattle: University of Washington Press.

1 The first time on 15 July and the second on 3 December.

If there is no victim, there is no abuse

Japanese child pornography comics have been regarded as inappropriate by both international media and local governments in Japan. When the national government proposed the bill banning the possession of child pornography (real images of child sexual abuse), which was passed by the Diet, Japan's bicameral legislature, in June 2014, a call to ban child pornography in comics was also made. When, after much debate, the Diet decided not to include comics in the prohibitions on pornography, a BBC report featuring Japanese pornographic sub-cultures stated: "As the Olympics approach, outside eyes will turn to Japan, exerting a powerful pressure for manga and anime to be part of what people see as 'cool Japan' rather than 'weird Japan'."⁶

Responding to this kind of international criticism and to the attempts to prohibit these publications in the Diet, supporters of freedom of expression in Japan insist that child pornography in comics is a field of fantasy in which the government should not intervene. They emphasise that, unlike real images of child sexual abuse, there is no actual child victim involved in making the comics.⁷ With an emphasis on how comics and animation differ from real images of pornography – based on the perspective that that there is no real victim involved – freedom of expression regarding pornographic cartoons is accepted in society for now.

Feminist attacks, attacking feminists

Nonetheless, as the BBC reported, "Many in Japan, particularly women, have a wider concern, too."⁸ Relations between some feminists and supporters of freedom of expression when it comes to child pornography in comics are tense.

For example, Kitahara Megumi, a feminist critic and owner of a sex shop for women, who was also involved in Rokudenashiko's second arrest for allegedly displaying "obscene goods" – though she and Rokudenashiko insist those are not "obscene goods" but "art works" – is an outspoken feminist who has criticised Japanese pornography. Just after Rokudenashiko's first arrest, Kitahara criticised Japanese pornography as a symbol of patriarchal society, saying that "it is the same logic of patriarchy that the society allows the expression of child pornography in comics and regards female genitalia as obscene. In this regard, it is not a contradiction to support banning expressions of child pornography

while criticising the censorship of obscenity; and furthermore, it is ridiculous to discuss the problem of the restriction of obscenity as a problem of freedom of expression."⁹

Rather than showing solidarity, there have been many tweets expressing annoyance with Rokudenashiko and feminist critics such as Kitahara. Akagi Tomohiro, a freelance writer, has tweeted: "If she is an artist, she can make works where viewers recognise her genitals while also avoiding legal troubles. Why do we have to bother about the issue of freedom of expression with her chicken game?"¹⁰ On Kitahara's criticism of pornographic expression, he stated: "If we care about 'violence' and 'discrimination', we should censor Kitahara's opinions. Although she thinks not, her views are appallingly discriminatory and violent."¹¹

Another tweet stated: "I want to tell feminist people, 'First of all, reform yourself if you want to gain support for Rokudenashiko's issue.' They should be self-critical about what they have done – awful things that support anti-pornography, the police and far-right cults."¹²

As the comments clearly show, these people regard Rokudenashiko's provocative works and Kitahara's feminist opinions as more of a potential threat to them than Japan's obscenity law and the police's actions. Here, "freedom of expression" is understood not as a principle but as something technical: expressing what you want while avoiding police intervention. For some supporters of "freedom of expression" when it comes to child pornography in comics, as long as these do not contain images of genitalia, Japan's obscenity law is currently not a problem, but feminist art and critique are.

Scepticism of the international media

As Japan is notorious for having a large pornography industry, the police's move against Rokudenashiko's artwork has attracted international media attention, especially focusing on Japan's censorship and double standards regarding freedom of expression.¹³ However, such criticism from the international media has also fuelled hostility against Rokudenashiko's case. On Twitter, discourses criticising

6 Fletcher, J. (2015, 7 January). Why hasn't Japan banned child-porn comics? BBC. www.bbc.co.uk/news/magazine-30698640

7 AFEE. afee.jp/manga

8 Fletcher, J. (2015, 7 January). Op. cit.

9 Kitahara, M. (2014, 15 July). Rokudenashiko san no taiho ni omoukoto (An idea on Rokudenashiko's case). *Love Piece Club*. www.lovepiececlub.com/lovecafe/minori/2014/07/15/entry_005228.html

10 https://twitter.com/T_akagi/status/489068832011468801

11 https://twitter.com/T_akagi/status/489072446553612288

12 <https://twitter.com/Artanejp/status/489006145013424129>

13 McCurry, J. (2015, 15 April). Japanese artist goes on trial over 'vagina selfies'. *The Guardian*. www.theguardian.com/world/2015/apr/15/japanese-artist-trial-vagina-selfies

international media reports featuring the case have appeared; for example: “Again, they insist on the theory that it is discriminatory and showing double standards as though Japan is perverted”, and “I think their coverage is based on Orientalism”.¹⁴ Here the international media’s criticism is being interpreted as being the product of “Orientalism”, rather than legitimately questioning Japan’s principle of freedom of expression, especially censorship targeting women’s freedom of expression in a democratic society. Instead, critics appeal to a sense of national pride and fuel nationalism.

Masculinity, nationalism and censorship

Here I will analyse how the issue of Japan’s censorship, as raised by the Rokudenashiko case, has been transferred to other issues through the online discussions, as seen above.

Firstly, as the Japanese system of censorship focuses on images of genitalia, it sometimes allows a wider variety of sexual expression including child pornographic expression than do other advanced democratic countries in respect to sexual content.¹⁵ The simple provision in Japan is that this expression does not contain realistic images of genitalia. However, at the same time, this restriction makes it impossible to realise one of the foundations of feminist art, namely, the ownership, control and free expression of one’s own body – including the vagina. Rokudenashiko’s case exposed the problem of the Japanese censorship system as *The Economist* ironically described: “Rape comics, yes; anatomical art, no.”¹⁶ However, many supporters of freedom of expression insist on maintaining Japan’s existing “freedom of expression” laws with the exception on genitalia, rather than confronting the problems this presents. This is the result of political calculation: they share the idea that they can save the existing *status quo* when it comes to freedom of expression – one that allows them to express and consume what they want to – rather than criticising the authorities and introducing a new form of freedom of expression that could prohibit comics with extreme content, as occurs in many countries in the West.

Secondly, international criticism has stimulated a sense of nationalism rather than respect for freedom. For example, a reader criticising the article

in *The Economist* commented: “He knows nothing about economics which is very strange working for The Economist, but he is very close to anti-Japanese left wings and femi activists.”¹⁷ In particular, criticism of Japanese child pornography in comics promotes the idea that Western “freedom of expression” tends to restrict expression more than the Japanese model of free expression does.

Thirdly, feminist criticism of the pornographic gaze of Japanese men has given rise to a counter-sentiment of masculinity linked to nationalism. Through this anti-feminist sentiment, the Rokudenashiko case is regarded as “karmic payback” rather than as censorship by the police.

In these ways, many self-identified supporters of freedom of expression have expressed online sympathy for the police’s action with regard to Rokudenashiko’s case.

Conclusion: Fragile freedom and failing solidarity

While the Rokudenashiko case exposes Japan’s contradictory situation when it comes to freedom of expression and its complicated social context of “censorship”, the Japanese media have tended to discuss whether Rokudenashiko’s work is art or if it is pornography, which the police can or should censor. On the other hand, the international media covering the case have focused on Japan’s “double standards” regarding sexual content, implying that rape or child pornography in comics are far more immoral than any expression using genitalia. However, both arguments are based on the idea that the government is an authority that can judge the morality of any expression, and that it can intervene when it comes to “immoral” expression by way of censorship or criminalisation. Supposedly, both discourses could be used, depending on the case, for strengthening Japan’s censorship through its obscure obscenity law.

Similarly, online discussions about the Rokudenashiko case have resulted in passive acceptance of police censorship in order to ensure existing “freedoms” and to support anti-feminist sentiment. Online debates reveal that Japan’s system of censorship has been sustained not only by the police’s arbitrary enforcement of the law, but also by people’s passive support of this.

One of the elements that have led to people ignoring issues concerning the state of freedom of expression in Japan is the combination of Japanese nationalism and masculinity, which emerged in the

¹⁴ togetter.com/li/694500?page=1

¹⁵ There are several cases of prosecutions and criminal convictions for possession of Japanese comics as possession of child pornography in the United States and Canada. For a list of cases, see: cblf.org/criminal-prosecutions-of-manga

¹⁶ *The Economist*. (2015, 13 June). Japan’s obscenity laws: Vagina monologue. *The Economist*. www.economist.com/news/asia/21654119-rape-comics-yes-anatomical-art-no-vagina-monologue

¹⁷ <https://www.economist.com/users/guest-oomwljo/comments>

reaction to the international coverage of Japan's position on child pornography in comics. Nationalistic sentiment and the defence of masculinity among Japanese men have two political functions in regard to contemporary issues of freedom of expression. Firstly, appealing to nationalism disturbs more rational discussions on freedom of expression in Japan. Nationalistic counter-sentiment not only views international criticism as merely "cultural differences", but also transforms the police's censorship into the "Japanese way" of society, and so accepts it; through nationalism, the censorship is transformed into a kind of "tradition".

Secondly, nationalism combined with the defence of masculinity sets up a double bind for feminists and minorities in Japan. While a feminist critique that points out how the patriarchal and violent gaze of men is used to reproduce a masculinity that embraces pornographic expression along with nationalism among Japanese men, the calls for restrictions of pornographic expression are easily appropriated by the police to restrict the counter-cultural expressions of women. It is significant in the Rokudenashiko case that the police arrested Kitahara Megumi, who is said to be one of the most vocal feminist critics of Japanese pornography, for displaying Rokudenashiko's work in her shop. This kind of double bind now benefits the Japanese authorities, which want to intervene in people's freedom of speech, not only regarding pornography but also regarding the voices of feminists and minorities.

Japan now needs rational discussions about freedom of expression without moral judgements or nationalistic sentiment.

Action steps

For rational discussions to take place, it is important to make it possible to talk about freedom of speech as a principle of democracy without stimulating a sense of nationalism. Due to the long history of censorship in Japan, and persistent scepticism against the "Western way" of freedom of speech, it is important to start to distinguish between discussions of the actual social effects of free expression and those that draw on issues of morality, or between the necessary political moves to protect women and children and moral judgements. It might be necessary to bridge the two later, but only once practical considerations are made.

To provide safety for women and children while protecting freedom of expression, Japan needs to focus on actual sexual violence and the improvement of social care for victims, rather than wasting resources in attempting to intervene in expressions that do not directly involve victims. At the same time, there is not enough empirical data and research on how far pornographic comics can cause harm in Japanese society. This research will be useful to figure out how far this form of free expression can affect the society and human behaviour, although studies must be conducted without any ideological influence.

To tackle the double bind that feminists and sexual minorities find themselves in, international criticism can still be effective if it focuses on the government. The Japanese government and police will be sensitive to how they are considered internationally, especially before the Tokyo Olympics in 2020. International criticism is still essential and effective, especially when Japan has an ultra-nationalist government such as the current Abe administration, in order to stop the administration and the police from abusing their power against feminists and minorities.

To achieve moral improvement, we need persistent, honest and rational discussions, but to prevent the abuse of power, we need prompt solidarity and action.



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kimep.kz/faculty/en/2015/04/10/adil-nurmakov

Political context

In 1991 Kazakhstan became independent from the Soviet Union, a country where homosexual relationships were regarded as criminal and same-sex intercourse was widely considered part of jail culture only. In the early years of independence, a progressive sense of politics in Kazakhstan was shared by pro-democracy activists and the ex-communist elite that effectively retained power, as well as by the population in general.

The late 1990s, however, saw the curtailing of progressive reforms, and a further consolidation of autocracy, that continued into the 2000s. No elections in Kazakhstan have been considered free and fair by the Organization for Security and Co-operation in Europe (OSCE) monitors and no political opposition exists in parliament. The presidential vote, essentially a farce, is meant to showcase popular support for Nursultan Nazarbayev, who is now 75, and who has been in charge since 1989.

In the last decade, Kazakhstan's civil society has shrunk, opposition parties have been banned or co-opted, and critical media shut down. Yet the regime has managed to improve the economy (largely due to petrodollars) and preserve internal stability. In this way it has secured a sense of legitimacy amongst the citizens, despite widespread corruption and erosion of social welfare.

The authorities try to balance their authoritarianism with a craving for international recognition, and see the hosting of international events as symbols of the foreign approval of their policies. As the president is ageing, the issue of succession in power is becoming acute for elite factions, which show an increased interest in making use of conservative, traditional discourse in their political statements. The migration of the rural population to cities is growing, and has become a serious factor in shaping conservative narratives. As the Russian media dominates the media landscape of Kazakhstan, the impact of Russia's reactionary official agendas on Kazakhstani politics is huge.

Internet in Kazakhstan

The internet penetration rate among the population in Kazakhstan has increased enormously over the past 15 years, skyrocketing from 0.67% in 2000 to over 54% in 2014.¹ The authorities claim that penetration has exceeded 70%² and that the telecommunications sector is one of their developmental priorities. At the same time, the government is fearful about the self-expression and opportunities for mobilisation that the internet provides to citizens. Laws regulating online activities have become more and more restrictive in the last decade.

There is little evidence of the use of mass surveillance by the state, the monitoring of private communications or the state hacking personal accounts, but the authorities possess technologies for deep-packet inspection and the sophisticated monitoring of social media. Recently, the government targeted circumvention, anonymity and encryption tools. Cybercafés are forced to delete and block circumvention tools, and in September 2014, a court decision banned “the functioning of networks and/or means of communication that can be used to circumvent the technical blocking by ISPs.”³ Many anonymisers are blocked, and users experience difficulties while using the Tor network.

Media laws, which also govern online discussions, do not support freedom of expression, even though the right is formally enshrined in the constitution. When the authorities prosecute the media it is mainly on charges of libel and insult. Defamation and dissemination of “knowingly false information” are criminal offences. In both cases the use of the internet is an aggravating factor. Self-censorship is pervasive offline and online, both when it comes to what journalists say and do not say, and regular internet users.

In sum, the authorities in Kazakhstan favour the development of internet-related infrastructure and technologies for socioeconomic purposes, but they want to regulate the online content with an iron fist.

1 See ITU statistics in a downloadable file “Percentage of Individuals using the Internet” at: www.itu.int/en/ITU-D/Statistics/Documents/statistics/2015/Individuals_Internet_2000-2014.xls

2 Inform.kz. (2014, 15 July). “Internet penetration in Kazakhstan is more than 70 per cent” [in Russian]. *Inform.kz*. www.inform.kz/eng/article/2677907

3 Muminov, A. (2015, 8 June). “Anonymizers outlawed” [in Russian]. *Kursiv.kz*. bit.ly/1KWIYzw

The government enjoys a broad array of legal means to punish domestic content providers and block foreign ones. At the time of writing (June 2015) several major online platforms have been blocked, along with some foreign media sites, and scores of adult pornography sites.

The LGBTQ community in Kazakhstan

Kazakhstan boasts about its experience in tolerance, meaning how it manages its inter-ethnic and inter-religious relations, but this tolerance does not extend to sexual minorities. Same-sex relationships were decriminalised in 1997, but no anti-discriminatory legislation has been developed since then. Likewise, no liability is prescribed for discriminatory behaviours or hate speech against sexual minorities, even if by public figures and members of parliament. While the state does not place any systemic pressure on lesbian, gay, bisexual, transsexual and queer (LGBTQ) people, it also has not launched any awareness raising or inclusion campaigns involving LGBTQ rights. Until recently, state policy development in this sphere has been almost non-existent.

Many view LGBTQ people through the lens of prejudice and myths, such as thinking they are responsible for the prevalence of HIV, pose a threat to children, or that their sexual orientation is a medical condition that needs to be treated. Sexual education is not taught at school, and the public opinion favours heteronormative sexual relationships. Media skills in gender-related issues are low. Negative stereotypical views on feminism, the objectification of women and moralising narratives about their “due place” are widespread, as is stigmatisation of LGBTQ people.

Donors, with only a few exceptions, show little interest in supporting non-discrimination campaigns or those pushing for acceptance of LGBTQ people. There used to be a handful of NGOs in Kazakhstan providing services for the gay community under internationally funded AIDS prevention programmes, and several gay-rights NGOs focusing on psychological support for LGBTQs, sharing information and resources and serving as a meeting place for LGBTQ people. In the last five years they all stopped working or went underground, and their websites are no longer available. This was either because of the fear of negative reactions from the public or financial difficulties, rather than due to any persecution from the state.

Gay.kz, the most popular community website, which is not affiliated to any NGO, had a vibrant forum, news, literature and features about gay and queer culture, and an online radio station called “Boys and Girls”. It stopped operating after

longstanding financial troubles in 2012. No viable informational alternative has been developed since then. The gay community’s online experiences are confined to dating sites and dedicated groups on social media where they share “fun stuff”. These platforms are not used to raise their voices publicly or coordinate any meaningful joint activity to push for LGBTQ rights in Kazakhstan.

Sexual minorities in Kazakhstan choose to remain in the closet, and some are lucky enough to do so. “There is no tension at work or with friends if everyone follows this unspoken ‘don’t ask, don’t tell’ rule,” says MV.⁴ “It is much more difficult for transgender people than for gays,” says Ksan, an emerging activist in the field, who expressed understanding towards those who do not want to “come out”. Many heterosexual respondents in Kazakhstan say they “have nothing against LGBTQ people, as long as they sit quietly and don’t make themselves too evident.”

Despite sporadic statements by fringe politicians and an unfriendly media, the gay community was not always in hiding. The degree of public acceptance used to be higher 10 or even five years ago, with gay clubs flourishing in Almaty, Kazakhstan’s biggest city. Today, coming out for gays is a fraught experience, which is likely to involve public humiliation and pain, unlike the early 1990s – many still prefer *kvartirniki*, or having meetings with gay friends in someone’s private apartment, rather than meeting in public places.

The language used by journalists has notably changed to include emotionally loaded words and the use of obsolete terms that serve to stigmatise LGBTQs, such as “homosexuality” or “sodomy”, and the public is readily consuming these. Many accuse Russia’s frenzied propaganda that frames LGBTQs as a sign of the West’s moral obscenity. Cases of violence against LGBTQs are rarely documented, despite nearly 25% of LGBTQ respondents having experienced physical or psychological violence, according to a 2009 report by local NGO Soros-Kazakhstan, the most downloaded report on its website.⁵ In 2013, a transgender’s house was burnt to ashes after appearing in a TV show.⁶ In 2010, a gay rights activist was murdered.⁷

4 Interviews were conducted for this report in May-June 2015 in Almaty. Respondents identified by initials preferred to remain anonymous.

5 Soros-Kazakhstan Foundation. (2009). *Unacknowledged and Unprotected: Lesbian, Gay, Bisexual and Transgender People in Kazakhstan*. en.soros.kz/press_center/publications/unacknowledged_and_unprotected

6 Tengrinews.kz. (2013, 9 January). “A Kapshagai Transsexual in Trouble” [in Russian]. *Tengrinews.kz*. tengrinews.kz/crime/transseksual-iz-kapshagaya-popal-v-bedu-226348

7 Novosti-Kazakhstan. (2010, 29 June). “Gay Rights NGO’s Leader Killed in Karaganda” [in Russian]. *Novosti-Kazakhstan*. sptnkne.ws/wy

Although no new major attacks on LGBTQs have been reported lately, the change in public perception is visible, especially on the internet. Homophobic and transphobic narratives and discussions about sexual “normalcy” often become hot topics on social media and in comments on articles on news sites. Cyber bullying is not widespread, but sometimes does target people who speak out in support of LGBTQs. It rarely involves physical threats – more commonly it involves insults and statements urging the person speaking out about LGBTQ rights to leave the country, says CT, a gay man who decided to follow this unfriendly advice and leave the country.

The “archaisation” of public opinion, as Ainur Shaikenova from Soros-Kazakhstan calls it, can be aggravated by the internet, which exposes human arrogance and ignorance. Online commentators, calling for death to homosexuals, amongst other forms of hate speech, can negatively influence otherwise neutral readers. Social media can reinforce the impact of traditional media biases and further consolidate homophobia and transphobia. Yevgeniya Plakhina from the Friedrich Ebert Stiftung branch in Kazakhstan notes that the internet can help LGBTQs to create a supporting community, but for those who do not belong to this community, everyday discourses online are destructive.⁸

The “poster controversy” and gay propaganda law

In late summer 2014, Kazakhstani internet users were plunged into a stand-off between conservative groups and those supporting homosexuality: the worst combination possible if you want to ignite the flames of online war in this country. A Havas Worldwide advertising agency branch in Kazakhstan created a poster for “Studio 69”, an Almaty-based gay club, and entered it into the influential Central Asian ads competition called the “Red Jolbors”.⁹ The poster won. It was not supposed to be used, but the award-winning work was shared online, generating a tsunami of hate. The artwork, echoing iconic graffiti on the Berlin Wall, depicted two historic personalities kissing – Russian poet Pushkin and Kazakh composer Kurmangazy. Studio 69 is located on the intersection of two streets named after these figures.

The immediate response was widespread public indignation at the “mockery of Kazakhs’ great ancestor”, but it almost instantly turned into a homophobic witch hunt. The advertising agency was blamed for

“propagating gay culture in the ugliest way”, by representing a figure of national pride as homosexual. In the swell of public outrage, all gays in Kazakhstan became collateral victims. The most innocuous user comments called for gays to remain invisible; the most radical urged people to burn them alive. Both agreed that the advertising agency – and, by extension, all LGBTQ people – should not get away with it.

In early September Nurken Khalykbergen, who claimed to be a descendant of the composer, filed a lawsuit for “moral damages” of around USD 55,000, but was denied his court action because he failed to prove he was related to the composer.¹⁰ The ultra-conservative Bolashak (Future) youth movement organised a roundtable against homosexuality, urging the state to criminalise “LGBTQ propaganda”, to expel gays from public institutions and to close all gay clubs. They also picketed outside Studio 69, breaking into the venue and shouting homophobic chants. The action was endorsed by the head of the city administration’s youth policy department.¹¹ It is difficult to trace the origin of Bolashak, but many believe it can hardly be acting on its own, given the regime’s tight control over public politics. “Following two decades of active migration from rural to urban areas, today anti-liberal discourses in Kazakhstan have a lot of influence. Political actors play on it,” says Gulnara Bazhenova, a prominent public commentator.¹²

The next lawsuit arrived from the city administration, which accused the ad makers of “production and dissemination of illegal materials”, saying the poster was “unethical”. The court was criticised by the defendants as biased after it forced them to pay about USD 1,200 in fines.¹³ Later, 34 students and faculty members of the State Conservatory named after Kurmangazy filed another suit against Havas, seeking more than USD 180,000 in moral damages. One of the plaintiffs later revealed that this suit had been supported by the city administration¹⁴ – per-

8 Interview with Yevgeniya Plakhina in Almaty, June 2015.

9 See the artwork’s page on the official website of the Red Jolbors, at: <https://jolbors.com/applications/preview/495>

10 Urazova, D. (2014, 4 September). Descendant of Kazakh composer demands 1mln in damages from gay smooch poster creators. *Tengrinews.kz*. en.tengrinews.kz/politics_sub/Descendant-of-Kazakh-composer-demands-1mln-in-damages-from-255907

11 Aimbetova, M. (2014, 28 August). “Until they close themselves” [in Russian]. *Time.Kz*. www.time.kz/articles/zloba/2014/08/28/pokasami-ne-zakrojutsja; *Radiotochka.kz*. (2014, 22 October). “Public figures in Almaty demand legislative restrictions on gays and lesbians” [in Russian]. *Radiotochka.kz*. radiotochka.kz/4041-obschestvenniki-almaty-trebuyut-zakonodatelno-ogranichit-v-pravah-geev-i-lesbijanok.html

12 Interview with Gulnara Bazhenova in Almaty, June 2015.

13 *Radiotochka.kz*. (2014, 24 September). “Creators of Pushkin and Kurmangazy kissing poster to pay 314 million tenge” [in Russian]. *Radiotochka.kz*. radiotochka.kz/4271-.html

14 *Radiotochka.kz*. (2014, 1 November). “Akimat and vice-rector asked to file a suit – conservatory professor” [in Russian]. *Radiotochka.kz*. radiotochka.kz/5299-elena-nikonova-nas-poprosili-my-kak-normalnoe-grazhdanskoe-obschestvo-iniciativu-podderzhal.html

haps the reason why it was accepted by the court, unlike Khalykbergen's equally groundless claim. The court upheld the suit despite a lack of evidence, leaving the agency bankrupt and forcing its director, Daria Khamitzhanova, to flee the country.

"There is little doubt that the city administration was behind this," says Khamitzhanova, citing numerous procedural violations during the trial. "Reaction from the general public and authorities would have been less hostile 10 years ago,"¹⁵ she adds, acknowledging the recent shift in public opinion. The regime that typically ignores the existence of LGBTQs in Kazakhstani society decided to meddle because it saw the poster as a broader threat to its conservative agenda, explains Plakhina, who added that the authorities do not want to lose control over public discourse. "Their reaction was meant to reinforce self-censorship," agrees MV. "Freedom of expression can be extrapolated into the political area, and they don't want that."

The poster controversy coincided with the final stage of discussions on a draft law that aimed to ban "gay propaganda", although the draft first emerged in 2012 – troublingly, at the time of a similar legislative move in Russia's St. Petersburg. The law in Kazakhstan, initiated by members of parliament, stalled for almost three years, but in 2014 it quickly passed through both chambers of parliament and went to the president on February 2015. The parliamentary decision took only three months and the process of debating the bill was disturbingly non-transparent. Only after a Constitutional Council's resolution in May did the public learn that the draft law was sent to the Council for consideration. The Council, which deliberates on the constitutionality of parliamentary laws, declared the draft law unconstitutional because "several provisions were formulated incorrectly and could violate the constitutional rights of citizens."¹⁶ A few weeks before this decision, a group of 27 top-profile athletes addressed Thomas Bach, the International Olympic Committee (IOC) president, urging him to reject Kazakhstan's bid to host the 2022 Winter Olympics in light of the looming discriminatory anti-LGBTQ bill.¹⁷

The regime's aspirations for international approval helped to prevent the scandalous legislation from being passed this time, says BS, but the way

it was adopted was very alarming, he adds. "It underwent all stages of official law making in the government and in the parliament. Didn't they notice that it was illegal?" he asks. Besides, given the mostly technical nature of the Constitutional Council's ruling, meaning the law can easily be amended and resubmitted for presidential approval, it can be expected that if Kazakhstan loses its Winter Olympic bid to China, the law will be back on the table. Aldan Smail, the main proponent of the draft law and head of the parliamentary working group, has been quick to tell the media that the bill would be altered and re-submitted.¹⁸ "The main danger of this legislation is not about repression," BS believes. "There would hardly be outright persecutions; but it is meant to intimidate people. The wave of hatred we are already witnessing, when backed by the state, may lead to vigilante justice."

There is another dimension to this row over the draft law. In the same way that in many other countries, rights activists criticise attempts by governments to use the issue of protecting children online as a pretext for intensified state control of the internet, the Kazakh "gay propaganda" bill has similar far-reaching implications. In particular, it is aimed at isolating the country's internet users from the global internet by introducing full control over internet service providers' (ISPs) access to external traffic, as well as in-country traffic exchange points, says Max Bokayev, a free internet proponent. Additionally, it planned to introduce liability for the use of alternative IP addresses, in this way targeting various circumvention tools. The state hiding its real agenda when passing laws is not new in Kazakhstani law making, says Plakhina, but it is probably the first time the regime has used sexual rights and a moral pretext to conceal its political goals.

Conclusion

There are various views on how helpful or disruptive the poster controversy was for the LGBTQ community in Kazakhstan. Opinions within the community differ too. Some respondents lament the "unnecessary attention" that the whole affair exposed them to, and blame the advertising company for the radicalisation of public opinion. Plakhina, albeit a strong supporter of the poster, admits that it lent additional arguments to the arsenal of LGBTQ haters, because "the internet is more effective in spreading hate speech rather than helping free speech."

15 Telephone interview with Dariya Khamitzhanova, June 2015.

16 Armitage, S. (2015, 27 May). Kazakhstan's Constitutional Council Rejects "Gay Propaganda" Bill. *BuzzFeed*. www.buzzfeed.com/susiearmitage/kazakhstan-constitutional-council-rejects-gay-propaganda-bi#.mh6l4zN122

17 Terkel, A. (2015, 15 May). Athletes Pressure Olympics To Take A Stand On Kazakhstan's Anti-Gay Legislation. *The Huffington Post*. www.huffingtonpost.com/2015/05/15/olympics-kazakhstan-_n_7291662.html

18 Mamashuly, A. (2015, 27 May). Blockage of the gay propaganda law explained by "inaccuracies". *Azattyq.org*. rus.azattyq.org/content/gei-propaganda-zakonoproekt-blokirovka-kazakhstan/27039630.html

Khamitshanova thinks that if there were more public voices in support of LGBTQ rights, the situation could develop differently. On the other hand, EF is grateful that the poster helped LGBTQ people see not only the extent of homophobia in Kazakhstan, but also identified those opinion leaders who support equal rights for all. She is currently moderating a Facebook group for sexual minorities and heterosexuals that sympathise with their cause. It is a closed group for the time being.

Amina Altayeva, a KIMEP University student who is researching the impact of the internet on sexual minorities in Kazakhstan, also thinks that raising awareness of LGBTQ rights is necessary, but that public scandals might be counterproductive. In the first five months of 2015, there have been more donors engaged in gender issues, supporting public film screenings, discussions on feminism, the publication of thematic *samizdat*,¹⁹ and capacity-building programmes for LGBTQ-oriented groups that have recently started to emerge (such as Almaty, a transgender youth rights initiative).

This renewed interest in LGBTQ rights in Kazakhstan suggests that the effects of the poster controversy were not entirely undesirable. Human Rights Watch (HRW), a leading international NGO, released two statements condemning the court rulings that “supported homophobia, masked as cultural concern.”²⁰ Later on, letters from HRW, as well as from Freedom House and Amnesty International, targeted the “gay propaganda” legislation.

Shakenova says the Kazakh regime’s clinging to conservative traditions should not trample on the Universal Declaration of Human Rights, and that the institution of marriage and family should not be promoted at the expense of LGBTQ people’s rights. The Kurmangazy-Pushkin poster furore helped many people realise this, she says. But many more clearly still do not understand or support the rights of sexual minorities in the country, as the reaction of hordes of online homophobes to the US Constitutional Court’s ruling on same-sex marriages²¹ showed in June 2015.

Action steps

Donors should continue to support programmes aimed at sensitising journalists on gender issues and LGBTQ rights, encouraging progressive standards of reporting on this topic.

Given the hostility or cautiousness of most Kazakhstanis towards discourse on LGBTQ rights, and the government’s legislative initiatives that use the argument of public morals to disguise further control of freedom of expression and association, online activists need to focus on awareness-raising campaigns that explain the potential implications and risks for all citizens when these laws are passed.

In view of the government’s sensitivity about its international image, activists and organisations should appeal to the various countries who have economic and other relationships with Kazakhstan, in order to get their support for LGBTQ rights in the country.

Human rights NGOs should include LGBTQ issues in their advocacy agenda and conduct collective advocacy campaigns pushing for non-discriminatory legislation to be passed in Kazakhstan and for the country to meet its international commitments according to the International Covenant on Civil and Political Rights²² and the recommendations made during the United Nations Universal Periodic Review, amongst others. Initiating lawsuits against discriminatory practices or homophobic statements by politicians can set important precedents for future judicial practice.

There is an absence of a comprehensive online platform dealing with LGBTQ and gender identity issues. Social networking sites are not enough to serve the information and support needs of the LGBTQ community – to guide those who are yet to come to terms with their sexual identity, and to offer support to their parents. Helpful information is scattered and difficult to find. Internet users are confronted with mostly hateful rhetoric. Psychological advice, the sharing of stories and experiences, as well as the offer of legal consultations can be a valuable resource for LGBTQ people.

Self-organised LGBTQ groups should receive donor support for capacity building and forge horizontal partnerships with other human rights defenders, media and sympathising opinion leaders.

More research is necessary to identify the needs of LGBTQ people, and ways to address these needs, given the lack of comprehensive studies in this field.

19 <https://en.wikipedia.org/wiki/Samizdat>

20 Human Rights Watch. (2014, 1 October). Kazakhstan: Lawsuits Over Same-Sex Kiss on Poster. www.hrw.org/news/2014/10/01/kazakhstan-lawsuits-over-same-sex-kiss-poster

21 Liptak, A. (2015, 26 June). Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide. *The New York Times*. www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html?_r=0

22 www.ohchr.org/en/professionalinterest/pages/ccpr.aspx



Tactical Technology Collective

Maya Indira Ganesh and Jeff Deutch
www.tacticaltech.org

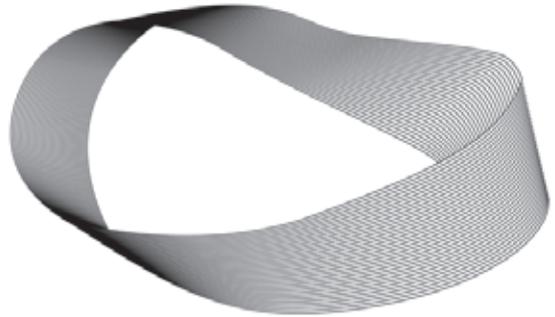
*In this time of fear called peace
In this place of dying called vision
We have chosen
To survive*

Witness #120, International Criminal
Court (ICC) Witness Project¹

Introduction

A Möbius strip is a flat ribbon twisted once, and then attached end-to-end to form a circular twisted surface. Imagine an insect walking along its surface;² at the beginning of the circular journey the insect is clearly on the outside, but it traverses the twisted ribbon without ever lifting its legs from the plane and ends up on the inside surface. This analogy is one way to think about experiences of visibility through technology.

The Möbius strip perspective challenges the binaries of visible/invisible and suggests that one is not just the opposite of the other, but they are different “folds” in the same fabric – a digital weave, if you like. The Möbius strip is also a good analogy to explain what we have learnt while researching³ the risks and barriers faced by lesbian, gay, bisexual, transgender and queer (LGBTQ) Kenyans online, a community which faces significant



social marginalisation. One of the main themes that emerge is that while social media and digital technologies offer spaces for voice and visibility, LGBTQ people also struggle to manage visibility in order to mitigate the risk of exposure. This research by Tactical Tech is evidence of the practical difficulties in securing anonymity online, and is used to trouble the idea that access to the digital is an unqualified benefit for activists. Through the research we also examined the competing registers of visibility that are the result of using technology, and suggest the value in maintaining diverse ways of seeing and revealing both online and offline.

LGBTQ visibility in Kenya

Homosexuality is still very much a taboo subject in Kenya. Surveys conducted by the Pew Charitable Trust indicate that 88% of Kenyans view homosexuality as unacceptable, and only 3% find homosexuality acceptable – the remaining 9% view homosexuality as not a moral issue.⁴ This places Kenya among the 10 countries least likely to accept homosexuality in the world. One local informant explained that because identifying as LGBTQ is not illegal, but engaging in same-sex sexual activity is, police use other existing laws to hold people perceived to be queer in custody or to extort money from people who are not aware of their rights.

Kenyan society simultaneously renders its LGBTQ citizens both visible and invisible. On the one hand, same-sex sexual activity is criminalised and yet, the government “allows” Pride marches and events to take place. When a small but powerful

1 The ICC Witness Project is a collection of poetry from Kenyan citizens involved with accountability for the post-election violence in 2007-2008. iccwitnesses.tumblr.com/post/52380449989/witness-120

2 Elizabeth Grosz uses this metaphor in her book *Volatile Bodies* to explore if it is possible to think about sexuality and the body through philosophy and feminism in something other than binary terms. She does so in order to help “rethink the relationship between the inside and the outside of the subject, its psychical interior and corporeal exterior by showing not their fundamental identity or reducibility, but to show the torsion of one into the other... the uncontrollable drift of the inside into the outside and the outside into the inside.” Grosz, E. (1994). *Volatile Bodies: Toward a Corporeal Feminism*. Bloomington: Indiana University Press.

3 This report is based on a research study supported by a grant from the Making All Voices Count (MAVC) consortium. In this study, Tactical Tech conducted semi-structured interviews with 25 LGBTQ activists and human rights defenders in Kenya between October 2014 and March 2015.

4 Pew Charitable Trust. (2013). *The Global Divide on Homosexuality*.

group such as the “anti-gay caucus” in parliament calls for the “stoning of gays”,⁵ Kenyan society buries its head in the sand, neither giving support nor speaking out.

In Kenya the state can charge individuals suspected of committing same-sex sexual acts with a criminal offence and a penalty of up to 14 years imprisonment.⁶ Although convictions rarely occur, this has a chilling effect on the LGBTQ community, resulting in them having to hide their identities. The lack of social acceptance also tacitly encourages online and offline violence. Many in the LGBTQ community face threats and violence, including blackmail and harassment by police officers and others.⁷ Additionally, evictions of LGBTQ individuals from their homes are common.⁸

Historically, as a marginalised group, queer people worldwide have been the subjects of surveillance as a way of identifying, naming, tracking, and ultimately controlling them.⁹ At the same time invisibility is also often part of the experience of being queer and amounts to not being acknowledged within society. The need to negotiate and manage the dual needs for visibility and anonymity is not new. In societies where being LGBTQ is not accepted, many people have to remain undetected in the mainstream and at the same time remain visible to those who they would consider part of their own community. Tactics for “passing as straight” may include dressing and presenting oneself in a certain way, or having an opposite-sex partner to conceal one’s same-sex orientation. While “passing for straight,” an LGBTQ person may still use and respond to the speech and body language unique to their community. LGBTQ subcultures and communities around the world can also have unique terms, gestures, and personal presentation styles that distinguish them.¹⁰

The relative invisibility of LGBTQ people has shaped popular activist strategies in Europe and North America such as “coming out of the closet” and Pride marches.¹¹ Yet, as artist Terre Thaemlitz says speaking on these highly visible yet increasingly co-opted strategies: “Queerness is something other than Pride™.” And according to academic researcher Jason Ritchie, the idea that making the invisible visible is a necessary pathway to securing LGBTQ rights is not universally applicable,¹² and coming out is perhaps best experienced as a gradual process – rather than a single moment of revelation.

Visibility through technology and data

Visibility is about “being seen” in the sense of being recognised or acknowledged, and therefore “counted”. “Being visible” is considered important because it allows the realities of injustice or violence against a particular marginal group or identity to be recognised and acknowledged. Digital technologies are commonly used to document information about and for marginal groups in order to make claims about rights violations. Popular examples of this are Harassmap,¹³ a mapping platform that allows women to make street-based sexual harassment visible.

“Being counted” also has a flip side for marginal communities. In Kenya much of the 2007-2008 post-election violence fell along ethnic lines. However, respondents to our research explained that while collecting ethnic data may pose the risk of exposing people from marginalised ethnicities by making them known, the collection of such data enables marginal groups like smaller ethnic communities which were not counted in the 1999 census¹⁴ to be recognised and to demand resource allocation and political representation.¹⁵ Without such empirical evidence, these groups argue, it becomes near impossible to document and monitor patterns of violence against them and political disenfranchise-

5 Wafula, C. (2014, 9 August). Draft bill proposes harsh penalties against gays. *Daily Nation*. mobile.nation.co.ke/news/Republican-Liberty-Party-Bill-Homosexuality/-/1950946/2414002/-/format/xhtml/-/supigkz/-/index.html

6 Vourlias, C. (2014, 5 September). ‘Stories of Our Lives’ Sheds Light on Kenya’s Gay Community. *Variety*. variety.com/2014/film/festivals/stories-of-our-lives-lgbt-kenya-community1201299178

7 Kenyan Human Rights Commission. (2011). *The Outlawed Among Us*.

8 Stewart, C. (2013, 18 July). Kenya making progress, but anti-gay violence continues. *Erasing 76 Crimes*. 76crimes.com/2013/07/18/kenya-making-progress-but-anti-gay-violence-continues

9 Weeks, J. (2000). *Making Sexual History*. Polity Press; and Monahan, T. (2009). Dreams of control at a distance: gender, surveillance and social control. *Cultural Studies Critical Methodologies*, 9(2), 286-305.

10 Tewksbury, R. (1996). Cruising for sex in public places: The structure and language of men’s hidden, erotic worlds. *Deviant Behavior*, 17, 1-19; and Brown, G. (2008). Ceramics, clothing and other bodies: affective geographies of homoerotic cruising encounters. *Social & Cultural Geography*, 9(8).

11 Chauncey, G. (1994). *Gay New York: Gender, Urban Culture, and the Makings of the Gay Male World, 1890-1940*. New York: Basic.

12 Ritchie, J. (2010). How do you say “coming out of the closet” in Arabic? Queer activism and the politics of visibility in Israel-Palestine. *GLQ: Gay and Lesbian Quarterly*, 16(4).

13 Harassmap. harassmap.org/en

14 In addition to not counting smaller ethnic groups, the final figures for the 1999 Census were never released. See BBC. (2009, 24 August). Kenya begins contentious census. *BBC News*. news.bbc.co.uk/2/hi/africa/8217637.stm

15 Nyambura-Mwaura, H. (2009, 25 August). Ethnic Question in Kenya census stokes suspicions. *Reuters*. www.reuters.com/article/2009/08/25/ozatp-kenya-census-idAFJOE5700GP20090825

ment. Concerns about visibility and anonymity are familiar to people who are marginal in their society.¹⁶

Visibility is also understood in terms of accessibility to institutional resources, and in terms of those institutions “being seen”, “open” and “transparent”. The public sharing and dissemination of information by public institutions makes them visible in the sense of transparency.

Amid the complexity of these different meanings of being visible, online visibility comes with both benefits and trade-offs. Being visible through data and technology can deny anonymity, which many activists need in order to be safe and effective.¹⁷ When a group is more visible and identifiable, this may come with a higher risk of violence or discrimination.¹⁸

LGBTQ visibility online

The digital environment has emerged as an important space for Kenyan LGBTQ people to meet, socialise, form friendships, mobilise and organise. The popularity of the digital among LGBTQ people is also a result of ubiquitous mobile phone ownership in Kenya, where usage continues to be among the highest per capita in the developing world.

An estimated 80% of Kenyans have mobile phone access¹⁹ and 67% of phones sold in Kenya

are smartphones.²⁰ Among lower-income Kenyans, sharing of smartphones is common. Facebook remains the number one social network in Kenya. In 2014, approximately four million Kenyans were on Facebook, about 10% of the total Kenyan population.²¹ Access is not equally distributed across class and geography, however, and in this way visibility begins with access. In contexts where phones and tariffs are deemed too expensive, or where internet access is slow or non-existent, regular digital visibility or presence is not even an option. Facebook has emerged not only as a place to connect with friends and relatives, but also as a place to socialise and meet new sexual partners. Dating apps and platforms like Grindr and Gay Romeo have also become popular within the men-who-have-sex-with-men (MSM) community.

The careful management of online visibility through photos on social media is a response to violations that have occurred. In one interview we did in Kenya as part of our research, Josie²² narrates the harrowing story of being outed to her family via social media because of a friend’s careless tagging of a photograph of a party she was at. The fallout was harsh and Josie was sent away from her small hometown to Nairobi, where she could not as easily be identified by her family. In another instance, a journalist for a Kenyan tabloid, on the hunt for a “juicy” story got access to a closed Facebook group and reported on a mock “beauty pageant” taking place in which butch women were being ranked and rated for their attractiveness. The “journalist” posted the names, pseudonyms, pictures, and links to personal Facebook profiles of “contestants” without their consent.

Social stigma due to criminalisation and the strong influence of religion and culture make closeted MSM vulnerable to blackmail and extortion. Closeted gay men and MSM share seemingly benign yet sensitive personal information online – occupation, address, personal details – before actually meeting up in person. Blackmailers pose as dates and potential lovers, extract the information they need and then use this as leverage in extortion attempts by threatening to out an individual to their family. It is also common for blackmailers to arrange for other people to walk in on sexual acts, only to demand money in exchange for either refraining from committing acts of violence or not outing the

16 Eubanks, V. (2007). Trapped in the Digital Divide: The Distributive Paradigm in Community Informatics. *Journal of Community Informatics*, 3(2); and Eubanks, V. (2014). Big data and human rights. In Seeta Pena Gangadharan (Ed.), *Data and Discrimination: Collected essays*. New America Foundation.

17 Ganesh, M., & Hankey, S. (2015). Fibrecultures journal. Forthcoming July 2015; also see, for example, the struggle to control digital traces of activists in the Hong Kong protests of late 2014. In this case the challenge was managing and making the right decisions about the dual needs of anonymity and visibility. For those protesters who had been underground for many years prior to the street protests, it was important to remain undetected; however, it was also an opportunity for these movements to become more active. The choice to become actively involved risked complete exposure partly due to how our digital traces never really disappear. For additional information see: Guarnieri, C. (2014, 2 October). What Protesters in Hong Kong (and Anywhere Else) Should Know About FireChat. *Global Voices*. advocacy.globalvoicesonline.org/2014/10/02/the-adoption-of-firechat-and-threats-to-hong-kong-protesters

18 See the case of Egyptian police using Grindr and similar applications to triangulate, identify and arrest LGBTQ users. Grindr removed the “show your distance” option in Egypt in response to privacy advocates raising concerns with the feature, although this was later reintroduced. Similarly, in Lebanon, police are using WhatsApp to target and entrap gay men. For more information see Sheils, C. (2014, 1 September). Egyptian Cops Using Grindr to Hunt Gays. *CairoScene*. www.cairoscene.com/LifeStyle/Egyptian-Cops-Using-Grindr-To-Hunt-Gays; Aravosis, J. (2014, 1 September). “Grindr” gay smartphone app turns off “distance” option in face of privacy concerns. *AMERICAblog*. americablog.com/2014/09/gay-grindr-smartphone-app-turns-distance-option-privacy-complaints.html; and Mamba. (2014, 28 August). Police using WhatsApp to entrap gay men. *Mamba Online*. www.mambaonline.com/2014/08/28/police-using-whatsapp-entrap-gay-men

19 Poushter, J., & Oates, R. (2015). *Cell Phones in Africa: Communication Lifeline*. Pew Research Centre.

20 Tripp, C. (2014, 16 April). 67% of mobile phones sold in Kenya are smartphones. *IT News Africa*. www.itnewsafrika.com/2014/04/16/67-of-mobile-phones-sold-in-kenya-are-smartphones

21 Kaigwa, M., Madung, O., & Costello, S. (2014). *Nendo 2014/15 Social Media Trend Report*. Nendo. report.nendo.co.ke

22 Not her real name.

person to employers and family members. Research findings indicate that although online dating was popular at first within the MSM community, due to widespread blackmail many have moved to meeting people offline in LGBTQ-friendly venues.

Other ways of seeing

The mainstream media plays a role by either ignoring the actual realities of LGBTQ life in Kenya, or by sensationalising it and creating negative, trivialised portrayals. In May 2015, for instance, a Nairobi-based newspaper ran a front-page story about Kenya's "Top Gays, Lesbians".²³ Though many LBQ women have been invited to speak in mainstream media forums, not one woman has chosen to speak for fear of social stigmatisation. One respondent in our research says "everyone wants to see a Kenyan lesbian," meaning that both in mainstream media and in activist circles, there is a high degree of exclusion of LBQ women – to the extent that the very presence of LBQ women in Kenya is, jokingly, questioned. The homophobia and lack of social support make it difficult for LBQ women to be prominent in society.

One of the questions that respondents in our research study found hard to answer was: "What are the popular blogs, Tumblrs, YouTube channels that you enjoy [as an LGBTQ person] or are popular in the LGBTQ community in your city?" We were trying to understand the productive, creative use of social media by the LGBTQ community in Kenya and how it is used by LGBTQ people to create and shape their own identities. There were not many of these our respondents could point to, however, and we were curious as to why. The presence of paid, well-designed, big media blogs and celebrity bloggers and journalists had shaped the perception that blogging was a privileged activity and that blogs had to look a certain way in order for them to be good or popular.

There has been a significant increase in queer activism in Kenya over the past few years. While social media platforms offer predictable, uniform ways of engaging online, many LGBTQ Kenyans are creatively using platforms and different media in non-intended manners to create and promote unique versions – and visions – of themselves. This not only involves witnessing their lives and others in their community, but the creation of new narratives to articulate their identities and desires. This

active and productive storytelling offers new ways of seeing and knowing a community.

Stories of Our Lives is a 2014 film directed by Jim Chuchu that chronicles queer experiences in Kenya.²⁴ *Invisible: Stories from Kenya's queer community* by Kevin Mwachiro is a collection of writing.²⁵ None on Record is an incubator for multi-media storytelling about queer life across Africa.²⁶ AFRA, Art for Radical Acceptance, is a queer women's art and performance collective.²⁷

Stories of Our Lives, was shown at the Toronto and Berlin international film festivals in 2014-2015 and achieved some prominence among audiences both domestically in Kenya and internationally. The film is comprised of five fictional vignettes, drawn from personal narratives, which document the experiences of Kenya's LGBTQ communities. It differs from more commonplace sensationalised depictions of LGBTQ Kenyans. *Hollywood Reporter* finds the film covers a variety of LGBTQ experiences "from tragedy to comedy, unrequited love to defiant romantic bliss."²⁸ Despite premiering at the Toronto International Film Festival in 2014, the film was banned in Kenya and criticised by the Kenyan Film Classification Board for "obscenity, explicit scenes of sexual activities and [for promoting] homosexuality, which is contrary to [Kenya's] national normals and values"²⁹ – a categorisation usually reserved for extreme pornographic films, such as pornography involving children.

Additionally, the film's producer George Gachara was arrested on charges of violating Kenya's Films and Stage Plays Act,³⁰ although these charges were subsequently dropped. Despite the ban, and perhaps because of it, the film has been widely circulated through informal networks in Kenya and has contributed to a greater awareness of and interest in LGBTQ experiences among Kenyans. Speaking about the film, one respondent explained: "The one opportunity that came with the banning of the film is that it got really big outside of Kenya. Within Kenya they say it's prohibited to be distrib-

24 www.thisisthenest.com/soul

25 Mwachiro, K. (2015). *Invisible: Stories from Kenya's queer community*. Goethe Institute Kenya.

26 noneonrecord.com

27 <https://www.facebook.com/afra.kenya>

28 Dalton, S. (2014, 4 October). 'Stories of Our Lives': Film Review. *The Hollywood Reporter*. www.hollywoodreporter.com/review/stories-lives-film-review-787641

29 Vourlias, C. (2014, 5 September). 'Stories of Our Lives' Sheds Light on Kenya's Gay Community. *Variety*. variety.com/2014/film/festivals/stores-of-our-lives-lgbt-kenya-community1201299178-1201299178

30 Hivos. (2015, 29 March). Forbidden Kenyan love stories told in the Netherlands. *Hivos*. <https://www.hivos.org/news/forbidden-kenyan-love-stories-told-netherlands>

23 Senzee, T. (2015, 14 May). Kenyan Paper Shamed for Its 'Top Gays' List. *The Advocate*. www.advocate.com/politics/media/2015/05/14/kenyan-paper-shamed-its-top-gays-list

uted amongst ourselves, but every movie when it's banned is watched more. So lots of people here are watching it. That's what happens."

Ground-up, independent uses of digital media like these offer choices in how to reveal and hide aspects of a community, as well as to play with the idea of visibility as well. The use of information management and security strategies in doing this is critical because the risks that exist offline and online are also real.

If the digital can be likened to "folds" on a Möbius Strip, rather than as enacting a binary online/offline, visible/invisible reality, then the ways in which LGBTQ people use technology and media can be thought of as remaining indistinct and evading exposure while simultaneously carving out spaces for visibility and agency. This is both a challenge and an opportunity in the journey for rights and self-awareness.

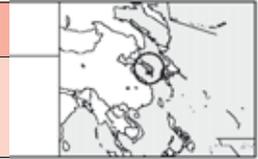
Action steps

The following action steps can be suggested for Kenya:

- Build bridges with other LGBTQ activist communities, both within Kenya and also abroad.
- Map the needs of LGBTQ communities to ensure technology choices respond to community needs.
- Learn about and adopt digital information management and security strategies.

KOREA, REPUBLIC OF

SEXUAL RIGHTS AND THE INTERNET IN SOUTH KOREA



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Introduction

The Korea Queer Festival 2015,¹ which held an opening ceremony on 9 June and lasted for three weeks, raised a bitter controversy concerning sexual rights online and offline. Around 20,000 people participated in the queer parade that took place on 28 June, while roughly 10,000 people also gathered at the same venue to demonstrate against homosexuality. A police force of over 1,000 was mobilised to prevent conflict between the two groups.

In Korea, the controversy around homosexuality and sexual rights has intensified in recent years. There have been several conflicts around institutionalising the rights of social minorities, including sexual minorities. Online hate speech against sexual minorities has often been aggressive and sometimes carries over into physical violence at offline events.

Kim Jo-Kwang-Soo and Kim Seung-Hwan, who had the first public wedding ceremony as a same-sex couple in South Korea in 2013, announced that they would take legal action against hate speech on the internet. They said that they would bring charges against insulting remarks they received online, such as “homosexuality is immoral”. A number of these online attacks originated from religious groups.

However, some advocates of sexual rights are worried that legal action against hate speech could bring about challenges for freedom of expression. Because of this, how is it best to respond to hate speech?

Policy and political background

Most of the groups who are aggressively against homosexuality in South Korea are Protestants, including the ministers of Protestant churches. Of those who practice religion in South Korea, 21% are Protestants.² Protestant groups have run campaigns

and held demonstrations against homosexuality, sometimes including physical violence and hate speech. This reactionary push has influenced the position of politicians.

Some political leaders have expressed their objection to the recognition of sexual rights. For example, Lee Myung-Bak, a former president, condemned homosexuality in a newspaper interview in 2007, and stated that the union between man and woman is the only “normal” one.³ The current Korean government has also given prominent positions to people who have condemned homosexuality. Hwang Woo-Yeo, who was appointed as the minister of education in 2013, represented a group that demanded the elimination of content in textbooks which dealt with discrimination against sexual minorities, and also objected to same-sex marriage. Choi Ee-Woo, a Chongkyo Methodist Church pastor, who was appointed as a commissioner of the National Human Rights Commission of Korea (NHRC) on November 2014, objected to the enactment of an act that prohibited discrimination and stated that the church should not allow homosexuality and same-sex marriage.⁴

The sexual rights movement and the internet

The first group campaigning for the rights of sexual minorities, Cho Dong Hoi, started in 1993. After that various sexual minority groups and communities began organising around universities. “PC communication” (a term used in South Korea to refer to access to a closed network using a dial-up modem in the 1990s) and the internet played an important role in facilitating the activities of various sexual minority advocacy groups.

The first demonstration by sexual rights groups was held in 1997, demanding the revision of textbooks which described sexual minorities as insane

1 www.kqcf.org

2 기록신문. (2015, 30 January). 기독교 신자 수는 ‘정체’, 헌신은 ‘최고’. www.kidok.com/news/articleView.html?idxno=90115

3 IGLHRC. (2007, 29 May). South Korea: Right Wing Leader Condemns Homosexuality. *OutRight Action International*. www.outrightinternational.org/content/south-korea-right-wing-leader-condemns-homosexuality

4 Lawyers for a Democratic Society (MINBYUN). (2015, 10 March). National Human Rights Commission of Korea’s appointment of anti-LGBT Commissioner Choi Ee-Woo warrants immediate attention. minbyun.or.kr/wp-content/uploads/2015/03/Statement-National-Human-Rights-Commission-of-Korea%E2%80%99s-appointment-of-anti-LGBT-Commissioner-Choi-Ee-Woo-warrants-immediate-attention.docx

people or sexual perverts. After a change in political power in the 1997 presidential election, the NHRC was finally established in 2001 and it was prohibited to discriminate on the grounds of sexual orientation, as defined in the NHRC act.

Internet rights groups have worked together with sexual minority groups in fighting against internet censorship. In 1999, the Korean government planned to introduce a so-called internet content rating system (ICRS), which required all HTML pages produced in South Korea to be classified according to a PICS⁵ rating so that they could be recognised by filtering software provided by the government. An authorised government body, the Korean Information and Communications Ethics Committee (ICEC), was mandated to assess the ratings.

Sexual minority groups, together with other activists such as internet rights groups, actively campaigned against the rating system. This was because the rating was based on criteria of content considered harmful to juveniles under the juvenile protection act, and most homosexual content could be regarded as harmful to juveniles according to the criteria at that time. For example, the ICEC had declared a gay community site called Exzone.com as harmful to juveniles.

If the system had been implemented, homosexual content would be blocked by filtering software. The protests by civil society networks succeeded in part. The system was applied only to websites which might have content harmful to juveniles rather than all websites in South Korea. Filtering software was only required in cybercafés and public institutions such as schools and libraries.

In the end homosexuality was removed from the criteria of content considered harmful to juveniles, which was an important victory for the sexual rights movement in South Korea. Since then there has not been a single case of censorship based on sexual orientation on the internet,⁶ even though homosexuality in movies or on TV could often be subject to censorship by the Korea Communications Standards Commission (KCSC).

Anti-discrimination legislation and hate speech

Although there has not been overt online censorship based on sexual orientation by a government body, this does not mean that sexual minorities are free to openly express themselves on the internet. They are still hesitant about coming out for fear of hate speech. Hate speech is speech that attacks a person or group on the basis of attributes such as gender, ethnic origin, religion, race, disability, or sexual orientation.⁷ Whenever public debate on institutional measures that will prohibit discrimination takes place – such as the debate around the act on the prohibition of discrimination,⁸ an ordinance for the human rights of students⁹ and the charter of human rights for Seoul citizens¹⁰ – hate speech against social minorities, especially sexual minorities, increases substantially online and offline.

Tensions between the sexual rights movement and those opposed to it began with the act on the prohibition of discrimination. The act, which was proposed in 2007, at the end of the term of the comparatively progressive Rho Moo-Hyun government, originally defined 19 prohibited grounds of discrimination, including sexual orientation. Remedial measures included court action or an appeal to the NHRC in cases of unfair treatment regarding employment and education, or being hurt physically or psychologically due to discrimination, as defined in the act.

However, businesses objected to the act, arguing amongst other things that the prohibition of discrimination when it came to medical information would hinder their business. Protestants also opposed the act, stating that it would legalise homosexuality. In the end the government removed seven prohibited grounds for discrimination, including sexual orientation. However the act has not yet been passed in the National Assembly.

Another debate on sexual rights was raised with the enactment of the ordinance for human rights of students under the provincial government. Conservative groups led by Protestants strongly opposed the ordinance, which included a provision on sexual orientation. However, the Seoul City Council passed the ordinance with the support of human rights groups on 19 December 2011. At the time of writing, similar conflicts around the enactment of the ordinance are ongoing in other regional governments.

5 Platform for Internet Content Selection. https://en.wikipedia.org/wiki/Platform_for_Internet_Content_Selection

6 On July, 2015, a website called “Korea Pink Map”, which lists gay-friendly venues, was blocked on the recommendation of the KCC. According to the KCC, it was blocked not because it has content on homosexuality, but because it has a lot of illegal content such as pornography. However, many LGBT groups think it would be an excessive measure to block the whole site just because it has some allegedly illegal content.

7 https://en.wikipedia.org/wiki/Hate_speech

8 likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_W12V1L1Ho06L1S8T4W5C5T4E3K8R1

9 studentrights.sen.go.kr/contents/b2111.jsp

10 opengov.seoul.go.kr/sanction/4474511

In 2013, three opposition party members in the National Assembly once again proposed the act on the prohibition of discrimination, but two of them withdrew their proposal, yielding to objections by the Protestant caucus. In 2014, the mayor of Seoul, Park Won-Soon, who came from a progressive civil society organisation and is considered one of the next presidential candidates for an opposition party, stopped the enactment of the charter of human rights for Seoul citizens. This is because several anti-homosexual groups and Protestant groups expressed their objection to the charter and even interrupted the public hearing on the charter by occupying the room. The reason for their objection was that the charter included the prohibition of discrimination based on sexual orientation.

Korean civil society organisations advocating for sexual rights give priority to the enactment of the act on the prohibition of discrimination in its original form. While the movement pushing for the passage of the act has itself triggered hate speech against sexual minorities, the irony is that the act is necessary to respond to the kind of hate speech it receives. Though hate speech online and offline might be caused by various social and economic factors, we need to establish the principle of non-discrimination by enacting the act to improve the current situation.

The dilemma of freedom of expression versus hate speech

Another challenge faced by Korean civil society advocating for sexual rights is how to ensure freedom of expression while effectively combating hate speech. Freedom of expression, online and offline, has been an important value for progressive civil society in South Korea. Korean civil society organisations have fought for a long time to ensure freedom of expression, especially the freedom to criticise the government in power, the freedom to communicate information about North Korea, and the freedom to create cultural works, especially containing sexual content.

In this context, the recent phenomenon of hate speech against social minorities and other groups – not only sexual minorities but women and immigrants too – could throw human rights and progressive organisations into confusion. Hate speech and hate crimes have become more and more organised and aggressive both online and offline. As mentioned before, conservative groups have been physically threatening by occupying a meeting space and shouting at participants. An internet

community site called ilbe,¹¹ which means “daily best”, is infamous for hate speech against social minorities and against the pro-democracy movement. A lot of articles that ridiculed the Gwangju massacre,¹² former president Roh Moo-Hyun who committed suicide, and victims of the Sewol ferry accident¹³ were posted on the site. This made many internet users angry and led to a public outcry that the site should be closed and those who posted the articles should receive a criminal penalty.

However, some human rights groups and experts are worried that demanding the deletion of articles posted on the site by appeal to the KCSC or accusing those who post the articles of defamation runs the risk of stifling the freedom of expression that progressive groups fought so hard for. In the current political context in South Korea, appealing to the government to solve the problem of hate speech might have the adverse effect of chilling freedom of expression in general.

After many discussions there is a consensus to some extent among human rights groups that hate speech cannot be protected as a form of freedom of expression and needs to be responded to. This is because hate speech may prohibit minorities from speaking freely, so it is not in accord with the intention behind freedom of expression – that all people can participate in the democratic public sphere freely and equally. The freedom of expression declaration published by human rights groups in South Korea in 2008 said that “anti-human rights expression such as instigation of war, racism, and the discrimination of minorities shouldn’t be included under the protection of freedom of expression.”¹⁴ However, this does not mean that criminal prosecution should be the preferred response to hate speech. How to properly respond to hate speech still needs to be discussed in more depth.

Conclusions

Through the struggle of internet rights and sexual rights groups for freedom of expression on the internet, and since the revision of the criteria of online content harmful to juveniles by deleting homosexuality from the criteria in 2004, there has not been direct censorship of online content related to homosexuality on the internet.

¹¹ www.ilbe.com

¹² A popular uprising in the city of Gwangju, South Korea in May 1980, in which up to 606 people may have died. For more information see: https://en.wikipedia.org/wiki/Gwangju_Uprising

¹³ https://en.wikipedia.org/wiki/Sinking_of_MV_Sewol

¹⁴ 민주수호촛불탄압저지를위한비상국민행동, 전국미디어운동네트워크. (2008, 9 December). 표현의 자유 선언

But this does not mean that sexual minorities are free to express themselves on the internet. One of the big barriers to the freedom of expression of sexual minorities is hate speech. As the sexual rights movement grows and demands the institutionalisation of sexual rights, hate speech against sexual minorities has increased and become more aggressive, both online and offline.

One of the priorities of Korean civil society, including sexual rights groups, is the enactment of the act on the prohibition of discrimination. This was the view of the UN High Commissioner for Human Rights who called for South Korea to “enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds and recognizes intersecting forms of discrimination.” This recommendation was made in the report “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity”, issued on 17 November 2011.¹⁵ In addition, the UN Human Rights Council recommended the enactment of comprehensive anti-discrimination legislation in South Korea in the Universal Periodic Review (UPR) held in 2013. The Korean government accepted this recommendation. Now the government needs to carry out its promise.

Hate speech should be regulated because it prohibits minorities, including sexual minorities, from speaking freely and may lead to physical violence or discrimination. The act on the prohibition of discrimination should define hate speech as discrimination clearly. Non-judicial remedies, such as a request for a correction made to the NHRC, could be considered. Education campaigns to raise awareness of human rights are also necessary, while a criminal penalty might be applied to serious cases of hate speech that could lead to physical threats or other forms of discrimination, such as in the workplace or when it comes to accessing services.

Action steps

The following steps are suggested for South Korea:

- The Korean government and the National Assembly should enact comprehensive anti-discrimination legislation.
- The legislation should include sexual orientation among prohibited grounds for discrimination and provide remedial measures.
- Educational campaigns to raise awareness of sexual rights should be developed.
- Effective measures to combat hate speech while ensuring freedom of expression should be further deliberated.

¹⁵ United Nations High Commissioner for Human Rights. (2011). Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf



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Introduction

Kosovo was the last country to break away from the former Yugoslavia, declaring its independence in 2008. The small Balkan state, with a population of approximately two million people, is still recovering from the debilitating aftermath of its armed conflict with Serbia in 1999 and has yet to become a full member of the European Union (EU) or the United Nations.

Although women participated in Kosovo's struggle for independence as political actors, activists, aid workers and fighters, they were for the most part pushed out of decision-making roles after the conflict.¹ Kosovo remains a deeply patriarchal society, with documented struggles around issues such as domestic violence,² sexual harassment,³ rape,⁴ women's employment,⁵ equal inheritance rights for men and women,⁶ the use of contraception⁷ and the division of household labour.⁸

Similarly, Kosovo's lesbian, gay, bisexual and transgender (LGBT) community faces serious and systemic prejudice and lives under the constant threat of hate crimes.⁹ Stringent EU standards for human rights legislation and the international presence in Kosovo have ensured a basic measure of legal protection from discrimination, particularly in the constitution and in anti-discrimination laws.¹⁰ However, the divide between laws and their implementation forces many members of the LGBT community to hide their identities, out of fear of attack or social stigma.¹¹

Policy and political background

Kosovo's legislation, most of which has been rewritten and adopted since the end of the armed conflict in 1999, includes protections against discrimination on the grounds of gender and sexual orientation – specifically the first article of the constitution, the Anti-Discrimination Law and the Law on Gender Equality. However, there are some inconsistencies concerning the language used to refer to gender identity and sexual orientation in Kosovo's legislation, which complicate the application of the law. For example, Article 37 of Kosovo's constitution¹² states that “everyone enjoys the right to marry,” whereas article 14 of Kosovo's Law on Family¹³ only recognises marriages between a man and a woman. Kosovo's Law on Gender Equality¹⁴ refers to women as “females” and men as “males”, complicating the division between gender and biological sex.

1 Marku, H. (2013, 8 December). No Rewards for Kosovo's Women of War. *Balkan Insight*. www.balkaninsight.com/en/article/no-rewards-for-kosovo-s-women-of-war

2 Kosova Women's Network. (2008). *Exploratory Research on the Extent of Gender-Based Violence in Kosova and Its Impact on Women's Reproductive Health*. Prishtina: Kosova Women's Network. www.womensnetwork.org/documents/20130120165614663.pdf

3 Farnsvden, U., Fansworth, N., & Qosaj-Mustafa, A. (2014). *Country Gender Profile: An Analysis of Gender Differences at All Levels in Kosovo*. Prishtina: Embassy of Sweden. www.swedenabroad.com/ImageVaultFiles/id_20757/cf_347/Orgut_Kosovo_Gender_Profile_FINAL_2014-05-08.PDF

4 Luci, N. (2002). Engendering Masculinity in Kosovo: Can Albanian Women Say No? *The Anthology of East Europe Review*, 20(2). scholarworks.dlib.indiana.edu/journals/index.php/aeer/article/viewFile/458/564

5 Gashi, A., & Rizvanolli, A. (2015). *The Cost of Patriarchy: Excluding Women from the Workforce is the Main Bottleneck to Development*. Prishtina: Democracy for Development. d4d-ks.org/assets/2015-02-16-Inactivity_web.pdf

6 Joireman, S. F. (2015). Resigning Their Rights? Impediments to Women's Property Ownership in Kosovo. *Political Science Faculty Publications*. Paper 44. scholarship.richmond.edu/cgi/viewcontent.cgi?article=1056&context=polisci-faculty-publications

7 Marku, H. (2013). Learning Sex in Kosovo. *Kosovo 2.0, 4 (Sex)*. hana-marku.com/2013/11/30/learning-sex-in-kosovo-one-way-or-another

8 Beilock, R., & Havolli, Y. (2005). Gender: Kosova's Other Challenge. *Journal of International Women's Studies*, 7(2). vc.bridgew.edu/cgi/viewcontent.cgi?article=1436&context=jiws

9 Youth Initiative for Human Rights. (2013). *Freedom and Protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo*. Prishtina: Youth Initiative for Human Rights.

ks.yihr.org/public/fck_files/ksfile/LGBT%20report/Freedom%20and%20Protection%20for%20LGBT%20in%20Kosovo.pdf

10 US Department of State. (2015). *Kosovo 2014 Human Rights Report*. Washington: US Department of State. www.state.gov/documents/organization/236752.pdf

11 Ibid.

12 Constitution of the Republic of Kosovo. 15 June 2008. kryeministri-ks.net/zck/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf

13 Law on Family. Assembly of Kosovo (2004/32). February 2006 www.kuvendikosoves.org/common/docs/ligjet/2004_32_en.pdf

14 Law on Gender Equality. Assembly of Kosovo (05/Lo20). June 2015 (revised). www.kuvendikosoves.org/common/docs/ligjet/05-L-020%20a.pdf

Kosovo's Press Council and Independent Media Commission (IMC) review and regulate the content of the country's media sphere. The Press Council oversees and monitors the work of both traditional press and online media. It is an independent, self-governing body, with its members forming the council and agreeing to abide by its code of conduct. The Press Council has no mechanism by which to compel media to abide by its decisions, which presents a challenge in assuring compliance to its standards – this is particularly problematic when it comes to online media, which are often maligned for poor editorial practices and shoddy reporting.¹⁵

The IMC is an independent body funded by the government of Kosovo, which oversees and monitors the work of radio and television stations. Radio and TV stations need permission from the IMC to broadcast their content, and must abide by the Code of Conduct for Audio-Visual Services to retain their licences. Both the Press Council and the IMC's codes of conduct include explicit regulations against the use of denigrating or discriminatory language on the basis of gender and sexual orientation.¹⁶

The Law on Gender Equality previously included an article on the equal representation of men and women in the media and also prohibited the denigrating or discriminatory portrayal of women; however, this was omitted after the law was revised in May 2015.

Watchdog and NGO reports on discriminatory practices in the media cite commonplace instances of hyper-sexualisation, objectification and infantilisation of women in all forms of media.¹⁷ The author has also observed the growing use of sexist language online, where an increasing number of Kosovars receive their daily news and participate in conversations on social media. Research

meanwhile points to denigrating descriptions of Kosovo's LGBT community in online media, primarily in comments on popular news portals which are posted with no moderation or editorial oversight.¹⁸ Hate speech in online comments remains a serious issue and has been described by Kosovo's media professionals as an ongoing problem.¹⁹

As Kosovo's online audience grows, online hate speech and the use of denigrating language arguably have an increasing reach. Approximately 76% of Kosovars are internet users²⁰ and 16% of Kosovars state they use the internet for news²¹ (73% of employed internet users say they go online for their news, compared to 26% of unemployed internet users).²² As the following examples will show, hate speech online – particularly on Facebook, a social media platform used by 73% of internet users²³ – remains an issue that has yet to be addressed seriously by Kosovo's justice system.²⁴

Kosovo 2.0's Sex launch and the #TakeBackTheNight Campaign

Two incidents that occurred in the past five years have served as points of conflict between more conservative elements in Kosovo's society and the country's nascent LGBT and women's rights movements. The first involves the publication of and attack against a magazine dealing with LGBT issues; the second involves the country's first Take Back the Night Campaign. Both cases unfolded online, before moving to offline protest.

Kosovo 2.0 is a current affairs website and magazine based in Prishtina, Kosovo's capital. I worked as the online managing editor for the website from 2012 to 2014. Kosovo 2.0 dedicates each biannual magazine issue to a specific topic, and has tackled themes as diverse as nation-building, religion,

15 Taylor, B. (2015). *Setting Media Standards: Public Awareness and Effectiveness of the Independent Media Commission and Press Council in Kosovo*. London: Thomson Foundation. www.thomsonfoundation.org/assets/News_Features/2015/Kosovo%20report/Kosovo_Report_new1602_setting_media_standards.pdf

16 Kodi i Sjelljes për Shërbime Mediale Audio-Vizuele (The Code of Conduct for Audio-Visual Media Services). The Independent Media Commission (KKPM-2013/07). December 2013. www.kpm-ks.org/?mod=materiale&id=907 and Kodi i Mediave të Shkruara të Kosovës (The Written Media Code of Kosovo). The Press Council of Kosovo. presscouncil-ks.org/wp-content/uploads/2015/04/Press-Code-for-Kosovo_alb.pdf

17 The Kosovar Center for Gender Studies. (2009). *The Image of Women Politicians in Kosovo Media*. Prishtina: The Kosovar Center for Gender Studies. library.fes.de/pdf-files/bueros/kosovo/09740.pdf; Farnsvden, U., Fansworth, N., & Qosaj-Mustafa, A. (2014). Op. cit.; and Abazi, J. (2014). *The Media Situation in Kosovo: Gender Representation*. Prishtina: Konrad-Adenauer-Stiftung. www.kas.de/wf/doc/kas_37921-1522-2-30.pdf?140602102458

18 Youth Initiative for Human Rights. (2014). *In the Name of Freedom of Expression*. Prishtina: Youth Initiative for Human Rights. ks.yihr.org/public/fck_files/ksfile/Hate%20Speech%20report/Anglisht.pdf; Youth Initiative for Human Rights. (2013). Op. cit.; and ILGA Europe. (2015). *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe – 2015*. Brussels: ILGA Europe. www.ilga-europe.org/sites/default/files/Attachments/01_full_annual_review_updated.pdf

19 International Research and Exchanges Board (IREX). (2015). *Europe & Eurasia Media Sustainability Index 2015*. Washington: IREX. https://www.irex.org/sites/default/files/u105/EE_MSI_2015_Kosovo.pdf

20 Fazliu, A. (2013). *Internet Penetration and Usage in Kosovo*. Prishtina: Kosovo Association of Information and Communication Technology. web.ks.org/uploads/downloads/STIKK_raport_eng_2013_stik_o8.pdf

21 Ibid.

22 Ibid.

23 Ibid.

24 Youth Initiative for Human Rights. (2014). Op. cit.

corruption, the arts, sports and migration. In December 2012, Kosovo 2.0 published the country's very first magazine issue dedicated entirely to sex and sexuality in Kosovo and the Balkans, with extensive coverage of LGBT communities across the region.

In the days leading up to the launch of the issue, titled *Sex*, a month-long social media campaign was held with sneak peeks into the magazine's content, blogs on sex and sexuality, and the promotion of the launch. The launch event, scheduled for 14 December 2012, was structured as a series of film screenings and readings in the afternoon, followed by a dance party with a DJ.

Two to three days before the event, Kosovo 2.0's Facebook page and website began receiving homophobic comments, with references to the "sinful" and "diseased" nature of homosexuality. A day before the event, a popular news portal called Telegrafi published an article on the magazine launch, erroneously describing the event as a "sex party". The homophobic comments on Kosovo 2.0's Facebook page increased in frequency and intensity on the day of the launch, which was also strongly criticised on two popular Islamic Facebook pages followed by Kosovars ("Others for Islam" and "The Protection of Islamic Identity") as well as the official Facebook page of a Prishtina sports club called Plisat. These Facebook pages made explicit calls to their followers to protest and prevent the launch of the magazine.

On the morning of the event, Kosovo 2.0 filed an official request for police protection, and two police officers were sent to the venue. At 6:00 pm, an hour before the scheduled readings, a group of 20 men pushed their way into the venue, catching the police officers off guard. They beat up one of Kosovo 2.0's male staff members, proceeded to demolish the venue's set-up, and threw tear gas into the venue. They ran away without being detained by the police. Plisat took responsibility for the attack on its Facebook page.

An hour later, police reinforcements arrived. The readings continued as scheduled, in a demolished hall, but a crowd of approximately 200 protesters had gathered in front of the venue and started preventing guests of the launch from entering the building. The crowd threw rocks at the police and the venue, chanting "Allah u akhbar!" and "Faggots out!" The police officers guarding the door called special police forces as reinforcement, but told Kosovo 2.0's staff that there was nothing they could do to remove the crowd.

At midnight, the magazine launch was officially cancelled due to the protesters outside the venue.

The guests inside the venue were escorted out of the building under police protection, in groups of four. The protesters threw rocks and spat at the guests and staff leaving the venue. The editor-in-chief of Kosovo 2.0 and two of the magazine contributors received death threats.²⁵

A day after the attack, approximately 150 people participating in an international youth summit run by a regional human rights NGO, called the Youth Initiative for Human Rights, organised a rally in support of Kosovo 2.0.²⁶ Two days after the attack on Kosovo 2.0, employees and members of Libertas, an LGBT NGO and drop-in centre in Prishtina, were attacked – an attack made even more disturbing by the fact that the centre's location was only disclosed to staff and members of the organisation.²⁷ On the evening of the attack, 20 Libertas employees and members were hosting a casual get-together. Two individuals briefly exited the centre and were physically attacked by a group of seven men waiting outside. The assailants then entered the centre, where they beat the other individuals inside and also threw an unidentified gas into the centre.²⁸

The attacks on Kosovo 2.0 and Libertas resulted in an outpouring of support by Kosovo's civil society, government officials and representatives of the international community in Kosovo.²⁹ The virulent opposition on the part of Kosovo's conservatives and religious adherents (both Islamic and Christian) forced the issue of LGBT rights to the forefront of Kosovo's public debate. The attacks were preceded and followed by a whirlwind of abuse and misinformation on social media and news portals – but were followed by frank and very public discussions about the rights of Kosovo's LGBT community in the media and among policy makers.³⁰

25 ILGA Europe. (2013). *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe – 2013*. Brussels: ILGA Europe. www.ilga-europe.org/sites/default/files/Attachments/annualreview2013.pdf

26 Quinones, M. (2013, 27 January). Kosovo 2.0: Defining a New Nation. *The New Context*. thenewcontext.milanoschool.org/kosovo-2-0-defining-a-new-nation

27 Shabani, A. (2013, 17 January). Kosovo Human Rights Activists Resist Attacks on LGBT Community. *Women's Media Center*. www.womensmediacenter.com/feature/entry/kosovo-human-rights-activists-resist-attacks-on-lgbt-community

28 Darby, S. (2012, 17 December). Anti-LGBT Violence Escalates in Prishtina; Kosovo Officials Condemn Attacks. *The New Civil Rights Movement*. www.thenewcivilrightsmovement.com/anti-lgbt-violence-escalates-in-prishtina-kosovo-officials-condemns-attacks/news/2012/12/17/56650

29 Demolli, D. (2012, 17 December). Attack on Kosovo 2.0 Widely Condemned. *Balkan Insight*. www.balkaninsight.com/en/article/attack-on-kosovo-2-0-widely-condemned

30 Luci, B. (2013, 14 December). The Sex Issue One Year Later: The Debate is More Important than the Attack. *Kosovo 2.0*. www.kosovotwopointzero.com/en/article/935/the-sex-issue-one-year-later-the-debate-is-more-important-than-the-attack

Two years later, another online campaign would turn into an ideological battlefield –albeit a much less violent one – in Kosovo. In November 2014, the Kosovo Women’s Network (Kosovo’s biggest network of NGOs dealing with women’s rights) organised the country’s first Take Back the Night campaign (in Albanian: *Nata Është e Jona*). Although there are no concrete numbers on the level of street harassment that women face in Kosovo,³¹ national surveys have indicated that approximately 46% of women are aware of domestic violence occurring in their neighbourhood,³² while a disturbing number of both men and women think violence against women is justified in certain scenarios.³³ As part of the Kosovo Women’s Network’s outreach work with young women and girls, consultative sessions with approximately 200 young women and girls from around Kosovo throughout 2012, 2013 and 2014 were held.³⁴ In each consultative meeting, street harassment was cited as an everyday problem faced by young women and girls of all ages (the youngest participant who reported street harassment as a daily problem was 13, the oldest was 35), primarily harassment which takes the form of verbal abuse or being followed in public spaces.³⁵

As a first step in addressing the issue, the network put out a public call on its Facebook page on a future campaign involving street harassment, one month prior to the Take Back the Night campaign. As a result of the public meeting, the network and its supporters decided to organise a week-long Facebook campaign followed by a march in the centre of Prishtina. The Facebook campaign involved a series of statements such as “Respect is sexy” and “It isn’t a compliment, it’s harassment” followed by the hashtag # TakeBackTheNight or the Albanian equivalent, #NataEshteEJona. The online backlash was harsh, with many Facebook users responding with derision or anger at the campaign. Approximately 300 to 350 people participated in the online cam-

paigned by sharing the #TakeBackTheNight hashtag.³⁶ On the last night of the online campaign and at the end of the Take Back the Night march, three feminist activists screened a video they had filmed, which captured the experience of a young woman walking around Prishtina for eight hours³⁷ (in the vein of the popular YouTube video “10 Hours of Walking in NYC as a Woman”).³⁸ The video was created in one night, two days before the end of the campaign, in order to address the claim that women provoke street harassment by wearing revealing clothing. Throughout the course of the video, the woman – dressed in jeans and a jacket – was harassed and followed more than 50 times. The video was picked up and reposted by most of Kosovo’s major online news portals, and was viewed more than 94,000 times.³⁹

While the march was limited to a crowd of approximately 150 people, the ferocity of online debate and the level of discussion dealing with street harassment was something new in Kosovo’s public sphere.⁴⁰

A public panel organised by the Kosovo Women’s Network was held a week after the campaign to discuss the varying reactions to the campaign, with a modest turnout. As a result of the strong online reactions to the campaign, the Kosovo Women’s Network decided to pursue a national research project on the prevalence of street harassment in Kosovo and will be organising the Take Back the Night campaign again this year.

I place these two cases side by side for several reasons. They are both instances in which the tensions between Kosovo’s feminist and pro-LGBT communities and their anti-woman and anti-LGBT counterparts unfold publicly, giving exposure to both ends of the spectrum. Both cases represent “firsts” in Kosovo: the attack on Kosovo 2.0 and especially the ensuing attack on Libertas represent the first public attack on LGBT rights in Kosovo. As noted by Vlora Krasniqi,⁴¹ a Kosovar LGBT activist and organiser, the Libertas attack represented the first public attack on the LGBT movement as a whole, as opposed to individual cases of hate crimes. The

31 The Kosovo Women’s Network will be publishing Kosovo’s first national report on street harassment in Fall 2015, and Kosovo’s Ombudsperson is also expected to present a report on possible policy responses to street harassment in September 2015.

32 Kosova Women’s Network. (2008). Op. cit.

33 Kosovo Agency of Statistics. (2015). *Kosovo: Multiple Indicator Cluster Survey 2013-2014 Key Findings* (Prishtina: The Kosovo Agency of Statistics. [https://mics-surveys-prod.s3.amazonaws.com/MICS5/Central%20and%20Eastern%20Europe%20and%20the%20Commonwealth%20of%20Independent%20States/Kosovo%20under%20UNSC%20res.%201244/2013-2014/Key%20findings/Kosovo%20\(UNSCR%201244\)%202013-14%20MICS%20KFR_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS5/Central%20and%20Eastern%20Europe%20and%20the%20Commonwealth%20of%20Independent%20States/Kosovo%20under%20UNSC%20res.%201244/2013-2014/Key%20findings/Kosovo%20(UNSCR%201244)%202013-14%20MICS%20KFR_English.pdf))

34 Interview with Donjeta Morina, Capacity Development Coordinator at the Kosovo Women’s Network, 13 December 2014.

35 Ibid.

36 Ibid.

37 <https://www.youtube.com/watch?v=l4VWREjwXyK>

38 <https://www.youtube.com/watch?v=b1XGPvWnoA>

39 Marku, H. (2015, 4 January). Stares, Whistles and Shouts: K2.0 Interviews Oda Haliti. *Kosovo 2.0*. kosovotwopointzero.com/en/article/1512/stares-whistles-and-shouts-k20-interviews-oda-haliti

40 Marku, H. (2014, 26 December). A Small Step to Reclaim Kosovo’s Streets. *Balkan Insight*. www.balkaninsight.com/en/article/a-small-step-to-reclaim-kosovo-s-streets

41 Email correspondence with Vlora Krasniqi, the former executive director of the Center for Social Emancipation (QESH), an LGBT NGO based in Prishtina, Kosovo, 25 August 2015.

Take Back the Night campaign, on the other hand, was the first organised and clearly articulated campaign against street harassment, and provided a platform for women and girls to share their daily experiences of harassment in public spaces. In both instances, people took offline action after heated (and sometimes aggressive or threatening) debate online, primarily on Facebook and on online news portals. However, in both instances, the potential of the internet to articulate feminist and pro-LGBT positions, and to be used as a way to organise protest and resistance, has also yet to be thoroughly tested. For example, an online/offline campaign calling for LGBT rights or women's rights with a longer time span and national scope has yet to be attempted, and presents a potential new phase for Kosovan activism. The Take Back the Night campaign in particular suggests a greater potential for the internet to mobilise protest and resistance than seen so far.

Conclusions

The sexism and homophobia already present in Kosovar society find ample room for expression on the internet. Online hate speech is rarely investigated – the online media sphere has a high tolerance for denigrating and hateful language towards feminists, members of the LGBT community and their allies. Kosovo's numerous anti-feminist and anti-LGBT supporters drown out other voices which threaten their world view, and as the Kosovo 2.0 case demonstrated, organised physical attacks represent a disturbing reality that activists must face in Kosovo. Only three people have so far been convicted of their involvement in the Kosovo 2.0 attack, each given suspended sentences.⁴² No suspects in the Libertas attack have been apprehended, and the case was dropped due to lack of evidence.⁴³

Kosovo's online activists have an inhospitable – but not completely unreceptive – online world to penetrate. If the Kosovo 2.0 attack demonstrates the frightening ability of hate to mobilise, the Take Back the Night campaign demonstrates the power of an organised campaign involving little more than a hashtag and a YouTube video to spark a long-delayed public conversation. The #TakeBackTheNight and #NataEshteEjona hashtags provided a platform for young women to share their stories of fear and

harassment in public spaces, and to demand an end to it. The community-building potential of the hashtags grew beyond the limited scope of the Facebook campaign, particularly after the launch of the “Eight Hours in Prishtina” video. The hashtags #TakeBackTheNight and its Albanian translation #NataEshteEjona, used in combination with statements in colloquial Kosovar Albanian, addressed street harassment in a way that was intensely local, while also suggesting a connection to the global feminist movement.

Since the explosion of debates on LGBT rights in Kosovo's public sphere following the attacks in December 2012, Kosovo's LGBT NGOs have taken steps to become more visible, and more accessible online – all have active Facebook pages, engage in online outreach public events, and make media appearances. The online presence of these NGOs is particularly important in Kosovo, where many LGBT individuals hide their identity out of fear of attack or condemnation from their families and their friends, and may not have direct access to or knowledge of the resources and safe spaces at their disposal (particularly in rural parts of the country). The most promising development in Kosovo's LGBT movement has been the second annual celebration of the International Day Against Homophobia and Transphobia (IDAHOT).⁴⁴ On 17 May 2015, Kosovo's LGBT community organised a march and dance event, in which the rainbow LGBT flag was prominently displayed in the centre of Prishtina, accompanied by a crowd of approximately 200 LGBT supporters, activists and allies.⁴⁵

The next step that the nascent LGBT movement could take online is a more coordinated approach to outreach, education and protest – preferably with as much overlap as possible between themselves and feminist groups, which share experiences and knowledge of marginalisation and can act as natural allies and supporters of pro-LGBT issues. A well-articulated collective programme can build an online activism which is both organised and, most importantly, intersectional and inclusive.

42 Pecì, E. (2014, 4 March). EU Court in Kosovo Convicts Magazine Attackers. *Balkan Insight*. www.balkaninsight.com/en/article/eulex-convicts-kosovo-2-0-attackers

43 ILGA Europe. (2014). *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe – 2014*. Brussels: ILGA Europe. www.ilga-europe.org/sites/default/files/Attachments/annual_review_2014_web_version.pdf

44 dayagainsthomophobia.org

45 Mari, C. (2015, 20 May). Kosovars Walk With Pride Against Homophobia. *Kosovo 2.0*. www.kosovotwopointzero.com/en/article/1663/kosovars-walk-with-pride-against-homophobia

Action steps

The lessons that can be taken away from the two cases described above include the following:

- Document and archive instances of hate speech and threats online in order to be able to criminally prosecute perpetrators. Do not dismiss any threats.
- Use existing mechanisms, such as local press councils, to address instances of sexist or homophobic language on online media. For example, the Kosovo branch of the Swedish NGO Civil Rights Defenders successfully filed a complaint with Kosovo's Press Council regarding homophobic comments published in an article on a popular news portal, which reported on Albanians going to Belgrade to support Serbia's Pride Parade. The news portal was condemned by the Press Council⁴⁶ and the offensive comments were removed, although without any further disciplinary action.⁴⁷
- In an online media sphere saturated with sexism and homophobia, it is important to create a media counterweight in the form of platforms such as blogs or specialised news portals. For example, "Gender Politics Online",⁴⁸ a gender issues blog supported by the University of Prishtina's Gender Studies Programme, is a promising initiative, as is the Albania-based website "Historia Ime"⁴⁹ ("My Story") which regularly reports and comments on LGBT news and current affairs in Albanian.

46 Kosovo Press Council. (2012, 19 December). Opinion Ref: 05.11.2012\140-2012. presscouncil-ks.org/opinion-pck/?lang=en

47 Koha Ditore. (2012, 19 December). KMSHK hedh poshtë pretendimet ndaj disa gazetave (Press Council Denies Allegations Made Against Newspapers). *Koha.net*. koha.net/?id=8&arkiva=1&l=128130

48 genderstudies.uni-pr.edu

49 historia-ime.com

LEBANON

STRIPPING FOR JACKIE



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Introduction

Although Lebanon is arguably the most liberal Arab country, sexuality and nudity are still taboo subjects in the mainstream media. When Mia Khalifa, a Lebanese woman living in the United States, was ranked by Pornhub¹ as their number one porn star,² most of the country reacted with consternation. She received death threats and her own family publicly disowned her and said she did not reflect their Lebanese values.

So when nude pictures of Lebanese Olympic skier Jackie Chamoun were leaked to the media, one might expect Lebanese society to react in a similar way.

But this did not happen.

Lebanese citizens and the naked body

The sight of the naked body is not new to Lebanese citizens. Lebanese law does not censor nudity or online pornography. Pornhub and many other adult websites are among the top 50 most-visited websites in the country.

As far back as 1971, the Ministry of Tourism used public funds to pay for an advertisement of a scantily clad Lebanese woman in *Playboy* magazine to attract tourists. Excerpts from that advertisement included: “Meet an Arabian Nights fantasy of unspoiled, unexpected ancient and modern delights” and “Meet your own Emeera... Like all the beautiful Lebanese you’ll find her warm, welcoming, worldly.”

Similar advertisements are still being published by the Ministry of Tourism. As recently as 2011, it ran a campaign titled “Lebanon Blues” featuring a white male tourist struggling to shake off images of Lebanese women in bikinis he encountered during his trip.³

As the story below shows, the hypocrisy of the government’s response to the pictures of Chamoun has, for many, been too much to stomach. Many activists, defending the skier, pointed out how women’s bodies were being used in “sex sells” strategies in the media, by the private sector, and even by the government. Yet when one woman wanted to participate in a photography project, these same sectors were trying to stifle any expression of female sexuality.

Jackie Chamoun goes viral

Jackie Chamoun was a relatively unknown Lebanese professional downhill skier. In the winter of 2012, she along with another Lebanese skier posed for pictures for an annual sports calendar promoting the Olympic games. She had the freedom to do it and was doing it for a good cause.

She was wearing very little clothing, with strategically placed ski gear to cover her breasts. The shoot took place on the slopes of Lebanon’s most famous ski resort, Faraya-Mzaar. There were other photos taken in which a breast was exposed, but Chamoun never saw these pictures and did not know that they existed.

Two years later, during the Sochi Winter Olympics of 2014, the “scandalous” topless pictures were leaked to the media. On its homepage, Al-Jadeed,⁴ one of the nine official media outlets in Lebanon, published an article titled “Scandal – Lebanese skiing champions are stars of nudity”.

Few Lebanese even knew Chamoun’s name or that Lebanon had skiers competing at the Olympics. But that suddenly changed and her name and pictures were making headlines. The Lebanese sports minister barred her from speaking to the media and immediately launched an investigation. He threatened to ban Jackie from participating in future competitions to “preserve the country’s reputation.”

The ministry did not react with this kind of outrage when Lebanese men’s basketball and football teams were embroiled in cheating, game-fixing and political meddling scandals. Nor would Chamoun’s pictures have caused any controversy in other

1 www.pornhub.com

2 Taylor, A. (2015, 6 January). The Miami porn star getting death threats from Lebanon. *Washington Post*. <https://www.washingtonpost.com/news/worldviews/wp/2015/01/06/the-miami-porn-star-getting-death-threats-from-lebanon>

3 Galey, P. (2011, 15 March). Tourism Ministry advertising campaign criticized as sexist. *The Daily Star*. www.dailystar.com.lb/News/Lebanon-News/2011/Mar-15/134535-tourism-ministry-advertising-campaign-criticized-as-sexist.ashx

4 www.aljadeed.tv

#stripforjackie campaign, activists shared pictures of semi-nude, beaten women, asking: “What shocks you more?” Others used similar images to challenge the government on electoral reforms, civil violence, refugees and corruption. Even marginalised communities found their voice through Jackie’s experience. One simple viral story became a catalyst and a common frame of reference for trying to explain bigger social issues, like the government’s role in policing nudity and women’s bodies, for a mainstream audience that had otherwise been disengaged or uninterested.

The story ends with Chamoun fully embracing the photos. “People can sometimes see these pictures directly when surfing the web... but I don’t care,” she said. “I really enjoyed [the photo shoot] and I don’t regret it. I like these photos.”

Conclusion

No one could have seen this coming. A social-media campaign involving “shocking” levels of nudity – people posing naked. It sent signals to activists, as well as established political and religious leaders, that there was a substantial segment of the young Lebanese population that was comfortable displaying sexuality and nudity to the world. This has given activists more breathing room to push more controversial subjects in public debate, knowing that so many Lebanese could discuss sexuality so openly. Lebanese officials were also clearly out of touch with the younger internet generation, given the way they initially reacted to the photos.

Lebanese politicians were also out of touch with the majority of the population. In a TV poll conducted by LBC,⁵ 81.6% of the Lebanese public ended up believing that Jackie did not damage Lebanon’s image or reputation, as the sports minister had claimed.

The mainstream media realised that they could no longer use random nude photos as easily to create scandals or to shame or bully public figures. *Al-Jadeed* ended up taking down its own article (it is still available on the internet archives).

Another striking fact about this story is how it subverts the usual male gaze. People were not supporting Jackie because she was an athlete who fell victim to gawkers of nude photos. They were instead supporting sexual freedom and a woman’s right to control her body. Both men and women were enacting that freedom in their campaign for her support.

This story also shows how fed-up Lebanese citizens have become with a government that fails to perform basic government duties while focusing

on petty and private matters – and this public sentiment creates a space for activists to advance human rights agendas. Whenever the government oversteps on private matters, activists can channel the public’s frustration with government ineptitude, telling politicians to mind their own business and focus on solving more pressing issues.

Action steps

When it comes to sexual rights and nudity, a lot remains to be done in Lebanon. But here are some of the suggested action steps that are specific to this story:

- Use sports to encourage a positive body image and as a conversation opener on deeper topics like public nudity and sexuality. Athletes tend to be younger and can speak to their young peer group in an engaging way they can relate to. Many athletes are role models for young teenagers. According to the United Nations, “A small but growing body of evidence has also begun to establish sport as a viable tool for addressing gender equity on a broader scale. Research on sport, gender, and development indicates that sport can benefit girls and women by:
 - Enhancing health and well-being;
 - Fostering self-esteem and empowerment;
 - Facilitating social inclusion and integration;
 - Challenging gender norms;
 - Providing opportunities for leadership and achievement.”⁶
- Raise issues of sexual rights through existing social debates and avoid using or invoking academic literature. To break the activist bubble and avoid preaching to the choir, viral campaigns need to be easily understandable, visual, and enacted by those who support them. Even the most simple campaigns can spur a feeling of public indignation and encourage participation.

⁵ www.lbcgroup.tv

⁶ Sport for Development and Peace International Working Group. (2008). *Harnessing the Power of Sport and Development and Peace*. www.un.org/wcm/webdav/site/sport/shared/sport/SDP%20IWG/Chapter4_SportandGender.pdf



One World Platform Foundation

Lagartata and valentina pellizzer
 oneworldplatform.net/en

Introduction

Located in the heart of the Balkans, Macedonia is a post-communist country whose transition to democracy has faced many challenges and taken far too long. Since 2006 the conservative right wing has been in power, constantly violating human rights and oppressing marginalised communities. At the end of 2012 a concerted homophobic campaign was launched, involving right-wing media, representatives of state institutions, and religious communities, which resulted in violence.¹ Freedom of expression, which should liberate marginalised communities, has constantly been under threat in recent years as a result of the actions of the current party in power. In 2014 Macedonia was ranked 124th out of 180 countries by Reporters Without Borders.² This year, with an interception of communications scandal that mirrored similar revelations in other countries,³ Macedonia is facing one of its biggest crises as an independent country.⁴

Over recent years, issues such as tensions with Greece over the use of the name Macedonia,⁵ ethnic conflict, and conflict with the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community have been used by the government to take attention away from corruption and its illegal interception activities.

This report will discuss the results of a survey we conducted with sexual minorities and the influence of the internet on their lives and work.

Policy and political background

An anti-discrimination law in Macedonia offers the legal basis to recognise and protect the rights of sexual minorities.⁶ However, despite many attempts to have it amended to specifically include sexual orientation and gender identity (SOGI) as a category protected against discrimination, it has remained unchanged. A reference to SOGI was deleted in 2010 during its revision.⁷ This decision, together with a lack of investigation in cases related to hate speech and physical violence directed at sexual minorities, and homophobic campaigns on social media, have created a climate uncondusive to sexual rights that has remained unchanged over the past years. It all points to the lack of experience, knowledge and professionalism of the relevant institutions to deal with cases that are concerned with sexual minority issues.

Furthermore, as suggested, Macedonia is facing its deepest and most dangerous crisis of democracy. This was after the opposition party leader leaked evidence that more than 20,000 phones have been eavesdropped on.⁸ The illegally intercepted communications showed that the right to privacy is non-existent and the national security agency (UBK) has been “operating outside its legal mandate on behalf of the government, to control top officials in the public administration, prosecutors, judges and political opponents with consequent interference in the independence of the judiciary and other relevant institutions.”⁹

1 ILGA-Europe. (2015). Review of the Human Rights Situation of LGBTI people in FYR Macedonia – Contribution to the 2015 EC Progress Report. www.ilga-europe.org/sites/default/files/ilga-europes_submission_to_ec_2015_progress_report-fyrmacedonia.pdf and LGBTI Support Centre. (2013). Quarterly report on the situation of human rights of the LGBTI population in Republic of Macedonia. lgbti.mk/uploads/20312a3a-7fb2-49dd-b1ce-bff3fd7ec159.pdf

2 Reporters Without Borders World Press Freedom Index. index.rsf.org/#!/index-details/MKD

3 META. (2015, 10 June). German laboratory confirmed the authenticity of wiretapped conversations. *META*. meta.mk/en/germanska-laboratorija-ja-potvrdi-avtenticnost-na-prislushuvanite-razgovori/

4 JEF Macedonia. (2015, 9 June). Macedonia: democracy in crisis or “democracy in bloom”? *The New Federalist*. www.thenewfederalist.eu/jef-macedonia-20150608

5 See: www.historyofmacedonia.org/MacedonianGreekConflict/conflict.html, https://en.wikipedia.org/wiki/Macedonia_naming_dispute

6 Dittrich, B. O. (2013, 10 July). Letter to Prime Minister of Macedonia. *Human Rights Watch*. www.hrw.org/node/117037; Amnesty International. (2013, 23 April). Macedonia must prevent homophobic attacks. www.fightdiscrimination.eu/discrimination-in-europe/publications/macedonia-must-prevent-homophobic-attacks; Council of Europe Parliamentary Assembly. (2015, 28 January). Failure of the Macedonian authorities to respond to repeated attacks on the LGBTI Support Centre in Skopje. assembly.coe.int/nw/xml/xfref/X2H-Xref-ViewPDF.asp?FileID=21536&lang=en

7 Balkan Insight. (2010, 12 April). Macedonia Anti-Discrimination Law Criticised. *Balkan Insight*. www.balkaninsight.com/en/article/macedonia-anti-discrimination-law-criticised

8 Lyman, R. (2015, 14 May). Tiny Macedonia Confronts a Supersize Scandal. *The New York Times*. www.nytimes.com/2015/05/15/world/europe/tiny-macedonia-confronts-a-supersize-scandal.html?_r=0

9 European Council Senior Experts Group. (2015, 8 June). The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015. ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

By law, “each of the national telecommunications providers is enabling the UBK to intercept communications directly [and] autonomously”,¹⁰ which means that the UBK does not need a court order to intercept communication. The court has also not rejected any demands for interception, which raises the question of its efficacy, capability and professionalism.¹¹

This issue led to the biggest public demonstration ever and widespread social unrest in June, and a 15-month boycott of party politics led by the main opposition party, as well as the intervention of the European Union to mediate and negotiate an early election and a transition plan.¹²

Analysing the survey results

This very complex and explosive context is the background of our survey. The goal of the survey was to investigate the influence of the internet on sexual minorities and sexual rights movements, the online platforms used by sexual minorities, and the issue of anonymity and its effect on sexual expression and exploration.

The survey was conducted using two questionnaires, one intended for NGOs, groups and activists working in the field of sexual minority rights, and one intended for individuals identifying themselves as a part of a sexual minority community. The questionnaires were answered by five organisations or groups working across the country and 77 individuals, mostly identifying as LGBTIQ, also from different parts of the country.

Of the individuals who answered the questionnaire, 3.9% are under 18 years old, 36.4% are between 18 and 24, 44.2% are between 25 and 35, 13% are between 36 and 45 and 2.6% are above 45 years old.

Meanwhile, 11.9% identify themselves as lesbians, 26.7% as gay men, 5% as transgender, 25.7% as bisexual, 7.9% as pansexual, 7.9% as queer, 2% as intersexual, 6.9% did not identify their sexual preference and 4% identify as “something else”. Of these, 2% have also stated that they are sexual workers.

Because of the small survey sample, the results discussed below should not be taken as indicative of the population as a whole, or of the impact of the internet on sexual rights movements and activists generally. Rather they are relative to the survey group.

The role of sexual rights movements using the internet for raising awareness and community building

The survey has shown that the internet is a key element to the work of activists in the field of sexual rights in our sample group. It has also shown that it has great success in raising awareness and community building. The organisations have all stated that it is an irreplaceable tool for their work.¹³

Concrete ways the activists used the internet for raising awareness on sexual rights were creating online encyclopedias of terms, concepts and resources in the local language, leveraging online media by writing columns and educational articles, publishing research online, using social networks such as Facebook or Twitter, and creating local websites.¹⁴ These all represented a way to spread information and reach more people. They say that it is easier to provoke debates online, especially when the national media is reluctant to publish on issues concerning marginalised communities. The internet is used as a way to create a public voice and to share individual experiences that often show great results in challenging prejudices.

Respondents also state that in the field of community building, social networks have been useful, including in reaching out to victims of violations, as many of the victims have contacted them using the internet.

As for the activists who answered the questionnaire, 80% (activists from four of the five organisations that answered)¹⁵ have faced online harassment, hate speech and threats because of their work in the field of sexual rights.

In this context, the oppressive policies of the current government, fuelled by traditional Christian propaganda, are increasing hatred of and expressions of violence towards human rights defenders working with communities outside of the heteronormative matrix. Some examples are the attacks on an LGBTI Support Centre,¹⁶ still under investigation after more than two years.¹⁷ The public prosecutor has not shown efficiency in dealing with cases connected to LGBTIQ

10 Article 175 and 176 of the Law on Electronic Communications.

11 Bogdanovski, A., & Lembovska, M. (2015). *Communications Interception Oversight in Macedonia: “Making the Impossible Possible”*. Skopje: Analytica. www.analyticamk.org/images/Files/impossible_en_final_9af93.pdf

12 Brsakoska Bazerkoska, J. (2015). The EU and Macedonia’s political crisis – another date with history? EPIN Commentary No. 23. www.academia.edu/13659626/The_EU_and_Macedonia_s_political_crisis_another_date_with_history

13 Specific campaigns mentioned by the activists that had great success online: “Say No to homophobia”, #CityofSkopjeHates, “It is easy to hate, courageous to love”, “Access All Areas”, “Not in my name”, “Investigation is pending, until when?”, “women archive 2.o.”, #memestanuafeme.

14 www.lgbti.mk, www.coalition.org.mk, www.okno.mk, www.novatv.mk, www.reactor.org.mk, www.bilten.org, www.amateuress.blogspot.com, www.upworthy.com, www.voxfeminae.net, www.libela.org, www.hera.org.mk

15 The organisations participating in the survey represented the views of some 20 to 25 activists in total.

16 LGBTI Support Centre www.lgbti.mk and oneworldsee.org/content/new-lgbti-support-centre-in-skopje-attacked

17 Ananievska, J. (2014). *Analysis of the homophobic campaign in Republic of Macedonia*. Skopje: LGBTI Support Centre.

victims. The other troubling fact is how a “lesbian/feminist” identity is provoking the most online anger, proving that once again machoism and misogyny are desperately blocking every attempt for articulating lesbian/feminist voices. An example here is a lesbian picnic that was organised by the lesbian and feminist organisation LezFem,¹⁸ as part of the third Pride Week in Skopje. This event received the most attention from trolls, including threats, insults and hate speech on Facebook.¹⁹ Similarly, in the last year, two other events organised by LezFem that touched on feminist or lesbian subjects and were promoted on Facebook were inundated with threats and hate speech from trolls.

Analysis of online platforms and sites that have had a role in breaking taboos and amplifying the voices of sexual minorities

Respondents to the survey indicated that the key reasons for use of the internet were contact with people with similar views, breaking the loneliness, and meeting potential partners and role models, which they did by using local or international online platforms and sites.

The survey has shown that using online platforms and sites has helped a little over half of the participants to express themselves freely, something they were unable to do offline. More specifically, 28.6% (or 22 of the individual participants in the survey) are still using these platforms and sites for this reason, 15.6% have used them for this reason when they were closeted, but now continue using them for private reasons, 11.7% have used them only when they were closeted, 16.9% have never used any kind of platform for these reasons because they did not have the need to, and 27.2% have never used them because they were too scared of being exposed.

This indicates two things: while most of the participants are or were depending on the internet for their sexual expression, a noticeable percentage of people were too scared to freely express themselves on online platforms in the current socio-political context in this country.

The platforms mentioned that helped the participants express their sexual identity freely are:

- International platforms: Mostly Facebook, PlanetRomeo, Grindr, Tumblr, Everyday Feminism, Lizzy the Lezzy, After Ellen, Queerty and Wapa.²⁰
- Local platforms: The forums set up by the Macedonian Association for Free Sexual Orientation (MASSO) and the LGBTI Support Centre mentioned above,²¹ www.macedoniagay.com, and the websites of NGOs such as EGAL,²² the Coalition for Sexual and Health Rights of Marginalized Communities,²³ and HERA.²⁴

With regard to the websites of local organisations, 6.5% of the participants think that they have amplified the voices of sexual minorities, and 32.5% think that they have done this to some extent but that they could do more. However, 46.7% consider that these websites have not done much in raising the voices of the LGBTIQ community, and 14.3% consider that they have no influence at all.

Analysis of the right to anonymity and its effect on sexual expression and exploration

Most of the participants stated that the internet has helped them a lot regarding their sexual expression and identity. The main reasons mentioned are access to information, a validation of sexual identity, improving self-confidence and self-esteem, support, learning to accept themselves, and voice.

Around 68.8% of the participants feel that the internet is or was the place where they could express themselves freely because it is easier than expressing themselves offline; 40.3% have and still use pseudonyms online to freely express themselves and 31.2% have used pseudonyms when they were closeted. While 77.9% feel that the right to anonymity has given them the chance to express their sexual identity, only 45.5% feel that anonymity is vital to their sexual expression.

It should be noted that around 26% of the individual respondents are open about their sexual identity in public and in private, while 59.7% are open only in front of those closest to them (the remainder are not open at all). In addition, around 60% believe that the internet is not really a safe place even if you are anonymous. We concluded that the right to anonymity was not thought of as an important political right or in relation to the right to privacy by the participants, but that anonymity was nevertheless used as a tool by the participants to try to avoid stigma and violence.

18 “Social media was also flooded with homophobic hate speech before the 2nd workshop on feminism on 14th April 2015 organised by LezFem, a lesbian and feminist group from Skopje. A dozen boys aged between 11 and 19 occupied the Facebook event wall of the workshop displaying quite upsetting homophobic and misogynistic attitudes.” ILGA-Europe. (2015). Op. cit. See also <https://www.facebook.com/events/1643842769189772> and <https://www.facebook.com/%D0%9B%D0%B5%D0%B7%D0%A4%D0%B5%D0%BC-563098877047782/timeline>

19 Radio MOF. (2015, 25 June). Lesbian picnic increased the homophobia on Facebook. *MOF*. www.radiomof.mk/lezbejski-piknik-ja-razgore-homofobijata-na-fejsbuk

20 Wapa Lesbian Dating - Android Apps. <https://play.google.com/store/apps/details?id=com.wapoapp.wapa>

21 www.lgbti.mk

22 egal.org.mk/en/za_nas.htm

23 www.coalition.org.mk

24 www.hera.org.mk

Conclusion

There is a constant battle in Macedonia for articulating the voices of marginalised communities. The national media are under the control of the government – but what is even more alarming is that private media are also bought, influenced or scared to report independently. With few exceptions, the information flow is controlled, and the only media that are left for channelling voices that are unheard are online media. However, there are online websites publishing governmental propaganda that are constantly popping up and creating online noise that interferes with freedom of expression. This, together with the activities of trolls, has a chilling effect on free expression online. In this context, privacy is key in surviving and spreading the voices of sexual minorities.

Having in mind all the points that the survey has touched upon, we can presume that the right to privacy is probably one of the most important and relevant rights that the sexual minorities lack in the “real” world. Reading the answers from the survey we sensed that many feel there is no hope for the protection of the right to privacy. Going back to the context of Macedonian society, it can be understood why sexual minorities do not believe in the effectiveness of the relevant institutions in protecting their rights.

The opposition leader has also revealed that activists working in the field of human rights and the rights of marginalised communities have been spied on.²⁵ At the same time the public prosecutor, as mentioned above, has not taken action against perpetrators of physical violence against LGBTQIs. Nor has reporting hate speech and online harassment resulted in the prevention of violence. The general feeling of hopelessness is therefore very much based on the cruel reality of Macedonian society.

The survey shows that most participants have reported experiences of hate speech and online harassment, but it also revealed that they have been victims of so-called “revenge porn”, blackmail and the hacking of their online profiles. In this way many have already experienced violations of their privacy. Despite this, 42.9% of the participants have never considered their online security. More worrying is that around 36.4% of them are not at all interested in improving their digital security. Unfortunately, and with few exceptions,²⁶ social movements do not seem very interested in deeper work in the field of online security.

On a more positive note, 63.6% of individual respondents (49) are interested in improving their online security, which will give them the possibility of exercising their right to privacy.

It is nevertheless contradictory that in the context of the revelation of surveillance illegally conducted by the government, affecting everyone and especially human rights defenders, this question has not become a priority on the agenda of social movements. However, we can argue that, given that we are in the middle of a crisis, where all the focus and efforts are on pushing for the change of the current government, it is understandable that many issues, among which are the right to privacy and digital security, have been put on hold.

Action steps

The first thing that should be changed in this country is the government. It has been exposed for violating rights – covering up politically motivated murders and surveillance, amongst other violations. Until this government is pushed from power, confidence will never be restored, which means that citizens will live in fear.

To overcome the current crisis there are many steps that have to be taken. However, some of the few for improving the protection of the right to privacy of sexual minorities are:

- Changing the law on electronic communications²⁷ and removing the unlimited and uncontrolled access that the UBK, Macedonia’s secret police, has over the use of technical equipment for communications surveillance.
- Including SOGI in the law on protection from and prevention of discrimination.
- Capacity building amongst institutions and civil society on the right to privacy and online protection.
- Raising awareness on LGBTIQ issues among professionals who work in public institutions.

We need to focus on reinventing our system. Even with a change in government, the roots of this current dictatorship will stay and we need to expose them and remove them. It is a complicated process where nothing will shift if we do not start from the core.

25 META. (2015, 10 June). Op. cit. and JEF Macedonia. (2015, 9 June). Op. cit.

26 Metamorphosis, Bori se zeniski, Hacklub KIKA and some individual activists.

27 Law on Electronic Communications: www.mioa.gov.mk/files/pdf/dokumenti/zakoni/Zakon_za_elektronskite_komunikacii-konsolidiran_tekst.doc and www.opm.org.mk/izdanija/MK/Zakoni/novo/Zakon%20za%20elektronski%20komunikacii.pdf; commentary: <https://edri.org/edrigramnumber8-10macedonia-new-law-electronic-communications-and-globalvoicesonline.org/2010/06/17/macedonia-law-on-electronic-communications-invades-citizens-privacy>



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Introduction

Malawi is one of the world's poorest countries. With an estimated population of 17 million people, most of them living in rural areas, poverty levels are extremely high.¹ Women, who form most of the population, are not only disadvantaged and disenfranchised by debilitating poverty, but also have to confront a patriarchal system in which their voices are rarely heard, their choices are seldom respected, and their systematic advancement is not promoted in society's institutions.

This is exacerbated by cultural conservatism, moral policing and religiosity, all of which carry the discursive power to name and accept certain principles, values and practices as "Malawian" or as "unMalawian". It is within this sphere that the feminist and lesbian, gay, bisexual, transgender and intersex (LGBTI) communities in Malawi have faced their greatest resistance, often being dismissed as attempting to corrupt "national values". Fewer than one million Malawians accessed the internet in 2013.² This can be attributed to various factors, chief among them a lack of infrastructure and the high cost of internet-related services.³ For women, in particular, prevailing economic disenfranchisement means restricted access to resources that can further enable internet access.

The consequence, therefore, is that conversations and discourses affecting these movements occur without their active involvement and participation, or when they do participate it is under severe limitations and restrictions.

Policy and political background

LGBTI issues substantively entered mainstream discourse in Malawi after the arrest and jailing of same-sex couple Steve Mwonjeza and Tiwonge

Chimbalanga.⁴ Subsequent turns of events would see a presidential pardon for the two (2010), a moratorium on the arrest of same-sex couples (2012), a constitutional review of the legality of sodomy laws (2013) and, finally, criminalisation of same-sex relationships (2015).

Although the Constitution of Malawi (Section 20) guarantees "equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status," sexual orientation and preference is still contested terrain.

A proposed Electronic Transactions Bill (e-Bill) in Malawi threatens to bear negative consequences for privacy, digital security and communications surveillance.⁵ If adopted, this bill will become part of a communications infrastructure that does not currently favour inclusivity and the participation of many voices, especially those marginalised and alienated on the basis of gender and sexual preference.

Despite this, narratives and conversations about LGBTI and feminist communities in Malawi still take place online, usually as derogatory, disapproving and disparaging interventions rather than empowering, productive or ideologically redemptive conversations and narratives.

The online absence of alternative affirming discourses and spaces online about LGBTI and feminist ideals in Malawi reveals a knowledge gap that feeds prejudice and breeds negative perceptions and attitudes for sexual rights, with seeming impunity.

"Misconceiving gender equality"

If the assumption is that online platforms in Malawi offer a free and safer space to organise and exercise discursive power on LGBTI and/or feminist ideals, then the opposite is true. Already marginalised and derided communities offline still face the same challenges online.

1 data.worldbank.org/country/malawi

2 www.internetworldstats.com/africa.htm#mw

3 Igunza, E. (2015, 20 February). Malawi's expensive mobile phone habit. *BBC*. www.bbc.com/news/world-africa-31533397

4 Mapondera, G., & Smith, D., (2010, 8 June). Love fails to conquer all as Malawi gay couple separate. *The Guardian*. www.theguardian.com/world/2010/jun/08/malawi-steven-monjeza-tiwonge-chimbalanga

5 Media Institute of Southern Africa. (n/d). MISA protests against draft E-Bill. www.misa.org/news-feeds/item/615-misa-protests-against-draft-e-bill

News stories highlighting LGBTI and feminist issues often attract considerable attention, including abuse from readers, which often equals the level of constructive response. To put this into perspective, a 2013 public intervention by prominent feminist Seodi White is instructive. This came in the form of an open letter to then-president Joyce Banda and in response to the president's remarks on marriage, which seemed to be biased towards patriarchy.

Addressing a mass rally in Malawi, Banda was quoted by media as advising married women in Malawi not to listen to female activists who are divorced and unmarried as a result of their gender activism and feminism.

"If someone comes here to tell you that you have to be rude to your husband because that is what gender equality entails, ask them if they are still in marriage... Many of them will not give you answers because they don't have husbands. They have wrecked their marriages three or four times for misconceiving gender equality," Banda was quoted as saying.⁶

Critics like White read this as a free pass for patriarchy, endorsed by Malawi's first-ever female president and someone in whom much faith and hope for the emancipation of Malawian women had been placed. Those who supported Banda's point of view argued that it was more important to stay married than to undermine the authority and sanctity of the institution of marriage by advancing feminist ideals that challenge male dominance and power.⁷ For a woman to do the latter, as popular thought has it in Malawi, is to go against both cultural and mainstream religious values.

In subsequent responses, White insisted that the criticism she had received proved her point and added that "the patriarchal agenda [in Malawi] thrives through institutions and one of the most patriarchal institutions where patriarchy reigns and thrives is the institution of marriage. (...) It is an institution that has the danger of oppressing women."⁸

Other analysts and commentators weighed in the debate, and one observed, "The debate Malawian women are having about gender and the political space is painful to watch, but it raises one question.

Can this debate prove to be a turning point in the way Malawians discuss gender and politics?"⁹

Indications are that the debate was not a "turning point". If anything, the debate reinforced experiences and structural designs which disenfranchise women from actively and freely participating in key discourses. Indeed, White herself expressed concern at the amount of abuse she and some of her family had to deal with in the aftermath of the expression of her views.

"The misogynistic insults," she wrote, "were highly personal and most unfortunate and mainly posted on Facebook and [the] *Nyasa Times* as well as over 20 links on the internet. Editors of the online newspapers have since told me that the letter has generated over 8000 hits since then. Meaning over 8000 people all over the world have since availed themselves to these verbal tirades."¹⁰

While gendered statistics on internet access in Malawi are not readily available, the prevailing social and economic trends suggest, as highlighted above, that men are more economically empowered and therefore able to gain access to the internet more frequently than women, who although they are in the majority, are not economically empowered. The dominant voices, opinions and comments seen online therefore become those of men, with women being pushed to the margins, or being silenced.

It is a point White is well aware of when, drawing from her own experience, she says "the cyber gender violence I experienced is a true manifestation of patriarchy and an androcratic social order that I now know more than ever before must be challenged over and over or it remains a deep [rooted] cancer in our society. Its result is and will continue to be that women will continue to cringe in private spaces for fear of participation in public spaces and in cyber dialogues on their own terms due to the tirades that I have received and other women have received."¹¹

In doing so, she echoes previous discussions on why Malawian women shun online debates, which observed, "Apart from issues of content (...) women cannot actively participate as Internet access is the domain of men only. [This] reality 'may be a reflection of the gender tilt in Malawi's education. It is biased towards men and this is reflected in mailing list membership.'"¹²

6 Nyasa Times. (2013, 22 July). JB advises Malawi women: Don't wreck families because of gender. *Nyasa Times*. www.nyasatimes.com/2013/07/22/jb-advises-malawi-women-dont-wreck-families-because-of-gender/comment-page-2

7 Nyasa Times. (2013, 2 August). The White shame in Seodi: In defence of Malawi Pres. Banda. *Nyasa Times*. www.nyasatimes.com/2013/08/02/the-white-shame-in-seodi-in-defence-of-malawi-pres-banda

8 White, S. (2013, 26 August). Seodi: Collusion with patriarchy and cyber gender based violence. *Nyasa Times*. www.nyasatimes.com/2013/08/26/seodi-collusion-with-patriarchy-and-cyber-gender-based-violence/

9 Sharra, S. (2013, 18 September). In support of Malawian feminism. *afrika aphukira*. mlauzi.blogspot.com/2013/09/in-support-of-malawian-feminism.html

10 White, S. (2013, 26 August). Op. cit.

11 Ibid.

12 Kaonga, V. (2008, 11 April). Malawi women shun internet discussions. *Ndagma*. ndagma.blogspot.com/2008/04/malawi-women-shun-internet-discussions.html

The absence of popular and protected spaces for advancing LGBTI and feminist discourse also contributes to the marginalisation of these voices. Sex and sexuality remain taboo topics deemed not worthy of open public discussion. In these circumstances, therefore, how can national discussions and debates in Malawi be structured in a way that promotes inclusivity of voice, tolerance of opinion and empowerment of marginalised LGBTI and feminist communities?

Several communication tools are being used to drive conversations within these communities. In common use are WhatsApp, Facebook, Blackberry Messenger (BBM) and Twitter. Extending these conversations into public offline spaces remains difficult given the criminalised environment within which LGBTIs can express themselves.

Many people from the LGBTI community have resorted to using social media tools, because in criminalised environments such as Malawi, there are no openly gay social venues where LGBTI persons can find sexual partners, explained Gift Trapence, director of the Centre for the Development of People (CEDEP).¹³

Yet, this is not done without consequence. The stigma attached to LGBTI communities in Malawi means that in the absence of vigilant privacy and security measures online, huge vulnerabilities exist.

“Most of the LGBTI persons have been ‘outed’ through social media. We have had so many cases in Malawi. There are cases of people with ill intentions joining social groups in these spaces with the aim of spying and outing people or blackmailing individuals.”¹⁴ Trapence added.

The proposed e-Bill adds to growing concerns of digital insecurities in Malawi. Against the backdrop of a moralistic outlook which relies on culture and religion to silence sexual minorities, this law – at the disposal of a rogue state – has the potential to further criminalise and undermine any progress towards the emancipation of LGBTI and feminist movements.

The existence of these risks means that a culture of censorship prevents fruitful self-expression for marginalised communities in Malawi. But silence is not an option. In this regard these communities will have to formulate both offline and online strategies that counter the continuous repression that their narratives, experiences and aspirations suffer.

Conclusions

High costs for accessing the internet remain a barrier in Malawi. Given the economic imbalances between men and women, this means that male voices, thoughts and actions continue to dominate spaces that should ordinarily be shared and distributed equally.

Policy ambiguities and inconsistencies have also meant that the plight of sexual minorities is not prioritised. These are best encapsulated by the way policy actors, chiefly the government, have behaved in Malawi in the past five years. These actions, from the arrest of a same-sex couple in 2010, a moratorium on the arrest of same-sex couples in 2012, then Constitutional review of the legality of sodomy laws in 2013 and finally, the criminalisation of same-sex relationships in 2015, all indicate the complexities of dealing with sex and sexuality in Malawi.

Tellingly, opportunities for progressive dialogue and discussion have not been utilised to seek understanding and inclusion of critical stakeholders in designing frameworks that support sexual minorities in Malawi. Therefore the absence of online counter-narratives on sex and sexuality has created gaps in the representation of LGBTI and feminist voices and aspirations.

This means that existing prejudices against these communities are continuously left unchecked and are reinforced in a seamless flow between both offline and online spaces. Such conditions are creating fertile ground for gender-based violence online, an import from offline spaces. Against this backdrop, a legal framework that criminalises same-sex relationships, such as the one in Malawi, reinforces oppressive practice and fails to offer adequate support to marginalised communities, which include women and sexual minorities.

However, the use of new communication technologies to organise and advance alternative narratives on empowerment, sex and sexuality signifies massive potential to upset the existing order and introduce new shifts towards more open and inclusive societies. Although there appears not to be much awareness on privacy and digital security concerns, these technologies are enabling conversations while at the same time offering private comfort to users.

More broadly, an insistence on culture and religion as being the custodians of “Malawian values” is misleading at best, and retrogressive at worst. Within the ambit of culture and religion in Malawi, sex and sexuality are policed in a manner that does not inspire honesty and openness at various levels – family, church and society. The result

¹³ Interview with Gift Trapence, director, Centre for the Development of People (CEDEP), 10 June 2015.

¹⁴ Ibid.

of this is denialism, which dismisses and purports alternative sexual behaviour and preference as “un-Malawian” by virtue of the power held by cultural and religious institutions, and prevents the evolution of critical discussions and dialogues about sex and sexuality.

Regardless, opportunities still exist for the introduction and evolution of a progressive sexual rights discourse in Malawi. Such opportunities will require innovative thinking, consolidated effort and courage if they are to be harnessed.

Action steps

The following action steps can be suggested for Malawi:

- Innovation in creating safe online and offline spaces for sincere and honest conversations about sex and sexuality at various layers of society (family, school, workplace, church, etc.).¹⁵
- The creation of sustainable structures and mechanisms of support for sexual minorities and other marginalised groups.
- The introduction of information platforms and services that can empower sexual minorities and other marginalised groups. These platforms can also be used to organise and lead public interventions which encourage openness about sex and sexuality.
- The inclusion of LGBTI issues in national sexual reproductive health programmes.
- Regular and robust engagement with religious and cultural institutions on matters of sex and sexuality in Malawi.
- The active involvement of LGBTI communities in policy formulation, implementation and review.
- Privacy and digital security training for LGBTI communities in Malawi to empower them to safely organise online without being surveilled.

¹⁵ An example of innovation would be using mobile practices to access information on LGBT issues.



Queer Montenegro and One World Platform

Vanja Gagovic and valentina pellizzer
queermontenegro.org and oneworldplatform.net

Introduction

Montenegro is among the 10 smallest countries in Europe.¹ It spreads over 13,812 km², and includes rivers, mountains and half a lake. By population size, with 620,000 citizens, it occupies 43rd place in Europe.² At least 60% of Montenegro is covered by high mountains, so even though there are at least two dozen towns, the average density of the population is 36 people per square kilometre. As Montenegro shows, such a small “community” of citizens can either be cooperative and accepting of each other, or – in this case – hostile to those who are different.

By 2003 probably a third of the population (aged 10-40) was online using services and platforms such as mIRC, ICQ, MSN Messenger and Myspace. In 2004 “Forum Cafe Del Montenegro”,³ one of the first forums hosted by a local media website, was formed and is still active.

According to the Montenegro Statistical Office⁴ more than half of Montenegrin households own or use a computer (53.7%). The latest available internet statistics show 369,220 internet users as of 31 December 2013, which means a 59.4% penetration,⁵ and 306,260 Facebook users in December 2012 (49.2% penetration). From a study done in 2007 by the Centre for Monitoring and Research,⁶ young computer and internet users were self-taught. It is important to note that Montenegro has high mobile phone usage, with 1,103,698 mobile phones (or a penetration rate of 178.01).⁷ Even though other

reports show a lower rate of 163, it remains substantially high. When we come to smartphone use, recent statistics talk of 35.8% of the population accessing the internet over their mobile devices.⁸

Hate speech and a culture of violence

The Law on Electronic Media⁹ was promulgated in mid-2010 and, after a long debate,¹⁰ mainly related to the governing model and the existence of two bodies which regulate electronic communications (the Broadcasting Agency and the Agency for Electronic Communications and Postal Affairs), was amended in 2011.¹¹ Both this law and the country’s Media Law¹² state that it is forbidden to publish information and opinions which would encourage discrimination, hate or violence towards others, specifically vulnerable groups, or provide services that are a threat to national security and the constitutional order. The Electronic Media Law states that the author of the content and the broadcaster will not be prosecuted if he or she did not have the intention to insult or denigrate the vulnerable groups or if the denigrating content is part of a report which is published with the intention to critically point out discrimination suffered by a vulnerable group.¹³ In

1 https://en.wikipedia.org/wiki/List_of_European_countries_by_area
2 https://en.wikipedia.org/wiki/List_of_European_countries_by_population
3 forum.cdm.me – the media portal hosting the forum can be found here: www.cdm.me
4 Montenegro Statistical Office. (2014). ICT Usage in Households in 2014. www.monstat.org/userfiles/file/ICT/2014/ICT%20USAGE%20IN%20HOUSEHOLDS%20IN%202014.pdf
5 www.internetworldstats.com/europa2.htm
6 www.cemi.org.me/index.php/en
7 https://en.wikipedia.org/wiki/List_of_countries_by_number_of_mobile_phones_in_use; see also wire.seenews.com/news/montenegros-end-dec-mobile-phone-penetration-up-to-163-43-460959

8 NTH Mobile. (2013, 9 April). Reach over 22 million Balkan mobile users with MT billing. www.nth-mobile.com/blog/payment-blog/reach-over-22-million-balkan-mobile-users-with-mt-billing
9 Law on Electronic Media: www.ardcg.org/index.php?option=com_docman&task=doc_download&gid=405&Itemid=26; see also: www.epra.org/articles/media-legislation#MONTENEGRO
10 Seferovic, D. (n/d). Montenegro: New Laws on Electronic Communications and Media Adopted. *IRIS Merlin*. merlin.obs.coe.int/iris/2010/9/article33_en.html
11 Media Law (Official Gazette of the Republic of Montenegro 51/02, 62/02 and the Official Gazette of Montenegro 46/10 and 40/11), the Electronic Media Law (Official Gazette of Montenegro 46/10, 40/11, 53/11 and 06/13) and the Rulebook on Programme Standards in the Electronic Media (Official Gazette of Montenegro 35/11 of 21 July 2011).
12 www.ardcg.org/index.php?option=com_docman&task=doc_download&gid=20&Itemid=26; see also the amendment: www.ardcg.org/index.php?option=com_docman&task=doc_download&gid=29&Itemid=26
13 For a complete reading of the articles from the different laws: The Media Law in Article 23 states: “It is forbidden to publicise information and opinions that instigate discrimination, hatred or violence against persons or a group of persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation. The founder of the medium and the author shall not be held accountable if the information referred to in paragraph 1 of this Article is part of scientific or authorial work the subject of which is a public issue and is publicised:

listing the members of vulnerable groups, the laws mention individuals with different sexual preferences.¹⁴ A draft electronic communications strategy was in place from 2006 until 2013, and in August 2013 the Law on Electronic Communication was published.¹⁵

A good description of the culture of violence that affects Montenegro can be found in research by the NGO Juventas¹⁶ which has shown that “bullying affects 57.3% of high school students every day”:

27.6% are exposed to threats and 16.7% stated that students of their school are physically assaulted by other students. Security/safety of an

– without the intention to instigate discrimination, hatred or violence, especially if that information is a part of an objective news report;

– with the intention to critically indicate the discrimination, hatred or violence or any phenomena which represent or might represent instigation to such behaviour.”

The Electronic Media Law in Article 48 states:

“(1) Provision of AVM service threatening the constitutional order and national security shall be prohibited.

(2) An AVM service must not incite, enable incitement or spread hatred or discrimination on the grounds of race, ethnic background, skin colour, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation.

(3) The publication of information revealing the identity of a minor under 18 years of age involved in any case of violence, regardless of whether being a witness, a victim or an offender, or disclosing any particulars of the family relations and private life of a child shall be prohibited.”

The Rulebook on Programme Standards in the Electronic Media in Article 17 states:

“(1) Programmes of the electronic media shall not be aimed at violating the guaranteed human freedoms and human and citizen rights or provoking national, racial and religious intolerance of hatred.

(2) The electronic media shall not broadcast the programmes promoting the belonging to an ethnic group, sex or sexual orientation as a form of discrimination.

(3) The electronic media are obliged to avoid using offensive terms that might be associated with certain social group.”

And in Article 8: “Broadcasting of the programmes referred to in Article 17 is allowed if they are a part of scientific, author’s or documentary work, published:

a) with no intention to instigate discrimination, hatred or violence, or as a part of an objective report;

b) with the intention of critically pointing at the discrimination, hatred, violence or factors that instigate or could instigate such a behaviour.”

Source: Agency for Electronic Media of Montenegro. (2014).

LGBT Rights in the Programmes of National TV Broadcasters in Montenegro. www.ardcg.org/en/index.php?option=com_docman&task=doc_download&gid=91&Itemid=4

14 This implies that “gender identity” is “sexual preference” and “sexual preference” is supposed to be “sexual orientation”. The dispute is always around the use of gender vs sex, where gender identity should not be a synonym for sexual preferences or orientation. It is a confusion very often present in reporting. Our language translates poorly in this case.

15 Law on Electronic Communications: www.ekip.me/download/Law%20on%20Electronic%20Communications%20%28updated%29%204.9.2013%20%281%29nova%20verzija.pdf; see also: www.ekip.me/eng/regulation/ecommunications.php

16 juventas.co.me/index.php/en/about-us

LGBT [lesbian, gay, bisexual and transgender] young person or a person perceived as LGBT in the school environment is very low. 63% of high school students stated that they had heard that a young person had been ridiculed for being gay/lesbian/bisexual/transgender; 53.3% heard that such a person had been exposed to insults, 22.7% physical assault and 29.8% (one third) had heard that such a person had been exposed to threats.¹⁷

Within this frame, children learn to adapt or to suffer in silence. It is considered rude to “talk back” to parents, even to ask legitimate questions. The rudeness is punished quite often with physical violence ranging from simple slaps to being beaten with a belt.

So the overarching accepted norms are: be obedient, be normal, do not stand out and do not provoke. Anyone who doesn’t comply gets punished. Adults punishing adults, parents punishing children, children punishing other children.

“They’ll get bored and go home...”

Despite being a non-conforming minority, the LGBT* community has learned not to stand out, to stay hidden, to be obedient and not to provoke anyone. Because of this, organising a Pride March was a very troublesome move. For a taboo-driven, patriarchal community, the simple idea of having half-naked men and women parading through the streets, kissing and doing *god-knows-what* and *in front of the children* (the most common descriptive picture and perception of the Pride March amongst Montenegrins) was simply unacceptable.

Montenegrin media reinforces this negative stereotype. Descriptions of the Pride March and any discussion of sexual orientation will use sensationalistic headlines such as “gay parade” or will indulge in inaccurate use of terminology relating to sexual preferences. Even though civil society organisations, such as Juventas, have organised training with media representatives on sexual orientation, gender identity and the use of correct terminology, it remains hard to change the attitudes of journalists who do not consider the proper terminology relevant.

In most cases – and the media is no exception – the acceptance of different “lifestyles” remains confined to fashion and the latest technological

17 ILGA Europe. (2014). *Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Montenegro: Contribution to the 2014 EC Progress Report*. www.ilga-europe.org/sites/default/files/ilga-europe_review_of_montenegro_contribution_to_ec_2014_progress_report.pdf

gadget. But underneath all of this is a push to conform to traditional social norms. This implicit and explicit culture of violence in Montenegro is very strong amongst generations exposed to and born during the Balkans wars of the 1990s, where patriarchy found expression in the hate of other nationalities and minorities. Now everything other than “normal” or “natural” is sneered at with a tone that verges on misogynistic, with a dash of chauvinism.

Before the first Pride Parade finally took place in Podgorica on 20 October 2013,¹⁸ there were attempts to stage it for three years in a row. During these attempts, people’s comments on online news sites showed their anger and high level of rejection of the idea, and kept administrators and moderators busy deleting comments that constituted incitement to hate or threats to persons. Despite this active moderation, the comments created the image of a giant, angry and frustrated anti-gay community – an image that feeds the paranoia of an average LGBT* person.

In a survey by several local researchers carried out in 2012, 71% of Montenegrins said they thought homosexuality was an illness and 80% said it should be kept private.

The most common comments can be grouped by type:

- “Why is the media giving them so much coverage? There’s so much more important news such as sick children or government manipulation.”
- “Just ignore them on that day. Don’t leave the house; they’ll get bored and go home.”
- “This is just so the NGOs can get their hands on European and American money.”
- “They are doing this so the others [anti-gay protesters] will vandalise the city – shame on them!”
- “I have nothing against them, if they keep it behind four walls or to themselves and don’t parade around.”

It is rare for LGBT* persons or their allies¹⁹ to post comments on news websites. In fact, LGBT*s often do not even read the news. On the other hand, as a

social phenomenon, many people feel compelled to share their loud disapproval of something that they claim “is none of their business”.

The first Pride Parade in 2013 saw a small war on the street, with 2,000 police protecting around 200 participants. Anti-gay youth thought they would be able to reach the marchers; but when they could not they assaulted police officers who were securing the march or demolished public property.

In contrast, the 2014 Pride event experienced no unpleasantness whatsoever. Both the date and location of the march in Montenegro were kept private until the day itself.²⁰ Institutions, pressured by the international community and eager to start the European Union (EU) accession process, took a public stand, and ensured that the participants were protected from the youth that the previous year were demolishing the streets (a football match was organised as a way to distract them, and to let them vent their objections to the march elsewhere). The lack of aggression in the streets was compensated by complaining online, where people feel protected by their anonymity to say anything and get away with it.²¹

That same anonymity is used by people to point out and express their right to be different. The more stringent the requirement to provide your real name when signing up to a website, the lower the chances the person who comments will be an activist.

For the LGBT* population, anonymity is a safe way to find partners and communicate with other LGBT* people. And it is the possibility to be anonymous that determines the choice of social network or platform and the kind of public communication that is shared.

Facebook, for example, requires a valid name and a valid email. It has become a platform where people keep in contact with what seems like every person they have ever met in their life. They keep track of each other and interact even if miles apart.

18 Komnenic, P. (2013, 20 October). Montenegro’s First Gay Pride Parade Takes Place Under Heavy Security. *Huffington Post*. www.huffingtonpost.com/2013/10/20/montenegro-gay-pride-parade_n_4131778.html; see also on the July 2013 march in Budva: Reuters/AP. (2013, 24 July). Violence Mars Montenegro’s First Gay-Pride Parade. *Radio Free Europe*. www.rferl.org/content/montenegro-gay-pride-attacked/25055771.html

19 Someone who is not a part of the LGBT* community but is supportive. In order to avoid outing themselves, some LGBT* people will call themselves allies.

20 Day, A. (2014, 8 October). Montenegro: Second Pride event will be held in secret from violent anti-gay protesters. *Pink News*. www.pinknews.co.uk/2014/10/08/montenegro-second-pride-event-will-be-held-in-secret-from-violent-anti-gay-protestors/; Milic, P. (2014, 2 November). Montenegro’s Gay Pride Parade Draws About 200 Activists Despite Nation’s Conservative Mindset. *Huffington Post*. www.huffingtonpost.com/2014/11/02/montenegro-gay-pride-parade_n_6091060.html; and Associated Press. (2014, 2 November). Peaceful gay pride held amid police protection in conservative EU-hopeful Montenegro. *Fox News*. www.foxnews.com/world/2014/11/02/peaceful-gay-pride-held-amid-police-protection-in-conservative-eu-hopeful

21 The 2015 Pride event was scheduled and banned by the authorities twice due to security reasons, on 24 April and 8 May, and is now scheduled for 18 October. ILGA Europe. (2015, 9 May). Pride event banned in Montenegro. www.ilga-europe.org/resources/news/latest-news/pride-event-banned-montenegro

To be “out” on Facebook means one would have to be out in real life.

Because of the risk this would imply, closed Facebook groups are used as online spaces where LGBT* people gather, meet each other and interact. Even if there are not many people in the group, they are perceived as safe. There is no fear of being judged or outed publicly. However, this also generates a parallel world where due to the fear of being outed or hurt, people keep in touch exclusively over Facebook and pretend they don’t know each other in the streets.

There is a growing trend amongst LGBT*s to make profiles with fake names in order to find other LGBT* people, mostly for sex. Trans* people tend to make a profile with their preferred gender and name, and add friends that are supportive. Some of them even keep the cis²² profile because of families and friends who do not know they are trans, including school friends.

Twitter does not require more than a valid email, but it offers the possibility of connecting to Facebook. Some LGBT*s use Twitter, some do not – and if someone plans on being “out” online, they *really* do not use Twitter. Rather, if someone is displaying publicly as LGBT* on Twitter, they use an alias and try to make sure none of their “followers” know their real identity. Being out on Twitter, given the social context in Montenegro, they cannot make a lot of friends, or exchange opinions.

LGBT* people who connect Twitter to Facebook know some of their followers personally, and more often than not have a “private” profile.

Tumblr is another blog-like platform often used among young LGBT* people. LGBT* people thrive on Tumblr, but because of the anonymity it provides, they are actually hard to locate. Their blogs are known only by a chosen few, if they even choose to reveal the fact that they have a blog. Tumblr does not require a person’s real name, just a blog name. The blog has an “about me” section where people sometimes write their name, age and country/city, and it is a very interesting that LGBT* people sometimes even include their MBTI assessment,²³ sexual orientation and preferred pronouns.

When one becomes part of the Tumblr community one feels no judgement, no disrespect, no shaming in any way. It is like a whole country of people who are there for each other, care for each other, share funny gifs and good advice.

Planet Romeo is the most used dating site among the men-who-have-sex-with-men (MSM) population. It is mostly used to find sex partners, but also to initiate friendships. Unlike Facebook or Twitter, Planet Romeo is known to be an MSM dating site, so if someone were to have their name or face there, it would make them vulnerable to outing, or any other potential unpleasantness in real life. The profile pictures/user-names vary from *Athletic29Top* with a picture of the man’s muscles to *Gladiator_27* with a profile picture that is a screen shot from the movie *Gladiator*.

Conclusions

The LGBT* community in Montenegro is still mostly closeted. LGBT* people take care of themselves online the same way as they do offline, by appearing “normal”, not standing out, by being cautious about the way they act with their partners in public, and by not talking about sexual orientation unless explicitly asked, and sometimes not even then. If surrounded by people they do not perceive as a threat or if they are in a group of seemingly supportive strangers they will never see again, then the possibility of coming out is higher.

This is also the case when anonymity is completely guaranteed: on forums, in chat rooms and other similar social media platforms. Anonymity allows freedom of expression without negative consequences and without intimidation. Unless the chosen online group is discovered or infiltrated by homophobic trolls or just plain haters²⁴ – but then the LGBT* community will not react adequately, if they react at all.

Action steps

In order to provide a safe environment for LGBT* people to be themselves online, we first need to provide that same safety offline.

- There is a need for information and education about what sexual orientation is. It is important for people to realise that we can be “just gay” in the same way that we can be “just straight”.
- Guidelines on how to act if faced with discrimination or hate speech online are necessary, because those who reply to hateful comments mostly start a fight. Others simply do not respond out of fear of intimidation.
- Support LGBT* people to stand up for their rights. There is the need for a stronger network and more solid ground to stand on.

²² <https://en.wikipedia.org/wiki/Cisgender>

²³ The Myers–Briggs Type Indicator (MBTI) assessment is a psychometric questionnaire designed to measure psychological preferences on how people perceive the world and make decisions.

²⁴ These are mostly people who will hate anything and everything; not necessarily homophobic, but not friendly either.



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Introduction

Online sexual harassment and other forms of sex-related cyber crime create new challenges for governments, and invite researchers and policy makers to rethink many concepts linked to gender-based violence. In this sense, and given the pervasiveness of the internet, the government in Morocco needs to update its legal frameworks to respond to the changes that characterise our life today.

When it comes to online sexual harassment, the key questions here are: How are information and communications technologies (ICTs) – and in particular social media – used in cases of sexual harassment; and how can they be used by the Moroccan government and NGOs to fight against the crime?

This report considers the recent drafting of a new criminal law in Morocco that attempts to deal with sex-related cyber crime.

Policy and political background

Morocco is a country with an area of 710,850 square km and a population of 31,514,000, more than 50% of which is female.¹ The national religion is Islam, and the national languages are Arabic and Amazigh,² as enshrined in the 2011 constitution.³ Influenced by globalisation through technology, as a developing country, Morocco has 16 million internet users, and in 2012, 92% of the population was equipped with mobile phones.⁴ On the one hand, these statistics demonstrate the transition of Moroccan society to a knowledge economy, and on the other, they suggest the context for the rising number of cyber crimes recorded each year.

1 Haut Commissariat au Plan. (2010). *Le Maroc des régions*. www.hcp.ma/file/129637

2 Ibid.

3 Royaume du Maroc. (2011). *La constitution*. www.maroc.ma/fr/system/files/documents_page/BO_5964BIS_Fr.pdf

4 Rouaud, P.-O. (2013, 24 May). Le Maroc compte 16 millions d'internautes et se prépare à la 4G. *Usine nouvelle*. www.usinenouvelle.com/article/le-maroc-compte-16-millions-d-internautes-et-se-prepare-a-la-4g.N197487

Despite the increasing number of sexual harassment cases in cyberspace, and Morocco's avowed commitments at the international level – including the ratification of several international conventions such as the Budapest Convention on Cybercrime⁵ – the government's legislative agenda does not address sexual harassment in cyberspace sufficiently. NGOs also tend to concentrate their efforts exclusively on sexual harassment offline.

The fight against cyber crime is a major challenge for Morocco's transition to a knowledge economy. Recognising the importance of this challenge, the Moroccan government has identified a national strategy for its information society and digital economy. This strategy treats ICTs as key instruments for human and economic development, and focuses on their impact on productivity and the international competitiveness of the national economy. From this perspective, the main objective of this strategy is to position Morocco among dynamic emerging countries using information technology as a central means for their economic development.

Yet even if this strategy is based on economic and human development, critics argue that it is flawed. The strategy encourages access to and use of the internet and ICTs, but without considering their negative impact on society, especially on women's safety.

Campaigns to combat online sexual harassment

Morocco's Cybercrime Services, working under the General Directorate of National Security, identified 112 cases of cyber crime in 2011. More than 26 of these cases were of crimes against personhood, including sexual harassment.⁶

This number is typical when considering official statistics on sexual violence in general, including sexual harassment. According to a survey conducted by the High Planning Commission, out of 9.5 million women aged 18 to 64, nearly six million, or 62.8%, had suffered violence during the 12 months preceding the survey. As many as 23% of the women, or 2.1 million, had suffered an act of

5 conventions.coe.int/Treaty/EN/Treaties/Html/185.htm

6 Rboub, A. (2012, 28 September). Cybercriminalité : les premiers chiffres passés au crible. *L'économiste*.

sexual violence in their lives.⁷ This percentage also includes sexual harassment.

There are no official statistics that break down in detail cases of sexual harassment in cyberspace in Morocco, nor in Arab countries in general. However, the emergence of gender-based cyber crime has prompted some organisations to conduct surveys to try to establish the severity of the problem. For example, the Centre for Media Freedom in the Middle East and North Africa (CMF-MENA) conducted a survey of 106 children in Casablanca and concluded that “more than two thirds of respondents had received travel offers, gifts or marriage proposals from unknown persons via the Internet.”⁸ Also noteworthy are such infamous perpetrators as Philippe Servaty, the Belgian journalist who took pictures of young girls from Agadir, and published them on a pornography website.⁹

The emergence of sex crimes online has spurred civil society to fight against them using social media and ICTs. Many NGOs have invested a lot in online tools to do just this. Several awareness campaigns and advocacy initiatives have been launched in recent years, such as the music video titled *Pour l'égalité “Masaktach ana”*¹⁰ (For Equality I'll Not Shut Up). This music video was developed by Space for the Future (EPA), a national NGO dedicated to youth and gender issues. The video addresses sexual harassment in different spaces, including online, in the street, the workplace, homes, and in rural areas. The purpose of this video is to sensitise young people to the importance of talking about cyber sex crimes. Its song lyrics are the following: “I'll not stop speaking about this phenomenon. I'll continue to talk about it and I'll continue to make my voice heard to all, even though it is considered a taboo by my society, my traditions, customs and educational system. I'll continue to fight against it because it's my right as a woman and as a girl to live in safety. In a democratic country women and men should be equal, and I'll not stop fighting for this equality.”¹¹

Moroccan legislation combating sexual harassment in cyberspace

The Moroccan Constitution of 2011 guarantees the protection of the rights and freedoms and the physical and moral integrity of human beings. However, at the moment, sexual harassment in cyberspace is punished by traditional criminal law.

This is set to change with the preliminary draft of a new Criminal Code.¹² The definition of sexual harassment provided in the draft includes online harassment. According to Article 503-1-1 of the draft, sexual harassment refers to “anyone who has bothered another person in public spaces, or in other environments, with acts of a sexual nature, or gestures for sexual purposes, by using written messages or phone or electronic records or pictures of a sexual nature, or in order to obtain sexual advantages.”¹³

This preliminary draft has ignited a heated debate in Moroccan society between all stakeholders: members of the government, and those in higher education, the media and civil society. It is expected to be adopted by the government council and then submitted to parliament. The prescribed penalty is one month to three years in prison with a fine of 1,000 dirhams (USD 90) to 3,000 dirhams (USD 270).

This legal reform has come after years of activism and several advocacy campaigns organised by the women's movement, which created a number of networks linking like-minded associations that pushed for the reform to the Criminal Code. That civil society – and in particular the women's movement – took the lead in this advocacy was expected. All judicial reforms related to gender-based violence have been directly or indirectly initiated by women's associations and NGOs working in the field of human rights, which have over time accumulated experience in advocating for change in policy and legal instruments. Now, with the preliminary draft of the Criminal Code, women's associations are fighting for a special and general law against gender-based violence rather than simply having an article included in the Criminal Code.

The preliminary draft does not meet the minimum demands made by the women's movement, which include, as suggested, a special and general law dealing with violence against women. It does not, for instance, meet the minimum of Morocco's commitments under the international conventions it has ratified, such as the Budapest Convention and the Convention on the Elimination of all Forms

7 Haut Commissariat au Plan. (2011). *Enquête Nationale sur la Prévalence de la Violence à l'Égard des Femmes, Principaux résultats présentés*. www.hcp.ma/downloads/Violence-a-l-egard-des-femmes_t13077.html

8 Rboub, A. (2012, 28 September). Op. cit.

9 Ibid.

10 Espace pour l'avenir (EPA). (2015). *Pour l'égalité « Masaktash Ana »*. www.febrayer.com/94112.html

11 Ibid.

12 Ministère de la justice et des libertés. (2015). *L'avant projet de code pénal*. www.justice.gov.ma/lg-1/documents/doccat-4.aspx

13 Ibid.

of Discrimination against Women (CEDAW).¹⁴ All these instruments require governments to implement public policies and strategies to end sexual violence.

The Moroccan cyber crime legislation is also incomplete compared to international standards set by similar legislation in other countries – some of which is pioneering in terms of the kind of regulations developed and the extent of international cooperation.¹⁵ Part of this is to do with the lack of a participatory approach in developing the legislation in Morocco – including the lack of a gender perspective.

Conclusions

Given both the country's constitution and the international conventions it has ratified, the Moroccan government is obliged to update its legal framework to bring it in line with international norms and to create specialised institutions. It is also obliged to include all actors in policy development, and to work with civil society to fight against cyber harassment.

To end gender-based violence and sexual harassment, several legal reforms are necessary. Firstly, a special law against gender-based violence, as demanded by the women's movement, is needed. Moroccan cyber crime legislation is also incomplete compared to international standards set by similar legislation in other countries. Secondly, a special institution needs to be set up, which can support the government through studies and in developing policies and legislation. We note here the importance of Article 19 in the new constitution concerning the creation of an authority that works towards equality and non-discrimination.¹⁶ Any such institution must be open to all stakeholders, and provide at least the minimum necessary information on cyber crime in general and online sexual harassment in particular.

The government should also invest in human resources through building capacity amongst all stakeholders on sex-related cyber crime.

Awareness campaigns must be run in educational institutions to educate the youth about the risks of using ICTs, especially social networks. In this regard, it is also important to encourage young people to share information on online sexual

harassment – because they are at the forefront of internet use and most sexual harassment crimes are suffered and perpetrated by youth – and to promote women's rights online.

International cooperation is very important for the exchange of experiences but also in terms of fighting online crime. Since online violations can involve a perpetrator from one country and a victim from another, technical and judicial cooperation is necessary.

Given that the emergence of Morocco as a knowledge economy has been accompanied by a rise in cyber crime, including online sexual harassment, it is imperative that all stakeholders focus on curbing this phenomenon. The state must commit to establishing a digital strategy based on human rights, with a particular focus on gender rights. This involves the coordination of all actors and sectors that contribute to the technological development of Morocco, a multistakeholder approach that is fundamental to ending sexual harassment via the internet.

Action steps

The women's movement in Morocco continues to advocate for a specific and general law against violence to address all forms of gender-based violence. As part of this mobilisation, women's NGOs are now organising many public events, seminars, round tables and conferences to debate the new draft of the Criminal Code. They are also working with networks such as the *Réseau Femmes Solidaires* (Women's Solidarity Network) and the *Coalition civile pour l'application de l'article 19 de la constitution* (Civil Society Coalition for the Application of Article 19 of the Constitution).

The goal of these initiatives is to present a proposal with comments on the draft legislation as well as recommendations, in order to push the government to establish a specific law against gender-based violence. It is important that these initiatives draw on the principles contained in international commitments, and engage in the strategic use of ICTs – in particular social media – to make their voices heard.

¹⁴ www.un.org/womenwatch/daw/cedaw

¹⁵ For example, France's Law 78-17 on Information Technologies, Data Files and Civil Liberties and EU Regulation 611/2013 of 24 June 2013 on measures concerning the notification of personal data breaches.

¹⁶ Secrétariat générale du gouvernement. (2015). *Projet de loi n° 79-14 relative à l'autorité pour la parité et la lutte contre toutes formes de discrimination (version arabe)*. www.sgg.gov.ma/Portals/o/lois/Projet_loi_79.14.pdf

NETHERLANDS

DEALING WITH SEXTING IN SCHOOLS IN THE NETHERLANDS



NETSHEILA

Lin McDevitt-Pugh
www.netsheila.com

Introduction

Remember being 14 and discovering yourself as a sexual being? I do. It was a great feeling, and scary. For my peers and me, experimenting was a natural part of growing up. Dating this one, dropping that one, keeping our friends informed on who was hot and who was not. We each experienced this part of our lives differently, and none of us escaped it. We were constantly on the brink of elation or dejection.

If like me you were born before 1990, you had various technologies at your disposal to help in your lusting and learning. You may have spent hours on the phone, or writing letters. You may have met up at school or in the holidays, gone out on dates.

People born after 1990 had new technological possibilities to facilitate the gentle art of being an adolescent. From the turn of the 21st century, computer hardware manufacturers began building webcams directly into laptops and desk screens. In the privacy of their own rooms, adolescents could flirt, chat and, with a simple command, take photos on their computers.

The technology advanced rapidly. In 2007, Apple introduced the internet-enabled iPhone with a touch-screen interface. The Android followed in 2008.¹ Capturing, storing and sharing images of sexual intimacy just became a lot easier. By 2013, nine out of every ten adolescents in the Netherlands had a mobile phone. All 12- to 15-year-olds in the Netherlands are online, 84% of them on a daily basis.² WhatsApp, Snapchat and similar apps make it easy to share images with friends, for free. If these images are of naked or near-naked persons, or are sexually explicit, sending these messages is known as “sexting”.

Until a decade ago, things could get out of hand with the sharing of sexually explicit images in a way that was harsh and unacceptable, even though age-appropriate. Word could get out that a girl or boy was “easy” or “game”. Freshly dumped sweethearts wanting to save face with their peers or simply wanting to retaliate could paste compromising photos all over the school. In the past decade, the technological ability to do serious damage to an adolescent’s reputation has moved to a new level. With a simple click, the image can be distributed to friends and they can distribute it further. The video or image will stay in cyberspace forever and the fear of it popping up when least expected will remain a concern for the person in the image. It is not just a new level in technology: because the image is now being disseminated widely, the act of disseminating it falls under the laws relating to child pornography.³ In legal terms, all those who distribute it are punishable by law. The individual’s conviction of a sexual offence is registered and can never be erased. Future employers can ask for a declaration of good behaviour and read about the conviction; the young person will experience great difficulties in the job market as a result.

And that is a problem. With a punishment that essentially lasts a lifetime, what school would want their young people convicted? What are the options for action, between convicting the young people involved in sending the images around, and sweeping the incident under the carpet, leaving the most vulnerable people, the people whose images are now out in the world, to deal with the consequences?

Policy and political background

National

Sex between minors is not punishable by law if it is voluntary and consensual, if there is little age difference, and if there is an affectionate relationship

1 <https://en.wikipedia.org/wiki/Smartphone>

2 Rutgers WPF. (2015). *Whitepaper Jeugd en seks online*. www.rutgers.nl/sites/rutgersnl/files/PDF/DEF_Whitepaper_jeugd_en_seks_online.pdf

3 Article 240 of the Criminal Law refers to criminal pornography as the showing or unauthorised sending of images or objects that conflict with the sexual decency norms. For example, sending or receiving sexualised images via smartphone of someone under the age of 18 is a form of child pornography. <https://www.ncj.nl/richtlijnen/jgrichtlijnenwebsite/details-richtlijn/?richtlijn=2>

between the two adolescents concerned. Sexting, however, falls under Article 240 of the Dutch Penal Code.⁴ Sexting is defined as the publication of images that are in conflict with sexual decency.⁵ Minors engaging of their own free will in sex together is not treated as a crime but, until guidelines were introduced in late 2014, sexting with each other was a crime, regardless of the intention behind the exchange of images. The guidelines exempt the exchange of sexual images between two minors from the pornography laws, provided all of the following apply:

- No pressure or coercion was used.
- The person in the image knew the image was being made.
- There is no large age difference between the two people exchanging images.
- The images are not made for commercial purposes.
- The images are not disseminated beyond the two people.

In the absence of any one of these provisions, the adolescent whose image is being disseminated, other school students, a parent, a teacher or a social worker may report the crime to the police.

A conviction will stay on the young perpetrator's "Certificate of Good Conduct"⁶ forever. Rutgers – an organisation working on sexual and reproductive health and human rights in the Netherlands – is of the opinion that it is important to keep the offence off the records. Its motivation is that the young people involved are doing what young people have always done in situations of a teenage break-up, or dabbling in sexual exploration, or being mean, but the difference is that technology now makes it possible to publish the images and it is the technology that elevates the deed to the level of a criminal offence. Rutgers prefers that the young person's crime be treated as a light sexual offence, where he or she is given

a training order from the Council for Child Protection, and the life-long label of sex offender will not apply. Rutgers has developed an individual psycho-educational programme called "Respect Limits", consisting of 10 to 12 sessions provided by qualified trainers and coordinated by Rutgers, that a young violator attends as part of his or her training order.

International

Many international agreements signed by the Netherlands are applicable to the situation of the victims of sexting. In the Convention on the Rights of the Child (1989),⁷ states parties have promised to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The International Covenant on Economic, Social and Cultural Rights (1966)⁸ specifies that the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1980)⁹ provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, education, health and employment.

The Beijing Platform for Action (1995)¹⁰ reinforced the importance of educating women, men, girls and boys to promote the social status of girls, and encouraged everyone to work towards mutual respect and equal partnership between girls and boys.

Criminal sexting is a new issue, but the way that violence against women is treated in the law and within institutions is not new. The question is, does the way Dutch institutions deal with sexting encourage mutual respect and equal partnership between girls and boys?

The poldermodel

In December 2014 the Dutch broadcasting station NOS aired a documentary on sexting.¹¹ The item included the story of a 14-year-old girl who was in love with a boy and sent him, albeit reluctantly, a

4 www.ncj.nl/programmaliijn-kennis/richtlijnen/jgrichtlijnenwebsite/details-richtlijn/?richtlijn=2&rlpag=506

5 Until 1984, the term "sexual decency" could be seen as what others regarded as decent. In 1984, a girl in a miniskirt walking through the Amsterdam Vondelpark at night was raped and the defence claimed that her lack of decency made her complicit in the crime. In a breakthrough court case, the feminist organisation Tegen Haar Wil (I was co-director at the time) got rid of the bylaw that made such a claim possible. Since then, the only person responsible for a sexual attack is the sexual offender himself; the law now applies the feminist interpretation of the term "sexual decency" as crossing the boundary of sexual autonomy, freedom of sexual expression, the absence of force, and the protection of vulnerable people including minors, students in student/teacher relationships and patients in patient/doctor relationships.

6 The Dutch phrase is Verklaring Omtrent het Gedrag, or VOG.

7 www.unicef.org/crc/index_30177.html

8 www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

9 www.un.org/womenwatch/daw/cedaw

10 www.un.org/womenwatch/daw/beijing/platform

11 nos.nl/nieuwsuur/artikel/2009957-sexting-jongeren-verspreiden-steeds-vaker-naaktfoto-s.html

sexy selfie. “They always say ‘don’t do it’, but they never tell you what will happen if you do,” she says in the opening scene of the story. Minutes after she sent him the sext, he sent it to his friends. And they sent it to their friends. It got around the whole school in a matter of minutes. And in a matter of minutes, her peers were texting her and calling her “slut” and “prostitute”. The girl was afraid to tell her parents, and locked herself in her room. A stranger rescued her some time later at a railway crossing, about to lie down on the rails. Her intention was to commit suicide. After some time a neighbour told her parents what had happened, which only made her more scared. She was afraid they would reject her as their daughter.

The NOS documentary coincided with the launching of a report by Rutgers WPF¹² and Bureau Sense, in December 2014. Researchers asked 1,000 secondary school students whether they had ever received a naked, partially naked or sexually explicit image of another school student on their smartphone; 600 had. In the meantime, 5% of boys and 2% of girls between the ages of 12 and 15 reported having sent sexually tinted images to someone else, and 7% of the boys and 2% of the girls did this with images received from a third party.¹³ While very few young people are actively taking and sharing naked, partially naked or sexually explicit images, considerably more young people are seeing the images that a few of their peers are making. None of the young people in the study were aware that transmitting these images to their friends is illegal, and that being found to be transmitting these images will remain on the record for the rest of their life.

The role of schools

In the absence of real data, we can extrapolate that the chances are strong that a school of 800 students will have 4.6 cases of criminal sexting per year to deal with.¹⁴ No information is available on how the school in the NOS documentary dealt with the girl, or how it dealt with the young people disseminating her naked image. One of the viewers watching the documentary, the now 28-year-old Francine Regelink, used Facebook to share her story of a similar experience when she was at school. Her ex-boyfriend duplicated a screenshot

of her breasts and pasted them throughout the school after they broke up.¹⁵ The school did nothing. She moved to another school. The instances of young people choosing to move to a different school after such an experience remain to this day undocumented.

Things are changing, however. As of June 2015, schools are required to develop their own social protection or safety policy. Part of this policy will be programmes that support healthy sexual development in young people. Prevention, identification and care of victims of sexting comprise a required component of the policy.¹⁶ A number of organisations support schools in developing and implementing these policies: *Kennisnet* (Knowledge Net), *Bureau Jeugd en Media* (Youth and Media Organisation) and Rutgers. Rutgers provides tips and tools for lessons about relationships and sexuality on the website *seksuelevorming.nl*, including material on sexting,¹⁷ and produces studies on cyber sex and sexual abuse online and offline.

The Netherlands has a culture of mediation. Schools prefer to have the students work things out between each other, rather than bring in the law. Only when violence or blackmail is involved will the police be brought in. This culture, called the *poldermodel*,¹⁸ involving consensus decision making and the ability to set aside differences for the greater good, is stronger than the law.

Empowering young people to be in charge of their online identity

Criminal sexting is causing a rise in stress and depression in young people.¹⁹ According to Rutgers, some victims are adequately supported if the image or video is stopped from travelling further in cyberspace. The website *meldknop.nl* is used to issue requests to a number of servers to remove the image or video. Some victims seek psychological help, others want compensation. Some choose mediation, others want to prosecute.

- For Dutch authorities and care organisations, the emphasis is on prevention. In recent months many awareness-raising programmes for young people have been launched.

12 The name Rutgers WPF was changed to Rutgers in 2015.

13 Rutgers WPF. (2015). Op. cit.

14 The Amsterdam police record on average one incident of problematic sexting per day. Amsterdam has 62,750 school pupils in the age category 12-17. If the average size of a school is 800 pupils, and if problematic sexting is universal to all schools, then every school would have 4.6 incidents of problematic sexting per year.

15 www.facebook.com/GirlsLove2Run/posts/633636226748811

16 Personal email, Ineke van der Vlugt, Rutgers, 20 June 2015.

17 www.helpwanted.nl/opvoeders/scholenpagina/handleiding-sexting

18 See https://en.wikipedia.org/wiki/Polder_model for an explanation of this cultural phenomenon.

19 www.joop.nl/leven/detail/artikel/32519_chantage_na_sexting_zorgt_vaker_voor_psychische_klachten



The “changemakers” of WE CAN Young Tilburg behind www.onuitwisbaar.nu.

- In November 2014 in Amsterdam, the police, together with the vice squad and the organisation Qpido, started a series of 50 educational meetings for parents, teachers and professionals on sexting and grooming.

To increase the sexual and relational empowerment of young people, and to prevent risks in sexting, www.onuitwisbaar.nu was launched in November 2014 in Tilburg. This website was designed by WE CAN Young Tilburg to inform and support young people, parents and professionals and to increase their awareness of the consequences of sexting.

In May 2015 the Utrecht police department and the organisation Pretty Woman launched a city-wide educational programme to address the positive and negative sides of sexting.

Rutgers and SOA Aids Nederland have a website for young people, sense.info, that provides information on sexting with the emphasis on “keeping it fun and safe”.

Conclusions

Smartphones offer new possibilities in the repertoire of sexual development. A problem is that the images they capture can easily be misused, sent on to others without the permission of the person in the image or video, and launched into

cyberspace. Any material distributed in this way, without the permission of the young person in the image, is pornographic, no matter what the age of the person in the image or the person publishing the image. Young people sharing the image among themselves are committing a crime. Dutch law and Dutch agencies and initiatives are responding by:

- Excluding personal exchanges of sexual images between two young people in a relationship from the pornography law.
- Providing alternative sentencing, such as training orders, where young people learn to respect limits.
- Making it compulsory for schools to develop policies around, among other things, sexting.
- Developing classroom materials for various age groups on sexting to prevent the misuse of personal images.
- Creating tools to support the sexual empowerment of young people.

Little is known on how schools deal with incidents of sexting. Many questions can be asked. For example, is their primary concern to come to agreement (*poldermodel*), or legal compliance, whereby the law that has been developed to protect the interests of the victim in accordance with



From the website www.onuitwisbaar.nu (onuitwisbaar can be translated as “indelible” or “cannot be erased”).

international treaties and agreements prevails? Victims are probably not aware of their rights as defined in international treaties. The international human rights treaties are also probably not foremost in the minds of the mediators. So who is bringing this perspective into the mediation?

No registry is kept on how many victims choose to change schools after their image has been circulated, and how many perpetrators choose to attend a different school. Also unknown is the effect this has on their further education.

Action steps

The following steps should be taken in the Netherlands:

- Research how schools deal with incidents of sexting and how victims and perpetrators reflect on this.
- Include explicit policy on sexting in the general “social safety policies” of schools, including training of teachers and preventive measures.
- Measure the impact of the new social policies on the incidence of sexting.
- Exchange experiences with other European countries on the effects of policies to diminish the harm of sexting.
- Form recommendations for an effective Dutch policy on sexting, as part of sexual health policies.

NIGERIA

THE BAN ON SAME-SEX MARRIAGE: DIVERTING ATTENTION FROM MASS SURVEILLANCE



Fantsuam Foundation

John Dada and Theresa Tafida
www.fantsuam.net

Introduction

After decades of military rule, democracy is still in a “pilot” phase in Nigeria, and the tenets of human rights are under constant attack and the subject of debate. Many of the country’s legislators still suffer the hangover of a military, autocratic attitude and operate from a narrow conservative and religious moral compass that would not readily recognise the wide spectrum of human sexual preferences, and the rights of individuals and groups to live accordingly.

As the first and sole rural-based internet service provider in our region, equitable and affordable access to the internet has always been a priority for the Fantsuam Foundation. We have a vested interest in all internet-related legislation that may affect our services or users of our services. In addition we have an information and communications technology (ICT) training programme that focuses on the country’s youth. In these sessions we provide them with the latest information on their rights as internet users and the current state of legislation affecting the internet

This GISWatch report from Nigeria looks at the recent senate bill on same-sex marriages, and considers how the timing of its release, coinciding with campaigns ahead of presidential elections in 2015, makes it look more like a populist attempt to attract attention away from the government’s widespread online surveillance of its citizens.¹

Policy and political background

In January 2014, then Nigerian President Goodluck Jonathan assented to a senate bill which banned same-sex marriage,² imposing a prison sentence on violators, including on any person or group that is deemed to have supported same-sex unions. Through this law, Nigeria has one of the most

wide-ranging and punitive legislations against lesbian, gay, bisexual and transgender (LGBT) rights in the world.³ It joins the likes of Uganda, Kenya, Ghana and Senegal in rejecting gay rights, while the Gambia has also indicated its desire to follow in their steps.

It is important to acknowledge the socio-political context of Nigeria’s new draconian law against same-sex marriage. At least two of Nigeria’s most widely spoken languages have words associated with homosexuality, and as Nigerian gay activist Bisi Alimi⁴ points out, there are several historical cultural markers that show that traditional Nigerian society has always recognised various forms of sexuality. Nigeria’s encounter and acceptance of different sexualities, therefore, pre-dates the current mass hysteria over same-sex marriage.

However, as a former colony, Nigeria inherited the anti-sodomy law⁵ from Britain. While the United Kingdom (UK) parliament has since repealed this law – as have some of its other former colonies – it is still on the Nigerian statute books.

A violation of basic human rights

In the politically charged atmosphere leading up to the 2015 presidential elections, popular opinion began to shift towards the opposition. This led to an appeal to the conservative electorate by the government in power, which knew that both Muslims and Christians would find the same-sex marriage ban appealing. Within a few days of Jonathan assenting to the bill, Nigerian law enforcement agencies started arresting people on charges of belonging to gay groups, and subjected some to a public flogging.⁶

Although the repressive tactics of the Nigerian law enforcement agents have already earned

1 Since the new government took over, there have in fact been grave revelations of impropriety by the outgoing government.

2 Kaleidoscope Trust. (2014). Nigeria: Same Sex Marriage (Prohibition) Act (Briefing). kaleidoscopetrust.com/user/library/documents/main/2014-02-nigeria.pdf

3 Sneed, T., & Welsh, T. (2014, 16 October). What’s Driving Homophobia in Africa? *U.S. News and World Report*. www.usnews.com/news/articles/2014/10/16/how-anti-lgbt-legislation-in-uganda-nigeria-and-gambia-is-shaping-africa

4 Alimi, B. (2014). Homosexuality Is Well Rooted In The Core Of Nigerian Society & Identity. *Naij.com*. www.naij.com/54704.html

5 Kirby, M. (2011). *The Sodomy Offence*. sas-space.sas.ac.uk/4824/20/02Kirby_TheSodomyOffence.pdf

6 Petesch, C. (2014, 17 January). Arrests spreading under Nigeria anti-gay law. *Associated Press*. news.yahoo.com/arrests-spreading-under-nigeria-anti-gay-law-184912984.html; and Associated Press. (2014, 6 March). Nigerian men whipped in public for having gay sex. *Daily News*. www.nydailynews.com/news/national/nigerian-men-publicly-whipped-gay-sex-article-1.1713258

international criticism,⁷ they are increasingly going unchallenged. Equally unchallenged is the violence and, at times, mob action unleashed on individuals accused or suspected of being gays or lesbians.⁸ With official backing provided by legislation, the rights of minority sexual activists continue to be disrespected, and violently threatened.

This violation of basic human rights cuts right across the country because the Muslim religious community that forms the majority in northern Nigeria accepts it. The official backing of harassment has emboldened the Muslim security outfit Hisbah, which is known for its attacks on suspected gays and lesbians.⁹ The strident voice of opposition to homosexual rights from Jonathan's religious allies has continued unabated after he left office, including as recently as July 2015 when the new President Muhammadu Buhari visited the United States (US).¹⁰

The sweeping and wide-ranging sanctions embedded in this legislation may also be a reflection of the low level of political sophistication of many of the legislators, who may have difficulties understanding the implications of the new law, relying on the interpretations of their more savvy colleagues. Anecdotal evidence has linked high-ranking political and military officials to the Nigerian gay community.¹¹ These are individuals that are clearly beyond the reach of the new law.

Yet it is obvious that with such an emotive issue at play, it will be easier to divert national attention away from the lacklustre performance of the Nigerian legislature.¹²

Diverting attention from mass surveillance

Nigeria has gradually moved towards a less tolerant society. As the Nigerian economy grew due to its oil exports, so did the level of corruption, so much so that the country is now recorded among the most corrupt countries in the world.¹³ This is, in part, reflected in unlawful attempts at mass surveillance, both by the national government and at least one of the state governments.¹⁴ There seems to be an appetite for a multiplicity of legal instruments aimed at invading citizens' privacy, with little recourse for individual protection. For example, although the Nigerian Senate has passed the Cybercrime Bill (2013)¹⁵ into law, the Nigeria Communications Commission insists on the Lawful Interception Bill,¹⁶ which basically duplicates the Cybercrime Bill with additional bureaucratic hurdles added. As reported in our previous GISWatch report,¹⁷ the public seldom considers these concerns as something that can affect their personal lives and privacy.

The promulgation of the draconian law on same-sex marriage was obviously a populist move by an outgoing government that still had its eyes on winning the next elections in the country. Such emotive issues that appeal to the electorate's religious bias have often been used, with the resultant cycles of violence in Nigeria. But it still remains a trump card for the politicians and they deploy it under the guise of meeting the demands of their people. So, on the one hand, while the government institutes illegal mass surveillance of its people, it offers them homophobic legislation with the other, diverting their attention from the governance issues that are at stake.

7 Whitehead, E. (2015, 4 June). Nigeria urged to investigate military war crimes. *Al Jazeera*. www.aljazeera.com/news/2015/06/nigeria-urged-probe-military-war-crimes-150603134418815.html; and Nossiter, A. (2015, 3 June). Abuses by Nigeria's Military Found to Be Rampant in War Against Boko Haram. *The New York Times*. www.nytimes.com/2015/06/04/world/africa/abuses-nigeria-military-boko-haram-war-report.html?_r=0

8 Tatchell, P. (2007, 29 August). Nigeria's anti-gay witch-hunt. *The Guardian*. www.theguardian.com/commentisfree/2007/aug/29/nigeriasantigaywitchhunt; and Ross, W. (2014, 6 February). Nigerian gay people being hunted down. *BBC News*. www.bbc.com/news/world-africa-26065392

9 Ibid.

10 See: Shiklam, J., & Ejifom, R. (2015, 20 July). CAN, Group Urge Buhari Not to Succumb to Pressure on Same Sex-marriage as He Meets with Obama. *This Day Live*. www.thisdaylive.com/articles/can-group-urge-buhari-not-to-succumb-to-pressure-on-same-sex-marriage-as-he-meets-with-obama/215107; Broadhurst, C. (2015, 20 July). Nigerian anti-gay activists fear Obama pressure on Buhari during US visit. *RFI*. www.english.rfi.fr/africa/20150720-us-nigeria-same-sex-marriage-lgbt-buhari-visit; and Godwin, A. (2015, 20 July). Don't allow Obama force you to accept same-sex marriage - Redeemed pastor warns Buhari. *Daily Post*. dailypost.ng/2015/07/20/dont-allow-obama-force-you-to-accept-same-sex-marriage-redeemed-pastor-warns-buhari

11 The Street Journal. (2012, 12 March). Revealed: How Nigeria's Prominent Businessmen Recruit Homosexual Partners! *The Street Journal*. thestreetjournal.org/2012/03/revealed-how-nigeria%E2%80%99s-prominent-businessmen-recruit-homosexual-partners; and Sessou, E. (2012, 30 June). More people are secretly practising homosexuality in Nigeria. *Vanguard*. [vanguardngr.com/2012/06/r-e-v-e-a-l-e-d-more-people-are-secretly-practising-homosexuality-in-nigeria](http://www.vanguardngr.com/2012/06/r-e-v-e-a-l-e-d-more-people-are-secretly-practising-homosexuality-in-nigeria)

12 Jimoh, M.A., & Onochie, B.C. (2015, 4 June). Senate dumps own rules, passes 46 bills in 10 mins. *The Guardian*. www.ngrguardiannews.com/2015/06/senate-dumps-own-rules-passes-46-bills-in-10-mins; and Ogunmade, O. (2015, 4 June). Senate Mocks Lawmaking, Passes 46 Bills Without Legislation in 10 Minutes. *This Day Live*. www.thisdaylive.com/articles/senate-mocks-lawmaking-passes-46-bills-without-legislation-in-10-minutes/211156

13 Paradoxically, the oil wealth has also witnessed an increased impoverishment of the majority of Nigerians (Poverty Index, 2014, data.worldbank.org/country/nigeria) and the resultant recourse to faith healing and prosperity preachers.

14 Omanovic, N. (2014, 20 October). Nigerian government under fire for expansion of surveillance programs. *Privacy International*. <https://www.privacyinternational.org/?q=node/372>

15 <https://www.pinigeria.org/download/cybercrimebill2013.pdf>

16 www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=328&Itemid

17 Dada, J., & Tafida, T. (2014). Online surveillance: Public concerns ignored in Nigeria. *Global Information Society Watch 2014*. www.giswatch.org/en/country-report/communications-surveillance/nigeria

Conclusions

The preference of the previous Nigerian government for illegal mass surveillance does not bode well for the free expression of sexualities online. In the current climate, social media has been used to lure and track individuals who are suspected of being sexual minorities. With more people taking to social media, and with the government's unfettered access to people's communications, the privacy of Nigerian citizens is being compromised.

The ostensible reason for the multi-million dollar investment in eavesdropping equipment¹⁸ by the Nigerian government was the worsening security situation in the country. The irony is that this situation has visibly become worse since the procurement of this equipment.

The ban on same-sex marriage is expected to be counterproductive to Nigeria's struggle against a high HIV/AIDS prevalence.¹⁹ The stigma being whipped up against homosexuals will not make it any easier for those who are HIV-positive to seek treatment. Since the bill came into being, reports say the number of people provided with HIV prevention services has dropped by up to 70%.²⁰

A cross-cutting issue that persists in Nigeria is the high cost and unreliability of internet access. Online commerce and relationships flourish when access is affordable and reliable. The fact that this is not the case may, paradoxically, work to the advantage of the hardliners, because limited access means fewer internet users, and fewer people to censor, including the LGBT community.

Many LGBT people in Nigeria have gone underground. However, some have found solace abroad, particularly in the UK and US, where they are able to be themselves without fear of breaking the law.²¹

The lesbian and gay community in Nigeria have a Facebook page,²² where they also host the Nigerian Lesbian and Gay Foundation online.

Action steps

The following advocacy steps are suggested for Nigeria:

- Nigerian civil society organisations must recognise the harsh economic climate that pushes many citizens to seek solace in religion. Civil society must be the watchdog that ensures that the Nigerian government meets its obligations to citizens through an equitable distribution of the national wealth.
- It is important to ensure that there is concerted international pressure to repeal draconian laws that negate the fundamental human rights of individuals as enshrined in the Nigerian constitution. This kind of pressure has already been successfully applied by the US in the reversal of the anti-gay law in Uganda.²³
- International support is also necessary to promote a stable democracy in Nigeria, ensuring that it respects all the international treaties to which it is signatory.
- Nigeria is just coming out of a 16-year political system that was dominated by one party. For the first time, an opposition party has taken over the mantle of leadership. The high expectations of the populace hinge on security, combating pervasive corruption and economic development. This may be the first time Nigeria is getting such a chance to be led by a party that comes in with a clear programme of action. This new party will need all the support it can get locally and internationally. Nigerian civil society are already providing this support, and already the UK, US and G7 have all indicated the same. While the reversal of the law on same-sex marriage may not take place immediately, Nigerians can hope that the new government will give it due attention eventually.

18 Ogala, E. (2013, 25 April). Jonathan awards \$40million contract to Israeli company to monitor computer, Internet communication by Nigerians. *Premium Times*. www.premiumtimesng.com/news/131249-exclusive-jonathan-awards-40million-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html

19 Punch. (2014, 15 June). Nigeria's high HIV/AIDS prevalence rate. *Punch*. www.punchng.com/editorials/nigerias-high-hiv-aids-prevalence-rate

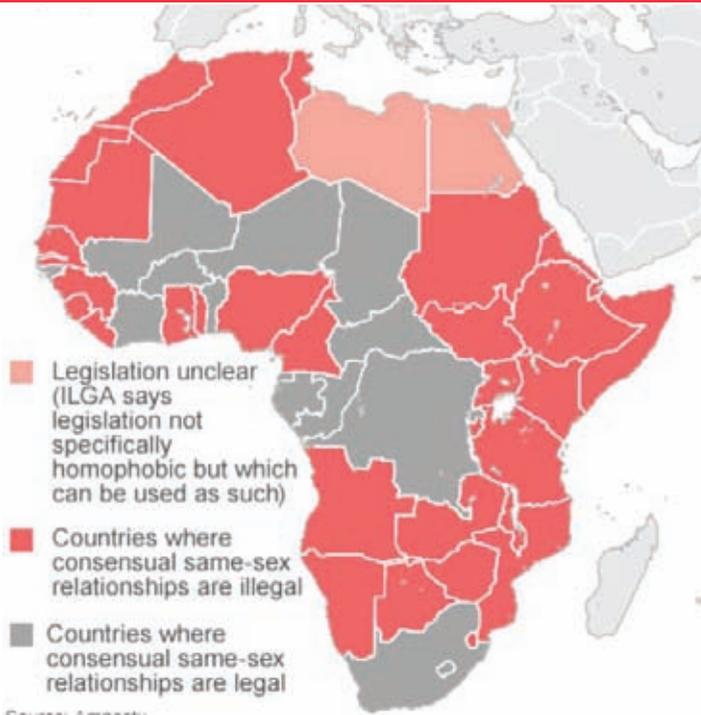
20 Stewart, C. (2014, 9 July). With Nigeria's anti-gay law, HIV care drops 10%-70%. *Erasing 76 Crimes*. 76crimes.com/2014/07/09/with-nigerias-anti-gay-law-hiv-care-drops-10-70; and Senzee, T. (2014, 17 July). Nigeria's Antigay Law Thwarts HIV Prevention Efforts. *Plus*. www.hivplusmag.com/treatment/world-news/2014/07/17/nigerias-antigay-law-thwarts-hiv-prevention-efforts

21 Ilesanmi, Y. (2014, 28 June). LGBT Rights activists demonstrates at Nigerian Centenary Awards, UK. Nigerian LGBTI in Diaspora Against Anti-Same Sex Laws. <https://nigerianglbtindiaspora.wordpress.com/>; and De Bode, L. (2014, 5 March). Exiled from home, Nigeria's gay community builds new life in US. *Al Jazeera*. www.america.aljazeera.com/articles/2014/3/4/exiled-from-homenigeriasgaycommunitybuildsalifeinnewyorkcity.html

22 Nigerian Gay and Lesbian Foundation. <https://www.facebook.com/pages/Nigerian-Gay-and-Lesbian-Foundation/286257818076265>

23 Deutsche Welle. (2014, 1 August). Uganda Constitutional Court strikes down anti-homosexuality law. *Deutsche Welle*. www.dw.com/en/uganda-constitutional-court-strikes-down-anti-homosexuality-law/a-17826296

Gay rights in Africa



Source: Human Rights Campaign/Human Rights First



Maan Network
George Hale
www.maannews.com

Introduction

Marginalised Palestinian communities are carving out space for sexual expression online despite obstacles from a patriarchal society as well as, in some cases, their representatives. One obstacle – faced by women in general, regardless of their public profile – is online harassment and sexual blackmail. Palestinian women say their abusers, whom they identify as predominantly male, frequently take advantage of societal strictures to prevent them from reporting harassment to the authorities and their families.

New efforts to assess and clamp down on such unique obstacles to access could arguably result in increasing women's share of employment in the Palestinian information and communications technology (ICT) sector and beyond. In response to online crime, the Palestinian Authority has intensified efforts to fight harassment on the internet. Its civil police force has created a 50-officer unit to target online abusers without dragging their victims into the spotlight. Some critics say other security agents are engaged in many of the practices the government claims to fight.

Policy and political background

In Palestine, according to a recent United Nations (UN) report, many laws are outdated or do not address current issues around domestic violence.¹ The Palestinian parliament has not been able to enact laws since 2007 when political violence split the West Bank and Gaza Strip into the control of separate regimes. A series of reconciliation attempts over the years remain unimplemented. As a result, modernising legislation regulating the ICT sector is not on the horizon.

At 17%, Palestine has one of the lowest penetration rates of women in the general economy.²

Numerous factors are responsible generally but women face additional risks online, which should be considered a contributing factor to the lack of female representation in the Palestinian telecommunications field. Increased connection to internet technologies has been a double-edged sword for many Palestinian women. Despite connecting them to platforms which encourage self-expression, the ease of sharing photographs and videos as well as personal information has left many vulnerable to blackmail and even violence.

Microwork: Empowerment or strangulation?

The disempowerment of women online can be seen not only as a consequence of the failure of authorities to counteract criminality online. It is also true that women do not share an equal role in the ICT sector in general, including at private companies. This contributes to disempowerment online. While officials say some Palestinian technology companies employ an equal number of men and women, few women can be found in their highest ranks.³ Most work in secretarial or service-related tasks, while men manage, experts say. Like in the rest of the world, men occupy most of Palestine's top technology positions. One strategy being debated in Palestine for increasing women's representation in the Palestinian technology sector is the field of microwork.⁴ The term refers to online tasks performed by multiple workers contributing to a single product. In the West Bank, one such project is being implemented by infoDev, which describes itself as a research group for ICT-related development.⁵

A 2013 World Bank feasibility study on bringing microwork to Palestine found that it had potential for reducing unemployment and underemployment of youth and women. Among the reasons cited were its ease of entry, flexibility in skills requirements, and ability to overcome movement and access restrictions in the occupied territories.⁶ The study

1 UN Women. (2014, 11 November). In Palestine, specialized prosecutors ensure women survivors' access to justice. palestine.unwomen.org/en/news-and-events/stories/2014/11/public-prosecutors

2 UN Women. (2014, 21 November). Leading the police service, ending violence against women her motto. beijing20.unwomen.org/en/news-and-events/stories/2014/11/woa-wafa-muammar

3 Contradictory reports on this gender breakdown exist, for instance, at: Paltel Group. (2012). *Annual Report 2012*. www.paltel.ps/admin/Upload/file/Annual-Report2012en.pdf

4 <https://en.wikipedia.org/wiki/Microwork>
5 www.infodev.org/en/index.html

6 World Bank. (2013). Feasibility Study: Microwork for the Palestinian Territories. siteresources.worldbank.org/INTWESTBANKGAZA/Resources/Finalstudy.pdf

concluded that the territories benefited from certain characteristics including a young, tech-savvy population – it noted Palestine’s 35% Facebook use among the population – along with competitive numbers of English-language speakers and relatively inexpensive internet and broadband. According to a 2015 United Nations Development Programme (UNDP) report on poverty and food security in the Palestinian territories, increasing microwork in the digital economy could address both issues: “As it is based on online, digital products and services, microwork can be performed remotely, anywhere, anytime – therefore providing viable jobs despite the Israeli-imposed restrictions on labour-related movement. Jobs in microwork could thus address the high levels of under- and unemployed women outside of Palestine’s cities, especially.”⁷

Proposals for increasing microwork have faced scepticism, however. Mark LeVine, a professor of Middle Eastern history at the University of California, Irvine, describes the potential benefits of microwork as elusive and illusory. He argues that such proposals not only neglect the fundamental role of the Israeli occupation in holding back the Palestinian economy, but could even serve the occupation’s interests. Economists have repeatedly identified the occupation as the primary obstacle preventing Palestinian development. Microwork centred on the internet or mobile phones “would allow Palestinians literally to work from their jail cells, offering them subsistence wages to engage in work that neatly fits into the parameters of the occupation,” LeVine wrote in a critique of a World Bank study on the type of work being offered to marginalised sectors. He added: “In so doing, whatever meagre benefits it produces, microwork will provide Israel with even more power to continue with the territorial strangulation of the West Bank” and the blockade of Gaza.⁸

Police unit’s profile grows

Another initiative appears to be having a clear impact on public perceptions of online crime, especially against women. Even critics of the Palestinian Authority’s priorities toward the ICT sector say the police’s unit for monitoring online harassment against women has been a successful endeavour. Current and former government officials as well as outside observers have lauded its achievements in

a relatively short period of time. Multiple Palestinian women and female activists interviewed for this report agreed that, in terms of perception, the seven-year history of the Family and Juvenile Protection Unit has led to public awareness of the phenomenon of harassment and blackmail of women online.

Palestinian officials say the accomplishments are not merely perception: “The statistics speak for themselves. We went from 55 domestic violence cases reported in 2012 to 3,660 in 2013,” said Wafa Muammar, head of the online police unit, which has about 50 officers in its ranks.⁹ She insists that progress on the issue on a societal level is reflected in the priorities of the civil servants who protect these communities. “Police are the reflection of society. Our society looks positively at a woman who endures her husband’s atrocities. If she speaks publicly about it she becomes an outcast. Many women avoided going to the police because lodging a complaint with the police could bring on a big loss – she could lose her children, her family and the respect of the people in society,” she says. Now that the unit exists, though, “we are changing perceptions and making combating violence against women a national cause.”

The online unit receives training and financial support from the European Union,¹⁰ and its members are frequently trained and updated on best practices in the field. In June, for example, members of the unit received special training from the Spanish police in two areas: risk identification and assessment, and management procedures for protecting victims and witnesses of gender-based violence. They were also trained on developing case management software used by the Family and Juvenile Protection Unit to identify main questions for alleged victims to be included in a final database. The database is expected to be used in an effort to streamline day-to-day work by police and prosecutors.¹¹ This is intended to mitigate the current fractured state of record keeping across Palestinian governorates.

Reminders of the existence of Muammar’s unit abound online as the civil police allocate considerable resources to public relations efforts aimed at solidifying the perception among the populace that they have a competent police force acting on their behalf. The unit, like others within the civil police force, maintains up-to-date online information for

7 UNDP. (2015). *Palestine Human Development Report*. www.ps.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-PHDR2015Poverty.pdf

8 LeVine, M. (2013, 12 April). In Palestine, ‘death’ by a thousand micro jobs. *Al Jazeera*. www.aljazeera.com/indepth/opinion/2013/04/20134810128647355.html

9 UN Women. (2014, 21 November). Op. cit.

10 European Union. (2005, 14 November). EU Council establishes Police Mission in Palestinian Territories. eu-un.europa.eu/articles/en/article_5290_en.htm

11 EUPOL COPPS. eupolcoppes.eu/en/node/4849

the public.¹² It is frequently reminding internet users in the occupied territories of its existence and participation in even the most minor developments in its specialised jurisdiction. On its website in the last week of August, for instance, the unit had published accounts of a town hall-style event in Bethlehem focusing on child labour and a summer camp for children on online risks and how to protect themselves from predators online, and a Jenin summit for security officers on international standards for respecting the rights of juvenile defendants. These reports, despite their dry content, are published frequently by local media. In addition to the news media, the civil police heavily update social media accounts.¹³ The message from the Family and Juvenile Protection Unit is clear: We exist, and we're getting better.

But the constant output of such media concerning the unit's day-to-day activities is the result of an atypical public relations effort which may be creating an impression that it is more active than its resources allow. This is part of a strategy designed to serve the unit's logistical goals, not only its public profile. Seeding constant reminders about the unit, even if individually small, is a step that authorities hope will make a dent in the almost incomprehensibly low estimates of the rates of reporting online crimes to the police. Muammar, the head of the online unit, insists that the number of prosecutions is rising fast. But they only represent a fraction of the cases that women's rights activists and development experts say are occurring every day. According to one study, only about 10% of cases reach the stage of an actual investigation. Until victims are able to safely report crimes, anxiety about speaking up will continue to prevail.

Changing these perceptions will take time, as the risks are great. In a UN report on women's access to justice published last year, the authors cited the findings of focus groups in which women recounted the process of seeking redress for online crimes.¹⁴ "It was surprising that the young college women in the focus group were able to map, deconstruct, and discuss societal reactions in detail while sharing stories of women victims/survivors and deviant and criminal men and women. They pointed out that disclosure of victimization is very challenging for women, and therefore they thought

that women should first seek ways to access justice inside their communities. Only if that failed, and with carefully planned steps, should they seek the help of external agencies."

Access to justice

The issue of the internet in maintaining strictures on Palestinian women cannot be accurately assessed outside the framework of Israel's occupation. The UN has concluded¹⁵ that Israeli military laws continue to have extensive effects upon the ability of Palestinian women to seek justice for online crime. Palestinian women's ability to seek justice is impacted by travel restrictions and differing jurisdictions depending on where they live in the occupied West Bank. For example, the Palestinian police have no ability to carry out investigations or arrests in Area C, the 60% of the West Bank under full control of the Israeli military.

Recent disclosures from intelligence-agency whistleblowers in Israel as well as the United States (US) have widened debate about the extent to which surveillance on Palestinians can be justified. Earlier this year it came to light that the US was supplying Israeli intelligence agencies with information collected on Palestinians. Such sharing is fairly routine. However, according to James Banford, a US-based expert on the National Security Agency (NSA), information is usually first "minimised" – names and other identifying information removed – before it is transferred to a foreign country. "But when sharing with Israel, the NSA evidently did not ensure that the data was modified in this way," he wrote in a US newspaper column. Banford said that the intercepts named "countless" Arab- and Palestinian-Americans whose relatives in Israel and the Palestinian territories could become targets based on the communications.¹⁶

This disclosure has added fuel to a debate in Israel, where a dramatic refusal by Israeli agents to continue bulk collection of data on Palestinians has painted a bleak portrait of information security in Palestine. In September 2014, a group of intelligence officers from Unit 8200, considered Israel's equivalent of the NSA, sent a public letter to their commander explaining their refusal to surveil innocent Palestinians. They specifically noted discomfort with the unit's spying on sexual practices. According to some of the nearly two dozen officers who signed the letter, data collected on Palestinians in the occupied territories could include

12 www.palpolice.ps/ar/content/specialized-departments/family-protection-unit

13 <https://www.facebook.com/Palestinianpolice1>; https://twitter.com/pal_police

14 UN Women. (2014). *Access Denied: Palestinian Women's Access to Justice in the West Bank of the Occupied Palestinian Territory*. [a2804972.vo.msecnd.net/~ /media/field%20office%20palestine/attachments/publications/2014/access%20denied_en.pdf?v=1&d=20150310T090056](https://www.unwomen.org/en/media/field%20office%20palestine/attachments/publications/2014/access%20denied_en.pdf?v=1&d=20150310T090056)

15 Ibid.

16 Bamford, J. (2014, 16 September). Israel's N.S.A. Scandal. *The New York Times*. www.nytimes.com/2014/09/17/opinion/israels-nsa-scandal.html?_r=0

information on sexual preferences, infidelities, financial problems or even family illnesses.¹⁷ Rather than remove sensitive information such as details about Palestinians' sex lives, however, the Israeli agents say they were instructed to record damaging details.

"The Palestinian population under military rule is completely exposed to espionage and surveillance by Israeli intelligence," read one portion of the letter.¹⁸ "Contrary to Israeli citizens or citizens of other countries, there's no oversight on methods of intelligence or tracking and the use of intelligence information against the Palestinians, regardless if they are connected to violence or not. While there are severe limitations on the surveillance of Israeli citizens, the Palestinians are not afforded this protection. There's no distinction between Palestinians who are, and are not, involved in violence." It is hard to overstate the danger of collecting such information. Societal taboos are such that sex outside of marriage for women, or homosexual relations with either gender, could put victims of surveillance at risk of violent reprisal. This is the suspected purpose, as the agents pointed out. The information collected in this manner could be used to extort or blackmail Palestinians into becoming collaborators with Israel.

On top of this, many Palestinian activists say the US-funded security services in Palestine – which are separate from the police and include intelligence units – do a fair share of spying on their population's private sexual practices and have even used the internet to extort gay Palestinians.¹⁹ "We copy the Israelis, and we do a better job sometimes," said Mashour Abu Daka, the former Palestinian minister of telecommunications. He noted allegations that the Palestinian Authority's security services used surveillance as a political tool, with consequences far more complex than mere harassment. Speaking to GISWatch, Abu Daka said he knew of cases while he was minister in which at least one senior Palestinian official reported being the victim of an online defamation campaign run by intelligence agents. "There are cases you don't read in the news. You only hear about them by talking." He said women were more often victims of surveillance but "these

(cases) don't reach the courts" because of the perception by many victims that the process could be more traumatising than the crime itself.

Conclusions

Around the world, access to ICTs has opened up opportunities for marginalised communities to challenge and transform societal norms. However, the availability of technology in the Palestinian context is insufficient for women if patriarchal strictures stand between them and access to justice. Despite anecdotal evidence of the internet as an avenue for women to seek justice, Palestine's statistics tell the real story. In 90% of the cases cited by the UN report on women and justice, the main source of the threat was within the family. ICTs will not reach their full potential until basic safeguards are taken to protect marginalised communities online.

Action steps

The following advocacy steps can be suggested for Palestine:

- The Palestinian parliament should meet as soon as possible in the event a reconciliation government is formed that is able to pass ICT legislation.
- In the absence of reconciliation, internet authorities should coordinate policies to ensure freedom of access to services in the West Bank and Gaza Strip.
- Labour officials, ICT authorities and women's groups should evaluate the impact on marginalised communities before microwork initiatives are initiated.
- EU countries should continue funding the civil police's Family and Juvenile Protection Unit while insisting on transparency about its true impact.
- Israel should withdraw to its internationally recognised boundaries and respect Palestinian police jurisdiction over crimes committed against women online.
- Israel should investigate allegations by members of its intelligence community and punish any who ordered surveillance against innocent civilians.
- Palestinian prosecutors should anonymously investigate allegations that security forces surveil and extort vulnerable Palestinian communities.
- The US should review its funding and training of branches of the security forces suspected of spying on marginalised communities.

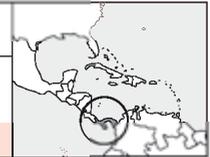
17 Levy, E. (2014, 12 September). Palestinians hail 8200 protest letter: Proof some Israelis reject occupation. *Ynetnews*. www.ynetnews.com/articles/0,7340,L-4570340,00.html

18 The Guardian. (2014, 12 September). Israeli intelligence veterans' letter to Netanyahu and military chiefs - in full. www.theguardian.com/world/2014/sep/12/israeli-intelligence-veterans-letter-netanyahu-military-chiefs

19 O'Connor, N. (2013, 19 February). Gay Palestinians Are Being Blackmailed Into Working As Informants. *VICE*. www.vice.com/en_uk/read/gay-palestinians-are-being-blackmailed-into-working-as-informants

PANAMA

THE CRITICAL NEED FOR LEGISLATION TO COMBAT SEXUAL VIOLATIONS ONLINE IN PANAMA



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Introduction

With the evolution of the internet, every day more and more people have access to information via any device that has a connection. Before the 1990s, access to information was comparatively limited, and expressions of diverse sexualities and desires were easier to control: authorities focused on censoring magazines, newspapers, movies and the media.

While the internet has facilitated the free flow and exchange of information, this potential has a dark side. Just as there are people that see the creative and positive possibilities in technology, there are people with criminal intentions who exploit these possibilities, whether through online fraud, theft, sexual harassment, or child pornography, among others.

Panama is no exception to this new global reality. There were 1,899,892 internet users in Panama in 2014 (a 52% penetration rate), and 1,039,840 Facebook users at the end of 2012.¹ However, when it comes to sexual violations online, the authorities have not acted with the necessary speed to develop appropriate policies and laws. There are also currently no legal processes to support the investigation and prosecution of these crimes.

In this report, we analyse the situation in Panama, and recommend the steps that our country has to take to improve the situation.

Key gaps in the legislative and institutional context in Panama

Panama has no laws to punish the online sexual violations that occur daily. We are at a point where it is time to take action. The following are key areas that need to be raised for public discussion amongst state actors, civil society groups, and the private sector.

a) It is necessary to broaden Panama's Penal Code when referring to sexual crimes.

Panama's Penal Code, in Title III, Chapter I, Articles 174-178, refers to sexual crimes and stipulates various punishments in terms of the length of prison sentences, depending on the seriousness of the

sexual offence and who commits it. However, there is no mention of sex crimes on the internet, which is a legal vacuum.

This section of the Penal Code must be urgently revised to bring it in line with international norms. A roundtable needs to be held, bringing together the three branches of the state (executive, legislative and judicial) as well as business and civil society representatives, to update the Penal Code.

b) Add amendments to Law 82 of 24 October 2013, where the rights of women in Panama are mentioned.

In Articles 1 to 22, this law refers to the protection and rights of women in all spheres. However, similar to the Penal Code, it lacks legislation dealing with the rights of women online, and the violations of these rights.²

We often see videos on different social networks where the integrity of women is violated. They are shared and discussed without any restrictions, and there is no legal recourse for the victims of this kind of online abuse.

Currently there is also no law dealing with so-called "revenge porn" in Panama. In 2010 the winner of a beauty pageant in Panama was the victim of revenge porn when her former partner posted an intimate video of the two of them together on the internet. For this reason, when someone types her name into Google, 95% of the results are related to this video.

The main victims of revenge porn are women, while the perpetrators go unpunished due to the legal vacuum.

c) Increase resources to the public ministry so that it can implement any changes to legislation and has the capacity to prosecute.

Improvements to existing laws must go hand-in-hand with human and technological resources allowing the authorities to investigate criminal organisations as well as any online sexual violation.

Currently cyber harassment complaints are neglected, because the human resources of the Panamanian justice system are not geared for these

¹ www.internetworldstats.com/central.htm

² The legislation can be read here: www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=95689&p_country=PAN&p_count=5

kinds of crimes. There should be a unit dedicated to these crimes, because current resources are used to solve cases that are more attractive and that create a positive perception of the country.

Communications and surveillance equipment is needed that allows the authorities to track cyber criminals. It is important to mention here that usually the people who use the internet to commit sexual offences have access to advanced technology, and skills.

We must create and build momentum for this kind of resource mobilisation to ensure that complaints are taken seriously by the authorities.

d) Promote internet governance in Panama.

We are in favour of using the internet to promote networking, education, the sharing of information and entertainment. Creating an internet governance law in Panama means ensuring that internet content is legal by creating rules and regulations for the safe use of the internet.

Once progress is made on this issue, the law must include, within its sections, the issue of sex education in schools. Currently there is no curriculum dealing with sexuality and the internet. Such a curriculum must deal with the needs and realities of the youth growing up in a digital world, as well as offer advice and support for their families and guardians.

e) Internet service providers (ISPs) in Panama play a fundamental role in this struggle. They are not working closely with the public ministry by sharing information.

There should be a close relationship between the public ministry and ISPs, including mobile data service providers. All online sex crimes committed in Panama in one way or another happen through local internet networks. Cross-border cooperation agreements are also necessary, given the transnational nature of the internet.

We are in an information age, and everything we do generates data, and also metadata – technical data needed to establish the communication itself. Though data remains private, metadata can be used in the fight against online sexual violations.

Conclusions

Given that there is currently no legislation to combat online sexual violations in Panama, the sexual rights of internet users are under threat in this country.

The dilemma we face in Panama is similar to that faced across the world. The task of regulating and monitoring sexual violations online is difficult

due to the fact that not all sexual content shared online violates sexual rights. Much of it is shared and viewed with the adult consent of all parties involved. Any legislation needs to protect this kind of content in terms of the rights to freedom of expression and association.

There is a long way to go to reach our goal, but it is important to create a base that we can start to work from. It is the responsibility of the state, civil society and the private sector to develop workable legislation.

Action steps

The following advocacy steps can be suggested for Panama:

- A commission must be created involving the three branches of the Panamanian state, together with civil society and the private sector. This commission should be dedicated to discussing the legal reforms necessary so that sexual rights are respected on the internet.
- Create mass media campaigns so that all users of social networks in Panama are vigilant when it comes to sexual rights online, and are able to report violations to the authorities.
- Create a forum for civil society and the private sector to discuss the issue of internet governance. It is essential for everyone to be able to use the internet in a secure online environment.
- Establish cooperation agreements between local and international service providers so that allegations of violations of sexual rights can be dealt with swiftly.
- Strengthen the capacity to prosecute online violations of sexual rights, and create a division dedicated exclusively to these crimes. Develop the appropriate human resources to deal with online violations, and invest in the necessary technology.
- Work with communities to raise awareness of sexual rights online. The first barrier to prevent a crime of this nature is ourselves. Parents must be aware of how their children access and use the internet, and openly discuss the risks involved with them.
- Draw from the lessons learned in countries with more robust internet laws and use these laws as examples to shape domestic laws in Panama. Bilateral cooperation should also be established with other countries given the transnational nature of many internet crimes.



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Introduction

According to the Continuous Household Survey of 2013,¹ there are approximately two million people aged 15 or younger in Paraguay, representing 31% of the total population estimated at 6.7 million people. Close to 1.4 million children are between six and 15 years old. Of these, 705,000 children live in poverty, as measured by family income.

Although our country was one of the least developed in the region in terms of access to new technologies, progress has been boosted with the entrance of mobile telephones. With this rapid take-up of technology, the problems of sexual vulnerability and violence through information and communications technologies (ICTs) have also begun to be felt in the country.

Paraguayan legislation has belatedly started to consider cyber offences. How to deal with sexual harassment and the violation of the rights of children and young people is an issue that has generated much public debate. However, it has yet to result in comprehensive legislation to protect children and adolescents online.

The slow pace of legislative development

The Code on Childhood and Adolescence was passed in 2001, and was one of the first attempts to deal with the safety of the country's youth online.² However, since the application of the law was at the municipal level, and a proper budget did not exist to implement the law effectively, there was little oversight and control of the numerous reports of online violations that were presented to the Secretariat for Childhood and Adolescence.

In 2007, an inter-sectoral process was started by the Inter-Institutional Commission³ that aimed to analyse the scope of the problem. This resulted in the Commission, together with the Ministry of Education, attempting to come up with tools to help children and adolescents to be safe online – including managing their online privacy – through consultations with psychologists Alejandro Brown Mateo and Vanessa Lovera, both members of Safe and Secure Approaches in Field Environments (SSAFE).⁴

In the meantime, Global Infancia researched the online behaviours and use of technology by primary and secondary school learners in the city of Asunción.⁵ The survey was the first of its kind, and was unique in that it captured the point of view of the primary stakeholders: the students themselves.

It was only in 2011 that the Criminal Code broadened the criteria of child pornography and, in Article 144, included a penalty for possessing and sharing child pornography online.⁶ The penalty is two years of prison or a fine – however, judges generally hand down fines when passing sentence.

Being safe online: Three examples that illustrate the context in Paraguay

The following incidents illustrate the situation regarding the safety of children and adolescents online in Paraguay. Generally, when most online violations occur, victims find it very difficult to report the violations to authorities, for two key reasons: the fear of retaliation from the abuser, and unresponsiveness from adults who do not know how to deal with the dilemmas faced by children and adolescents when it comes to new technologies.

1 www.dgeec.gov.py/Publicaciones/Biblioteca/TripticoJuventud/2013/Triptico%20JUVENTUD_2013.pdf

2 See www.sna.gov.py/archivos/documentos/c%C3%B3digo%20de%20la%20ni%C3%B1ez%20final%202013_0007p6js.pdf, which states in Article 32 that internet protection will be the responsibility of the Municipal Council for the Rights of Children and Adolescents (CODENI).

3 The Inter-Institutional Commission for the Prevention of Violence against Children and Adolescents comprises 45 institutions that include ministries (such as health and education), representatives from municipalities, the national police, organisations for the defence of the rights of children and adolescents, parent and school organisations, and private companies.

4 www.unssc.org/home/category/themes/peace-and-security/safe-and-secure-approaches-field-environments-ssafe

5 www.globalinfancia.org.py

6 www.oas.org/dil/esp/Codigo_Penal_Paraguay.pdf

Fono Ayuda 147: A national help line?

This is a service offered by the Secretariat for Childhood and Adolescence. It offers telephone support and advice for children and adolescents. The service specialises in:

- Psychological, social and legal orientation in cases of mistreatment, sexual abuse, sexual exploitation, labour exploitation, and other forms of rights violations.
- Offering support for the daily experiences of children and adolescents.

During 2014, more than 5,000 calls were received. Between July and December 2014, a total of 100 cases of sexual abuse were registered, 12 of them involving boys, and 88 girls.⁸

In one recent case (11 January 2015) the caller requested anonymity and reported the sexual abuse of two boys, aged 10 and eight, providing their address in the city of Asunción.

According to records, the father was the primary caretaker of the two boys, following a separation from the boy's mother. However, the caller alleged that when the children visited their mother, they were vulnerable to sexual abuse by strangers visiting their mother's home. Besides the address of the father's house, telephone contact numbers of both parents and information on the potential aggressors were also provided by the caller. According to the caller, the children's father apparently knew of the sexual abuse, but had not laid a complaint with authorities. The investigation continues.⁹

Online harassment

In 2014, a case occurred involving the online harassment of a 15-year-old girl living in Peru. She was being harassed by a person from Paraguay on Facebook – he would send the girl messages to her Facebook inbox. The girl appealed to the Secretariat for Childhood and Adolescence for help, and was offered orientation on:

- The use of social networks, blocking and permission, and how to send complaints to an administrator.
- Not eliminating conversations that could be used as evidence against the harasser.
- The importance of communicating the situation to a trusted adult so that he or she can support

the girl, and accompany her to lay a complaint with authorities.

- A letter was also written by the Secretariat for Childhood and Adolescence to the Peruvian Embassy in Paraguay.

At a government workshop on cyber harassment, the idea of creating an online platform where violations of rights can be reported was suggested. A platform¹⁰ was subsequently set up with support from the United Nations Children's Fund (UNICEF). However, authorities who prosecute online offences say that most offences reported are economic offences. When it comes to issues such as cyber harassment, they say that it is difficult to identify the aggressors easily due to internet protocol (IP) addresses being dynamic each time the internet is accessed by a computer.

Tacumbú online

At first glance you might think that the title refers to some digital network in the Guaraní language. Nothing is further from reality. It refers to Tacumbú Prison (which in Guaraní means "hot stone exploding"). In September 2010 the Public Ministry discovered that two adolescent girls had been blackmailed into visiting the prison, and had been raped at Pavilion 6, known as "Pabellón La Esperanza".¹¹ According to evidence from the state prosecutor, the rapes of the two girls were photographed and filmed by the inmates, and then distributed online.

There is an administrative provision that prohibits unlimited access by prisoners to certain communications media, including mobile phones. In the case of Pabellón La Esperanza, a prisoner had unrestricted access to an office computer with an internet connection. The prisoners – working with prison authorities – had used Facebook to contact the girls, and forced them to go to the prison by threatening to harm their families, whose details they had also got off Facebook.

When the adolescent girls refused to return to the prison following the rapes, the suspects in the case phoned their school. Because of this, the incident was reported to the Public Ministry by a teacher. This resulted in a search of Pabellón La Esperanza where the computer used for the crime was seized.

The former director of the Tacumbú Prison, Julio Acevedo, the head of security, Silverio Báez, and three convicts from the prison were arrested for the

7 www.hoy.com.py/radio-unotell_a_friend/147-fono-ayuda-para-denunciar-abuso-de-ninos

8 www.snaa.gov.py/archivos/documentos/informe%20147_0v77t3di.pdf

9 www.snaa.gov.py/articulo/42-fono-ayuda.html

10 www.unicef.org/paraguay/spanish/unicef-20compromisosninez.pdf

11 www.protecciononline.com/%C2%BFque-sucedio-en-el-pabellon-la-esperanza-de-tacumbu

rapes. In the end, two prisoners – Jorge Pereira, 32 years old, and Feliciano López, 57 – were convicted on charges of coercion, sexual abuse and the production of child pornography, receiving the longest sentence yet for these crimes: 20 years imprisonment plus an additional 10 years.¹² Prosecutor Teresa Martínez stated after the sentencing that it is “a historic conviction, since this is the first time that this number of years of imprisonment has been handed down for the production of child pornography and sexual coercion.”¹³

Key issues to consider when it comes to the safety of children and adolescents online

Protection of minors from online sex-related crimes is not a priority

Reviewing the perspectives of government officials, civil society organisations, UNICEF, and internet operators, among others, it is clear that the protection of children and adolescents when it comes to sex-related crimes online is not a priority. Rather, online safety for the country’s youth is an incidental issue when authorities consider legislation and government strategies. Initiatives that do try to address the safety of children and adolescents are not well implemented. For example, the hydroelectric company ITAIPU Binacional¹⁴ set up a regional office on the border shared with Brazil and Argentina. Its specific role is to combat the child sex trade, which includes child trafficking, sex tourism, online child pornography, and paedophilia. Although the initiative is necessary, particularly in the border region, the ITAIPU website is not updated, suggesting that the initiative has not been all that successful.

Legislation on the protection of children and adolescents is weak

Although the government makes very optimistic statements, such as the one by the Minister of Information and Communication Technologies David Ocampos, who said Paraguay “is one of the most updated countries in the region” when it comes to the matter of cyber legislation,¹⁵ the reality is quite different. While the Paraguayan Criminal Code has introduced several new offences relating to cyber crime, such as accessing private information, the

punishments are mild, many only involving fines. The minister also acknowledges that “the great challenge lies in punishing the criminals... who are difficult to track down online.” He also claims that few cases of cyber crime are reported.

While there is a new bill before the National Congress that legislates on cyber crime, it is still waiting approval, a process that has already taken a year. The Tacumbú case is one of the few exceptions where judges and prosecutors were successful in prosecuting a crime that involved the internet.

Campaigns with some impact have little institutional sustainability

It is necessary to stress that there are a number of campaigns and projects, some of them online, which deal with sexual rights in Paraguay.

Recently one was launched by UNICEF and the mobile service provider Tigo. According to Tigo, the initiative developed “a manual with advice to promote the responsible and positive use of information and communications technologies (ICTs) by children and adolescents.” Tigo says the initiative was aligned with the worldwide “Internet Segura” (safe internet) campaign that took place in February 2015.¹⁶

Rosa Elcarte, a representative from UNICEF Paraguay, said she felt satisfied to deliver the manual to Paraguayan families, hand-in-hand with Tigo, and that the initiative would have a great impact on the country’s citizens. “In this manner, we reaffirm our commitment to the youngest, providing them with material that supports the responsible and safe use of the internet and social networks, guaranteeing them the maximum enjoyment of their rights, and helping them to avoid the possible risks,” she stated.

While UNICEF’s intention behind this initiative is good, it is important that the National Secretariat for Childhood and Adolescence take over the leadership of the project in order to be able to coordinate the different stakeholders, and enhance the initiative’s impact. To do this, it is necessary for the government to comply with Commitment No. 1 signed by the Front for Childhood and Adolescence,¹⁷ which calls for an annual increase in

¹⁶ www.tigo.com.py

¹⁷ For more than a decade, institutions such as Global Infancia have put their energy into issues relating to sexuality and the sexual rights of children and adolescents. They have worked with 14 institutions, among them Asociación Trinidad and Radio ViVa, and created the Front for Childhood and Adolescence, which was founded at the beginning of 2013 (see: www.unicef.org/paraguay/spanish/media_24196.htm). The Front persuaded President Horacio Cartes to sign 20 commitments on the safety of children and adolescents, which must be reported on annually (see <http://www.unicef.org/paraguay/spanish/unicef-20compromisosninez.pdf>).

¹² www.protecciononline.com/caso-pabellon-la-esperanza-mayor-condena-por-abuso-sexual-y-pornografia-infantil

¹³ www.abc.com.py/edicion-impresa/policiales/infierno-de-adolescentes-abusadas-por-convictos-161742.html

¹⁴ www.itaipu.gov.py/es/responsabilidad-social/red-de-combate-la-explotacion-sexual-infantojuvenil

¹⁵ www.abc.com.py/nacionales/paraguay-uno-de-los-mas-actualizados-en-ciberlegislacion-1230403.html

the budget dedicated to protection of children and adolescents of at least 0.7%.

However, the National Budget for 2016 decreases the resources allocated to the Secretariat of Childhood and Adolescence by 10% compared to 2015.

The need for sexual education in schools

Paraguay has had 35 years of military dictatorship and 61 years of single-party government. It took until 2008 for the first proposal by the Ministry of Education to emerge that incorporated sexual education in primary and secondary schools. However, this was rejected by the parliament and the Catholic Church, and a good part of conservative society which has hypocrisy as a central part of its daily discourse. When it comes to sexuality amongst teenagers, a lack of public awareness and education, coupled with secrecy and ignorance, has arguably led to a high birth rate amongst girls aged between 12 and 16 years.¹⁸

Action steps

Given the above, we suggest the following action steps for Paraguay:

- Despite efforts by the government and civil society, the degree of vulnerability that children and adolescents face online requires the urgent development of a comprehensive bill addressing online safety and ensuring sexual rights online.
- Civil society should ensure that the government reports on the 20 commitments on the safety of children and adolescents presented to the presidency by the Front for Childhood and Adolescence.
- Several years ago psychologist Marta Benítez stated that “the biggest challenge is not so much the role of the educator, but rather that of the educational system.”¹⁹ Programmes that modernise the educational system and integrate technologies and the safe use of these technologies in the classroom are crucial for educational development.

¹⁸ www.abc.com.py/nacionales/preocupa-estadisticas-de-embarazo-adolescente-580057.html

¹⁹ www.globalinfancia.org.py



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Introduction

Gender identity and sexual orientation are not acknowledged as issues that need to be debated by the Peruvian Congress. Local legislation against discrimination in public places and in public services refers to gender identity and sexual orientation. In addition, the Ministry for Women and Vulnerable Populations¹ is preparing a policy document with recommendations on dealing with cases of violence against lesbian, gay, bisexual and transgender (LGBT) people. However, there is no general policy securing the rights of LGBTs in Peru yet.

The LGBT movement in Peru has campaigned for recognition, visibility, policies against discrimination and violence, the rights of trans people, and the realisation of their civil rights (such as same-sex marriage). While all of these issues are important, policies against violence affecting the LGBT community – which implies the formal recognition of LGBT people so that official records can be kept – are urgent. The most recent report on the human rights status of LGBT people in Peru² identified 13 murders and four suicides in the last year, with the real number possibly being higher. The problem is that without legal recognition, hate crimes against LGBT people are not considered hate crimes according to our criminal code, a legal and policy gap that is acknowledged by the Ombudsman's Office.³ At the same time, all references to LGBT issues contained

in drafts of the National Plan on Human Rights⁴ and the National Plan of Education on Human Rights⁵ developed by the Ministry of Justice have been recently deleted.⁶

While there is neither research nor statistics to back up this perception, it is accepted by rights experts and activists that the internet was appropriated by members of LGBT community right from the beginning of the service becoming available in Peru in 1995. According to Rolando Salazar, the organiser of Outfest Peru⁷ – an LGBT film festival – and former administrator of one of the first gay websites in Peru,⁸ the first internet tools used were chat rooms that were seen as a kind of free place where LGBT people could express themselves and develop relationships with others. In 1998 Salazar set up a website on gay issues that helped people to connect and develop a sense of self-identity and group consciousness, allowing them to debate issues with each other, and in this way make themselves “visible”. They ran a chat room, translated and published articles from magazines such as *Gaytimes*⁹ and *Advocate*,¹⁰ and produced their own articles. Their agenda was always to help with the process of LGBTs “coming out” and to push for the recognition of LGBT rights. As Salazar says, from 2005 to 2008 there was an explosion of LGBT blogs in Peru. Since 2010 Facebook and other social networks have become the main platforms for LGBT people to connect, debate, and be visible – and now they serve as the launch pads for activist campaigns too.

- 1 Ministerio de la Mujer y Poblaciones Vulnerables: www.mimp.gob.pe
- 2 PROMSEX 2015. (2015). Informe Anual sobre DDHH de Personas TLGB en el Perú 2014-2015. www.promsex.org/documentacion/publicaciones/item/2678-informe-anual-sobre-ddhh-de-personas-tlgb-en-el-peru-2014-2015/2678-informe-anual-sobre-ddhh-de-personas-tlgb-en-el-peru-2014-2015
- 3 Defensoría del Pueblo, Adjuntía para los Derechos Humanos y las Personas con Discapacidad. (2014). Opinión respecto del Proyecto de Ley N° 2647/2013-CR, que establece la unión civil no matrimonial para personas del mismo sexo. Situación de los derechos fundamentales de la población LGBTI en el país. Informe de adjuntía N° 003-2014-DP/ADHPD. www.justiciaviva.org.pe/webpanel/doc_int/doc27032014-134929.pdf

4 Ministerio de Justicia. Plan Nacional de Derechos Humanos. www.minjus.gob.pe/wp-content/uploads/2014/07/DS-005-2014-JUS-Aprobacion_PNDH.pdf

5 Ministerio de Justicia. Plan Nacional de educación en deberes y derechos fundamentales al 2021. www.ohchr.org/Documents/Issues/Education/Training/actions-plans/Peru_National_Plan_Education.pdf

6 See also the letters submitted by MHOL – the oldest and most well-known LGBT organisation in Peru – to the justice minister: www.scribd.com/doc/235577816/MHOL-al-MINJUS-sobre-exclusion-de-LTGBI-del-Plan-Nacional-de-Derechos-Humanos and to the Inter-American Commission on Human Rights: www.scribd.com/doc/259023468/MHOL-a-CIDH-sobre-Plan-Nacional-de-Educacion-en-Derechos-y-Deberes-Fundamentales-al-2021#scribd

7 www.outfestperu.com

8 Deambiente.com (it is now offline).

9 www.gaytimes.co.uk

10 www.advocate.com

LGBT activism in Peru reportedly began in the 1970s. *Movimiento Homosexual de Lima* (MHOL),¹¹ the “Homosexual Movement of Lima”, was founded in 1982 and it is believed that the first public demonstration that raised LGBT issues as political issues was in Miraflores in July 1995, according to the LGBT and HIV/AIDS Human Rights Observatory.¹² Now there are dozens of organisations that, while they may have differences in opinion on political issues, and on how to advocate for change, nevertheless recognise themselves as belonging to one movement, according to Ho Amat y León, a member of the Peruvian LGBT Network.¹³

A draft civil union law, presented by member of parliament Carlos Bruce in 2013, aimed to allow limited same sex unions – it was not called “marriage”, and the right of gay couples to adopt children was not included in the draft.¹⁴ It was presented without any consultation or coordination with the Peruvian LGBT movement; however, while it met with opposition from some parts of the LGBT movement, it has been embraced by most of the movement, by other human rights organisations and an increasing proportion of the population. The discussion of this proposal at the Justice Commission in Congress in March 2015 became the most important issue on the political and media agenda. The proposal was shelved without passing through to the Congress plenary,¹⁵ but it received the attention of the media and the public, who showed strong support for the law.

A few days after the draft law was presented, a small group of LGBT youth activists together with members of MHOL set up a Facebook page called “Unión Civil Ya” (UCY – “Civil Union Now!”).¹⁶ The page received 2,000 likes in a few hours. Considering this unexpected success, they decided to organise themselves into a collective¹⁷ and develop a communication campaign.

According to Liliana Huaraca, one of the founding members and public spokespersons of the UCY collective, the campaign has had four stages. It started out as informative, looking to create public visibility of the draft proposal, as well as LGBT issues in general. Then it looked for support from media and TV personalities, some of whom helped produce videos for the cause. The third stage involved seeking the support of Congress members and the media, which led to a debate in the Constitutional Commission in Congress. When the proposal was shelved, the campaign turned to a public show of indignation for a short period of time. Afterwards, it stated that the fight had reached a new beginning, and it turned its focus to campaigning for equal marriage.

While the campaign originated online, it was always a combination of online messaging and debate, together with street activities. UCY is not a traditional movement “using” information and communications technologies (ICTs), nor just an online activist group; it is both and it is more. Its members are young people to whom the notion of online versus offline is a false dichotomy because their lives occur “online” and “offline” all the time. They debate, communicate and coordinate among themselves by using WhatsApp or Facebook chat, but meet face-to-face once a week. They act, debate, discuss, react, mobilise, support and get supported both online and offline all the time, and that is one of the things that makes them the kind of group that gets audience attention, and the participation of the public.

The communication strategy of UCY has always been non-confrontational, with the exception of the above-mentioned period of expressing public indignation when the draft law was put aside. UCY members respect other ways of doing things, including the more aggressive activism of organisations that sometimes criticise them. However, they believe that their approach allows them to gain greater commitment from LGBT people and more support from the general public for LGBT causes.

To implement their strategy they developed a visual identity, and a set of norms to answer critics online or to participate in debates. The members, who take care of communication issues such as managing their Facebook page or Twitter account, explained in an interview¹⁸ that they are also conscious of the fact that they are the face of the UCY campaign 24 hours a day. Because of this they need

11 www.facebook.com/mholperu

12 www.facebook.com/notes/observatorio-de-derechos-humanos-lgbt-y-vihisida/algunos-hitos-hist%C3%B3ricos-del-movimiento-lgbt-per-uano/726901677455570?fref=nf

13 Red Peruana TLGB: www.redperuanatlgb.net

14 Bruce, C. (2013). Proyecto de ley que establece las uniones civiles entre personas del mismo sexo. [www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoco2_2011_2.nsf/d99575da99ebf305256f2e006d1cfo/588055827c08debdo5257be4005f45ec/\\$FILE/PLo2647120913.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoco2_2011_2.nsf/d99575da99ebf305256f2e006d1cfo/588055827c08debdo5257be4005f45ec/$FILE/PLo2647120913.pdf)

15 There were four votes in favour of the proposal, seven against and two abstentions.

16 www.facebook.com/unioncivilya

17 Most of the organisations that young people create now in Peru are called “collectives”, which basically refers to an organisation without bureaucracy, but which allows for the practical distribution of tasks and of leadership.

18 Interviews were conducted by the author with Liliana Huaraca, and a group interview with her, Gabriela Zavaleta and three other members of UCY.

to moderate their public or “visible” behaviour as representatives of the campaign, including sometimes their own personal online identities.

Peaks of support for the campaign occurred during the first year at the beginning of the campaign (October 2013), two months later and, importantly, in April 2014 when they organised the First Equality March (*Primera Marcha de la Igualdad*) which was one of the biggest demonstrations in recent years and perhaps the biggest LGBT demonstration ever in the country. At that time they received 13,000 “likes” for their posts on Facebook, which reached 130,000 friends.

In March 2015, when Bruce’s proposal was shelved, UCY was active on social networks, especially the day before and on the day of the debate (10 March). On Twitter they produced 577 tweets, received 1.7 million impressions, 51,500 profile visits, 5,187 mentions and 5,820 new followers. On Facebook they received 14,000 likes for their posts, and more new “likes” for their page than ever before (more than 1,000). As mentioned above, those were also the days where public indignation was expressed following the shelving of the bill, and there were calls for street protests, such as one in San Martin Square on the night of 10 March.

Those heady days of activism opened up a new juncture. The movement was now in the media spotlight. They decided to leverage this attention, to show publicly that they were on the right side of history. They called for a new demonstration on 11 April under the banner “*La lucha ya empezó*” (the fight has started).

The end of March and the first days of April were also days of high activity on the social networks. These are Twitter statistics for April: 577 tweets, 820,000 impressions, 24,200 profile visits, 2,140 mentions and 1,645 new followers. By the time of the April march they had reached 16,300 followers on Twitter.

During this period they reached their peak on Facebook with 20,000 likes for their posts and 120,000 friends. The most successful post of the month was one with a picture from San Martin Square, showing how online and offline activism are interwoven.

They also used YouTube,¹⁹ but more as a support tool than a social network. They upload videos onto YouTube and share them through Facebook or Twitter, but they do not start debates on YouTube itself. The most watched video is one where a well-known entertainer (Ricardo Morán) calls for the public to participate in the April demonstration.

19 www.youtube.com/channel/UCyqdbcSHvRG836O2HZuXRFA

By July 2015 they had more than 52,000 likes on Facebook and more than 17,000 followers on Twitter.

As they explained, tweets or posts congratulating Morán for making his call or photos such as one of two older gay men getting married are the ones which get the most “likes”, reposts or retweets. However, more “political” posts and tweets on crucial debates have also received support, according to Gabriela Zavaleta, the networks manager at UCY.

While it is their current focus, they do not limit their activities to the civil union law but also support other LGBT activities or struggles. For example, they produced a manifesto during the most recent local government elections (October 2014) asking voters to avoid voting for homophobic candidates.²⁰ They also supported the last Pride Parade, which has been the biggest demonstration ever on LGBT issues in this country.

Public support for the civil union proposal has increased, according to market survey company Ipsos Peru,²¹ from 31% to 35% between October 2013 and February 2015, while 51% of the public were against the proposal being shelved in March, according to Datum International.²² The support for the initiative was mostly from young people and women; 60% of the people who “liked” the UCY Facebook page are women.

UCY members feel they have achieved a lot with their campaign: they helped to get the issue of the draft law into public debate, they helped a lot of people – including some of their members – to “come out” in public, they helped to empower some young people and groups, they increased support amongst heterosexual people for LGBT causes, they organised the biggest demonstration for LGBT rights at the time and, furthermore, they gave LGBT people a voice and made them visible.

As members of UCY pointed out, there are a number of online LGBT movements that have appeared over the past two years. One example would be *No Tengo Miedo* (“I’m Not Afraid”),²³ a group that started in 2014 with its members documenting their personal histories as LGBT people in a series of videos posted online. The point of this was to motivate LGBT people to come out and make themselves visible. Now they are developing a range of activities using video, theatre, education and research

20 www.scribd.com/doc/241375047/UNION-CIVIL-YA-PRONUNCIAMIENTO-SOBRE-ELECCIONES-MUNICIPALES-2014

21 www.ipsos-apoyo.com.pe

22 elcomercio.pe/politica/actualidad/union-civil-homosexual-51-esta-contra-y-45-favor-noticia-1802300?ref=flujo_tags_243322&ft=nota_6&e=imagen

23 www.notengomiedo.pe

as ways to “perform” activism. There are also a lot of university groups that have created Facebook groups that serve as a means of support, communication, reflection and public messaging, as well as a way to organise events on campus and to participate in public activities or demonstrations. Some of these have existed for a number of years, such as GPUC,²⁴ but a lot are new or not well known.

The case of the UCY collective using ICT tools to coordinate, communicate, develop public messages, and generate consensus shows clearly that ICTs were not just tools. ICTs are part of the lives of the collective and they shape ICTs to their own needs and purposes. The collective cannot be understood without looking at the way in which they appropriate ICTs; it would be true that there would not be a UCY without ICTs, but it is also true that UCY sheds new light on how we understand ICTs and social networks in Peru. The main conclusion of this report is that UCY expresses a new relationship between ICTs and political action. When it comes to this kind of group it is not useful to talk about the usage or the appropriation of ICTs; instead they can be called “networked organisations”.

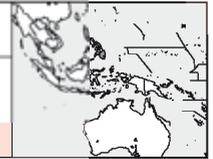
At the same time, the UCY campaign suggests that while other more aggressive forms of activism are understandable, a purposeful communication campaign would garner more support from the public and the media.

Action steps

UCY and other LGBT organisations, especially those operating outside Lima, need to raise more support in Peru. We will have general elections in a few months time, and LGBT rights should be on the political agenda and kept in the public eye. The LGBT movement needs to fight for the attention of political campaigners (those already in office and those who are seeking power) as well as the media. They need to force the next Congress (it is in session until July 2016) to reopen the debate on same-sex marriage and the identity rights of LGBT people.

The internet – mostly Twitter, Facebook, blogs and the comments sections in online newspapers – will be a battlefield for this fight, but not the only one. UCY and the rest of the LGBT movement know this very well.

24 www.facebook.com/gpucguds



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Introduction

The expression of one's sexuality is a key component of human development, and the discussion of sexual rights in society is important in a healthy democracy. This report will look at how these have played out in the Philippines – especially as they intersect with information and communications technologies (ICTs) and the internet – through three recent cases where online and offline sexual rights collided and surfaced old contradictions within new technological contexts.

The Philippines is home to more than 100 million people, with almost 53% of them 24 years old or younger.¹ It is still a developing economy with about 26% of the population living below the poverty line.² It is the only predominantly Christian nation in Asia, with more than 80% of Filipinos identifying as Roman Catholics.³ It is also the only country in the world where legal divorce is still not recognised. A generally conservative Catholic hierarchy remains influential. Though socially progressive on some issues (e.g. environment, anti-corruption and social equality), it has been conservative on others (contraception, divorce and sexual rights).

Since the introduction of the internet in the Philippines in 1994, its use has steadily grown. Internet penetration among the population in the country is now estimated to be more than 40%.⁴ Those between the ages of 15 and 24 years old are the

most active users,⁵ spending about six hours per week online, some logging in as much as 35 hours of internet use.⁶ Social media drives much of the country's exploding internet use. The Philippines is recognised as one of the most social media-savvy countries in the world.⁷ Social networks are the new place to meet, access knowledge, transact, and discuss myriad topics, including once taboo issues such as sexuality.

Policy and political background

Gender

The Philippines ranks highly in many global gender indices. In 2014, it ranked 9th in the Global Gender Gap Index, the only Asian country in the top 10.⁸

Several laws protect women against gender-based sexual abuse and violence, including laws on sexual harassment, rape, trafficking in persons, and violence against women and children (VAWC). It also has laws addressing HIV/AIDS and promoting reproductive health. The country is a signatory to many international human rights instruments,⁹ including those that relate to women and gender.¹⁰ In 2009, the Magna Carta of Women or RA 9710 was passed. This is the country's localised version of the Convention on the Elimination of All Forms of Dis-

1 Index Mundi. (2014). *Philippines age structure*. www.indexmundi.com/philippines/age_structure.html

2 Philippine Statistics Authority. (2014). *Poverty Statistics*. www.nscb.gov.ph/poverty/

3 "As of the last census of the National Statistics Office (NSO) in 2010, there are 74,211,896 followers of the Roman Catholic Church, or 80.6% of the Philippine population." Cited from Bueza, M. (2015). MAP: Catholicism in the Philippines. *Rappler*. www.rappler.com/newsbreak/iq/81162-map-catholicism-philippines

4 Internetlivestats.com estimates that internet penetration in the Philippines is 39.43% while DOST-ICTO in the document *Free wi-fi internet access in public places* claims that the Philippines has an internet penetration rate of 52%. See icto.dost.gov.ph/wp-content/uploads/2015/03/Free-Wi-Fi-Project-TOR.pdf

5 comScore, Inc. (2013). *Southeast Asia Digital Future in Focus*. www.comscore.com/Insights/Presentations-and-Whitepapers/2013/2013-Southeast-Asia-Digital-Future-in-Focus

6 Demographic Research and Development Foundation (DRDF) & University of the Philippines Population Institute (UPPI). (2014). *2013 Young Adult Fertility and Sexuality Study*. Quezon City: DRDF & UPPI. www.drdf.org.ph/yafs4/key_findings; press release: DRDF. (2014, 6 February). *Internet, social media are important part of young Filipinos' life – survey shows*. drdf.org.ph/yafs4/pressrelease/02-06-2014/05

7 Hansen, M. B. (2015, 30 July). *The Philippines – From text messaging capital to most "social nation"*. *Opera Business Blog*. www.operasoftware.com/blog/smw/the-philippines-from-text-messaging-capital-to-most-social-nation

8 World Economic Forum. (2014). *The Global Gender Gap Report 2014*. reports.weforum.org/global-gender-gap-report-2014/rankings

9 Including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

10 These include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, the International Conference on Population and Development Programme of Action, and the Beijing World Conference on Women Platform for Action, among others.

crimination against Women (CEDAW).¹¹ In spite of the generally positive legal framework for women, gaps remain, as myriad implementation issues abound, and legal remedies are elusive.¹²

ICT policy

Policies and laws on ICTs are continuing to emerge, both as a legacy of traditional telecommunications regulation, as well as newer modes of internet governance. In the recent past, ICT policy has concentrated more on e-commerce and ICTs in education.

In 2009, the Anti-Photo and Video Voyeurism Act (RA 9995)¹³ was passed as a result of the high profile case of an intimate video circulated on the internet. In 2012, a contested Cybercrime Prevention Act was passed, and deemed constitutional after a protracted legal battle.¹⁴

Three cases: “Ruby”, Jennifer and the Valkyrie dress code

The “Ruby” videos¹⁵

“Ruby” was a famous actress who in 2009 was dragged into one of the many internet scandals the country was notorious for, when intimate videos of her and her equally prominent partner were circulated online without her consent. She subsequently filed a high-profile legal VAWC case which immediately became a converging point for many powder keg social issues: violence against women, internet privacy, cyber crime, online regulation, gender and sexuality. The above-cited RA 9995 was a direct result of this case.

Interestingly, although social media were not then as ubiquitous as they are now, many of the online discussions at the time in blogs and discussion boards were surprisingly critical of “Ruby”, portraying her as a “loose woman”, an indication of what the dominant discourse was on women’s sexuality then. Nevertheless, the incident sparked many

important debates and increased the discussion of gender rights on the internet.

The Jennifer Laude murder

The more recent transgender killing of Jennifer Laude in October 2014 was also significant. Laude’s body was discovered inside a hotel room in Olongapo, after she had checked in the previous night with a companion, reportedly a visiting US national.¹⁶ The killing had been characterised as gender-based violence on the basis of sexual orientation and gender identity expression (SOGIE). The police report further stated it was a crime of hatred, and it was “the discovery [by the perpetrator] that his sex partner was gay that prompted him to kill the victim.”¹⁷

The case of Laude was not the first case of a brutal killing of a transgender woman, and may not be the last. Many similar cases remain unsolved. But in this era where social media have surpassed even traditional news channels in reach and as a platform for debate, the death of Laude was unique in how it exploded on the internet – riding the wave of an increase in the use of social media since “Ruby”. The case garnered local and international attention, especially in cyberspace.¹⁸ It brought together different groups and social movements calling for justice, but also surfaced anti-lesbian, gay, bisexual and transgender (LGBT) sentiments; in this way social media became a battleground for those on opposing sides.

Even as many called for justice, and used Facebook, Twitter and Instagram to broadcast their views, Laude herself even in death was not spared the vitriol of those opposed to her sexual identity and lifestyle; she was described as a flirt who deceived the suspect and a con artist who “got what (s)he deserved.”¹⁹

Facebook pages of Laude supporters themselves were bombarded with negative comments

11 RA 9710 states: “The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women.”

12 An anti-discrimination bill, which aims to promote gender equality and recognise LGBT rights, among others, has not passed for the past five Congresses.

13 For the complete text of the law, see: www.lawphil.net/statutes/repacts/ra2010/ra_9995_2010.html

14 There were 15 petitions lodged before the Supreme Court questioning the constitutionality of RA 10175. See sc.judiciary.gov.ph/microsite/cybercrime for a list of petitions challenging RA 10175.

15 For a more comprehensive exploration of the case of “Ruby”, see Garcia, L., & Manikan, F. (2014). *Gender Violence on the Internet: The Philippine Experience*. Manila: FMA/APC. www.genderit.org/sites/default/upload/monograph_finalz.pdf

16 The case of Laude was complicated by the fact that the alleged killer was a US serviceman stationed in the country under a contentious Visiting Forces Agreement (VFA) between the US and the Philippines. This is not the first case of gender-based violence that implicates the VFA. In 2005, a US serviceman was implicated in the rape of a Filipino woman; the issue of custody of the accused is contentious as the US refuses to give custody of their nationals to the Philippines.

17 Francisco, K. (2014). Killing of Jennifer Laude a ‘hate crime’ – police report. *Rappler*. www.rappler.com/nation/72224-killing-jennifer-laude-police-report

18 A murder case filed against the alleged perpetrator (the US serviceman) was still being tried at the time of writing.

19 While the transgender community were asking people to respect Laude’s choice of being a woman and to call her “she”, there were many (including some media outlets) who denied her even that. Laude’s physical attribute (i.e. her having a penis) is still what defined her as a person, and the internet became a space where deep-seated social contradictions were played out.

expressing transphobic and misogynistic views.²⁰ Slurs against transgender people, and the LGBT community as a whole, were numerous.

A spokesperson for Kapederasyon, an LGBT group, declared: “We are deeply disturbed with the negative comments online reeking with hate, homophobia, and transphobia. Many posts blame Jennifer for her own murder and even condone hate crimes.”²¹

*The Valkyrie dress code*²²

More recently, a less grave case emerged in June 2015, in which the Philippine cyberspace again buzzed with another instance of gender-based discrimination. The issue this time was how numerous transgender women were often barred entrance into Valkyrie, a famous high-end bar in Metro Manila, because they violated a formal “dress code” (i.e. that men should dress as men).²³ Those affected aired their complaints over social media and in a matter of minutes garnered overwhelming sympathy and support. Widespread criticism over the discriminatory policies of the bar eventually led to the owners issuing a public apology. As with the Laude case, this “minor” incident was also heavily discussed online.

This is actually just one of many similar cases in which the internet had a big role in exposing discrimination against, as well as facilitating some degree of justice for, women and sexual minorities.²⁴ After the extensive social media debate ignited by the Laude murder, the Valkyrie case, and similar cases that came after these, activists began to harness social media to draw attention to the transgender phenomenon in the country and the issues that LGBTs face. As Naomi Fontanos, executive director of GANDA Filipinas,²⁵ a transgender rights group,

declares: “The internet has played a huge role in giving visibility to the transgender community.”²⁶

The internet, sexual identity and representation

The internet has provided a space to many, including marginalised sexual/gender minorities, to be visible and to be able to express their self, assert rights and identities, and initiate and enhance their participation in political and social life. The internet has become a genuine arena for activism, including the assertion of sexualities and sexual rights. For instance, many LGBT organisations in the Philippines utilise social media to highlight their work, inform others of who they are, and provide support to members.

On an individual level, the internet has provided a space for the expression of sexuality. One transwoman interviewed said she finds the space “liberating”.²⁷ She has a Facebook account where she openly declares she is a transgender and posts all her photos. She reflects that it is easier to admit being transgender – and also to be recognised and accepted as one – online rather than offline. In fact, it was through social media that she met her partner. “Face to face, one has to hurdle the stares and scrutiny of people who ask, people who question your choices,” she said.

A nationwide survey conducted in 2013 found that among young adults, there is a heightened, bolder and wider range of sexual behaviour because of ICTs.²⁸ One in 10 has recorded him/herself having sexual activity; four in 100 have had sex with someone they met online or through text messages; six in 100 have engaged in phone sex; one in four has sent or received sex videos through mobile phone or internet.²⁹ The internet is really part of the fabric of Filipinos’ sexual lives.

But sex and sexuality can be a double-edged sword, especially when formal sex education is still not sufficiently or competently taught in many Philippine schools. “Sex” can readily be accessed online in the Philippines where the internet is generally unregulated. More than half of the country’s young people (57%) surveyed said they have watched pornographic movies and videos; about 16% said they had visited websites with sexually

20 See www.facebook.com/pages/Justice-for-Jennifer-Laude/1479505508982667?ref=bookmarks as well as www.facebook.com/JusticeforJenniferLaudeandtheFilipinoPeople?fref=nf

21 Cayabyab, M.J. (2014, 17 October). LGBT group decries ‘hate posts’ vs. Jennifer Laude. *Philippine Daily Inquirer*. lifestyle.inquirer.net/174718/lgbt-group-decries-hate-posts-vs-jennifer-laude/

22 For a more detailed account of the incident, see: ABS CBN News. (2015, 24 June). How Valkyrie incident happened. *ABS-CBNnews.com*. www.abs-cbnnews.com/lifestyle/06/23/15/how-valkyrie-incident-happened

23 Rodriguez, F. (2015, 23 June). Valkyrie club apologizes to transgender fashion designer. *Rappler*. www.rappler.com/move-ph/issues/gender-issues/97206-valkyrie-club-apology-transgender

24 Other prominent incidents of gender/LGBT discrimination going viral in the Philippines include various denials of service to gays, a lesbian couple being denied a marriage licence by a local registry, a submissive portrayal of a woman in an underwear fashion show, and a controversial rape-related t-shirt pulled out of a prominent department store chain.

25 For more information about GANDA Filipinas, see: The Philippines: Gender and Development Advocates (GANDA). www.apcom.org/philippines-gender-and-development-advocates-ganda

26 Nachawati Rego, L. (2015). APC at the Global Voices Summit – Sex and the internet: Expression, activism, regulation. *APC*. www.apc.org/es/node/20118

27 Interview with B. Corpuz on 25 June 2015.

28 Demographic Research and Development Foundation (DRDF) & University of the Philippines Population Institute (UPPI). (2014). Op. cit.

29 Ibid.

explicit content.³⁰ Filipinos rank 26th in daily global traffic when it comes to accessing pornography, and rank 15th globally in watching pornography using mobile devices.³¹ This reality eventually has to be discussed with the whole range of gender advocates, some of whom view this type of online content and behaviour as exploitative.

The shadow of the church: Contesting reproductive rights

Filipinos' concepts of sex, sexuality and sexual rights are naturally influenced by the country's dominant religion, Catholicism. Because of Church opposition, it took more than a decade before a reproductive health law was passed in 2012. The Catholic Bishops Conference of the Philippines (CBCP), a staunch opponent of the bill, had issued several statements rejecting it as "unjust, arbitrary and unreasonable legislation" which had no place in public governance.³² They even equated reproductive health-supporting politicians with abortionists, threatening them with excommunication, in an effort to sway the vote. The Catholic Church said that what was a "moral issue" had been downgraded by proponents to merely a "health issue" by claiming that "unimpeded mastery over one's own body" was a human right.³³ These messages were widely spread online.

Meanwhile, supporters of the bill, including many lay Catholics, also took to cyberspace to have their voices heard. Many pages on Facebook in support of the bill emerged, and many internet "memes" poking fun at the bill's critics spread.³⁴

After 13 long years, Congress finally passed the Responsible Parenthood and Reproductive Health Act of 2012 (RA 10354).³⁵ However, it was immediately challenged by opponents before the Supreme

Court, which deliberated on its constitutionality. Both supporters and opponents of the bill used social media heavily to provide real-time updates to the public and push their arguments. In the end, RA 10354 was ruled constitutional, though certain provisions and language opposed by the Church were struck down. Any reference to "sexual rights", for example, was dropped.

Violence against women online

While the internet is an arena where sexualities can be expressed, it is also a site where risks and vulnerabilities abound, especially for women and sexual/gender minorities. The emergence of ICTs brought about an alarming proliferation of technology-related violence against women (VAW) that both stigmatises and targets them.³⁶ Studies by the Association for Progressive Communications (APC) show that technology-related VAW is increasing,³⁷ with its research partners in countries including the Philippines providing evidence pointing to the connections between ICTs and VAW. Many of these cases involve cyber stalking, the uploading of nude images and sex videos online without consent, cyber harassment, and violations of online privacy.

The internet has also become a space to propagate hate. In the Laude case, hateful messages were hurled not just against the victim, but targeted her family and the whole transgender community as well. Freedom of expression may be an ingredient of democracy, but it does have legitimate limitations, offline and online. This delicate balance of "rights vs. regulations online" played itself out in many national policy debates.

Regulating cyberspace, regulating sexuality?

To address the emerging incidence of online abuse hurled against women and children, laws such as the Anti-Child Pornography Act³⁸ and the Anti-Photo and Video Voyeurism Act³⁹ were passed. The latter is seen as a deterrent to non-consensual online

30 Ibid.

31 Lozada, B. (2014, 24 January). Filipinos rank 15th in global porn watching. *Philippine Daily Inquirer*. globalnation.inquirer.net/97567/filipinos-rank-15th-in-global-porn-watching

32 Catholic Bishops' Conference of the Philippines. (2005, 18 February). "Hold on to your precious gift." A Pastoral Statement on Population Control Legislation and the "Ligtas Buntis" (Safe Pregnancy) Program. cbcponline.net/v2/?p=505

33 Catholic Bishops' Conference of the Philippines. (2003, 31 May). "We must reject House Bill 4110." A Pastoral Statement of the Catholic Bishops' Conference of the Philippines. cbcponline.net/v2/?p=476; www.cbcponline.net/documents/2000s/html/2003-housebill4110.html

34 For example, to counter the excommunication "threat", reproductive health bill supporters announced through social media the holding of an "excommunication party" to "celebrate our freedom to choose what is good for our own bodies." See www.facebook.com/ExcommunicateMe; also filipinofreethinkers.org/excommunicateme

35 Congress of the Philippines. (2012). Republic Act No. 10354. The Responsible Parenthood and Reproductive Health Act of 2012. www.gov.ph/2012/12/21/republic-act-no-10354/

36 Women's Legal and Human Rights Bureau. (2011). *Study on ICT, VAW and Sexuality: A Policy Advocacy*. Manila: WLB. womenslegalbureau.wordpress.com/publications

37 Fascendini, F., & Fialova, K. (2011). *Voices from digital spaces: Technology related violence against women*. Johannesburg: APC WNSP. www.apc.org/en/node/14235/; www.genderit.org/node/3539

38 RA 9775 punishes those responsible for the production, advertising and promotion, sale and distribution, purchase and access (even for personal use) of pornographic materials that involve children (Section 3).

39 RA 9995 penalises the taking of photos or video of a person/s performing sexual acts or similar activities or capturing the image of the private area of the person/s without consent; and also the selling, copying, reproduction, broadcasting, sharing, showing or exhibition of such coverage or recording.

sex-related images – a big problem in the country. The former, however, though similarly well intentioned, included provisions which may erode internet rights.⁴⁰ Herein lies the dilemma of content regulation of the internet.

The controversial Cybercrime Prevention Act provides the latest example of the debates on regulating cyberspace. RA 10175 was passed in 2012 to address crimes committed against and by means of computer systems, amidst broad debates as to its scope and effect on human rights.⁴¹ Broad opposition and a legal challenge by human rights advocates brought forth one of the most significant online protests in the country in 2013. A watered-down version has since been declared constitutional by the Supreme Court in 2014, which simultaneously struck down several problematic provisions, but opposition remains.

One particular provision problematic for women and gender advocates was retained. This refers to the criminalisation of “cybersex”, defined as “the wilful engagement, maintenance, control or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favour or consideration.”⁴²

Gender rights groups were almost unanimous in criticising the provision for its vagueness and overly broad scope. In a statement, they declared that “the law fails to consider the transnational nature of sexual violence in cyberspace where site owners or operators and buyers are beyond the jurisdiction of the Philippines” and as such, because of its vagueness, it may pose “more harm to women who are usual victims of sexual violence in cyberspace.”⁴³ Further, the law “focuses solely on criminalisation, unmindful of its possible effects and without clear understanding of the inherent nature and characteristics of ICTs relating to violence committed against women.”⁴⁴ Rather than recognise a person’s agency to express sexuality online, sexual behaviour would be effectively criminalised.

They argued that the cybersex provision failed to address the underlying causes of VAW and compromised the potential of ICTs to promote women’s

empowerment. One dissenting Supreme Court justice wrote that with the inclusion of the cybersex provision “it seems that we, as a society, are being thrown back to the dark ages.”⁴⁵

Violations of online privacy have also markedly increased, especially in relation to social media, and a recent landmark Supreme Court ruling on Facebook privacy highlighted this. The case involved five female students in Cebu City, who had posted photos of themselves in bikinis while smoking/drinking to (only) their Facebook friends, and were banned by their Catholic school – which was able to access the photos – from marching in their high school graduation parade. Ruling in favour of the school, the high court essentially declared that nothing is ever private on Facebook, putting the full burden of safeguarding one’s privacy online on users. The doctrine of “reasonable expectation of privacy” on Facebook now seems to be eroded.⁴⁶

Conclusions

This report provides an initial landscape of sexual rights as they are represented, asserted and contested on the Philippine internet. Three offline/online cases and their subsequent discourses in cyberspace became a starting point for examining current realities which portray how sexual rights are played out in cyberspace.

Although more research and analysis are needed to fully understand how the internet is impacting on sexual rights, the following initial conclusions emerge:

1. *The internet has provided a space for many, including marginalised sexual/gender minorities, to be visible and to express themselves, assert rights and identities, and enhance their participation in political and social life.*

Women and LGBTs online have greater access to information and knowledge, a platform for women’s agency, organisation and empowerment, and an emancipatory space to express their sexuality. Cyberspace has also provided new tools to challenge gender inequality and violence.

2. *At the same time, the internet and social media are still very much a contested space.*

Cyberspace inherently contains risk and harm: human rights violations, security and privacy breaches, and hateful speech – part and parcel

40 Many internet rights advocates, including ISOC PH chapter member Winthrop Yu, bewail the heavy-handed provisions that compromise free expression and privacy rights.

41 The passage of the law met with opposition from different groups. Fifteen petitions were filed before the Supreme Court to declare this law unconstitutional.

42 Section 4(1)(c) of Republic Act No. 10175.

43 Delete, Undo, Retrieve: Statement on the Cybercrime Prevention Act of 2012, which was signed by several women’s rights groups and advocates. www.genderit.org/es/node/3661

44 Ibid.

45 Dissenting and concurring opinion of SC Justice Mario Victor Leonen on GR No. 203335, p. 69.

46 Supreme Court decision: *Vivares and Suzara vs. St. Theresa’s College*, GR No. 202666. The merits cannot be discussed extensively here. A case study on this is being drafted by FMA.

of an internet not always oriented towards the public good.

Further, from a sexual rights perspective, cyberspace is also a venue where traditional forces opposed to the full expression of gender rights can influence the public discourse. Though this could be considered a feature of democracy, unequal power relations within what is still essentially a patriarchal society are reproduced online. Many social institutions – schools, the legal system, churches – either abet this, or are still not oriented towards meaningful reform.

3. *Regulating cyberspace is a complex balancing act, which requires careful consideration of competing rights and responsibilities.*

The Philippine experience has shown that because of inherent power differentials in policy making and governance, especially for women and sexual/gender minorities, many laws and policies end up compromising human rights rather than enhancing them.

The struggle for sexual rights in the Philippines still has a long way to go. Continued advocacy and activism, both online and offline, are important to create changes in attitude, behaviour and social structures. The internet – especially social media – and its democratic governance are an arena of struggle in this regard.

Action steps

The following advocacy steps are recommended for the Philippines:

- Review existing legislation according to its responsiveness to the rights of women and sexual/gender minorities and alignment and compliance

with international treaties and instruments. Address existing civil laws that codify discrimination and gender inequality, and support the legislation of an anti-discrimination bill.

- Review existing ICT policies and ensure that sexual rights – as a part of internet/human rights in general – are considered.
- Engage Congress, the executive, the Philippine Commission on Women, the Human Rights Commission, and the Information and Communications Office of the Department of Science and Technology (ICTO-DOST).⁴⁷
- Ensure meaningful participation of women, as well as LGBTs and other marginalised sectors, in all stages of policy development and implementation.
- Focus on localisation. Promote gender-fair, human rights-based and ICT-enabling policies and programmes within local government units through local ordinances, frameworks and plans.
- Broaden awareness of ICT policy and internet governance. Address digital literacy in appropriate ICT skills, digital privacy and security, and online safety.
- Continue advocacy and activism both online and offline, and conduct public information and popular education campaigns on the issues of sexual rights and the internet.
- Ensure the inclusion of gender and ICT provisions in the envisioned Philippine Declaration on Internet Rights and Principles.⁴⁸

⁴⁷ ICTO-DOST is the primary policy, planning, coordinating, implementing, regulating and administrative entity of the executive branch of government that will promote, develop and regulate integrated and strategic information and communications technology (ICT) systems and reliable and cost-efficient communication facilities and services.

⁴⁸ At the time of writing, the declaration has not yet been finalised and FMA is still conducting consultations.



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Introduction

With the rise of the networked society in the information age, patriarchy has moved online. Cyberspace – although developing a culture of its own – is not emerging in a social vacuum. Instead it reflects the fragmented and contradictory character of the “offline” world.

In this report, we provide a snapshot of a Romanian initiative aimed at bringing gender-based violence onto the public agenda through educational tools, with a focus on cyber harassment.

Gender-based violence affects both men and women, but women are more at risk. As a European Union (EU)-wide report has argued:

Women can perpetrate violence, and men and boys can be victims of violence at the hands of both sexes, but the results of this survey, together with other data collection, show that violence against women is predominantly perpetrated by men. This is overwhelmingly the case when it comes to sexual violence and sexual harassment. With this in mind, the majority of violence against women can be understood as gender-based violence.¹

According to the 2014 Gender Gap Report, Romania ranked 72nd out of 142 countries, with better scores for the health and survival index, and worse for political participation.² There is more food than freedom, one might say. Although gender equality and civic participation have a long way to go in the country, there are local projects that connect different age groups, ideas and actions towards a freer and fairer society. A project called “Gender-based Urban Discrimination”³ initiated by two Romanian

NGOs – *Societatea de Analize Feministe* and *Asociația Front* – has called for a series of civic actions in the capital Bucharest, which include the creation of an online map of the spaces and places where women have encountered harassment; the development of a guide to gender-based violence in urban spaces; the organisation of street activism; and an exhibition of photographs and videos on the topic. Another important and visible initiative was a coalition of 12 women’s rights organisations that formed a network for preventing and combating violence against women,⁴ connecting local and national advocacy actions. Last, but not least, the LOG IN Romania educational project by the ALEG Association, which is discussed below, is part of a broader initiative to bring gender-based violence onto the public agenda.

Policy and political background

Romania joined the EU, a community of cultures, values and policies, in 2007. After 50 years of communist dictatorship (1949-1989), the country is still struggling to fight corruption, advance human rights and build democratic institutions. As presented in the Global Information Society Watch (GISWatch) 2013 report,⁵ Romanian society has encountered a new patriarchy and a “room-service feminism”⁶ – meaning top-down gender equality policies that are imposed, but lack real substance.

Research has shown that a gender-based hierarchy is a predictor for gender-based discrimination, and a basis for sexual harassment: “The more an organization differentiates the status of men and women, the stronger the incentives will be to meet sex-based ideals⁷ in that organisation.”⁸ The “new patriarchy”⁹ that emerged in post-communist Romania has risen both in offline and online contexts.

4 violentaimpotrivafemeilor.ro/membri-actuali

5 giswatch.org/en/country-report/womens-rights-gender/romania

6 Miroiu, M. (2004). State men, market women: The effects of left conservatism on gender politics in Romanian transition. *Feminismo/s*, 3, 207-234. rua.ua.es/dspace/bitstream/10045/3243/1/Feminismos_3_14.pdf

7 Refers to gender-based norms of behaviour in organisations.

8 Berdahl, L. J. (2007). Harassment Based on Sex: Protecting Social Status in the Context of Gender Hierarchy. *The Academy of Management Review*, 32(2), p. 646.

9 A term that Romanian feminist organisations use to describe a return to the pre-Communist age of gender inequality.

1 European Union Agency for Fundamental Rights. (2014). *Violence against women: an EU-wide survey*. Luxembourg: Publication Office of the European Union. fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report

2 Schwab, K. et al. (2014). *The Global Gender Gap Report*. Geneva: World Economic Forum.

3 discriminari-urbane.ro/index.php/despre-noi/despre-proiect

Traditional environments for gender-based violence – the family and the workplace – are increasingly complemented by violence against women online.

A survey conducted among citizens of EU member states has shown marked differences in the level of violence against women in online environments, with Denmark and Sweden at the higher end of the cyber harassment scale (18% of the respondents above 15 years old have experienced some sort of online harassment) and Romania at the lower end (5%). However, the difference might also be due to the digital divide between EU countries. The report stated: “It is possible to exclude from the calculations those respondents who do not use or have no access to such tools as email, SMS and social networking sites. The variation, however, appears to reflect the use of the internet as a communication tool for both victims and perpetrators in the different Member States.”¹⁰

The digital divide is still deep in the EU: while 92% of Danish citizens used the internet at least once a week in 2014,¹¹ only 48% of Romanians did so.¹² However, this situation seems to be changing rapidly with the expansion of 3G and 4G telephone networks – the mobile broadband penetration rate is rising exponentially in Romania, from 35.4% in 2012 to 60.2% in 2014.¹³ This means cyber harassment should be on the agenda of developers and policy makers. A gang rape case and the hate speech it generated online shows how important this issue is in the country.

Patriarchy and revenge culture: The case of a gang rape

On 10 November 2014 an 18-year-old girl from a Romanian village was gang raped by seven men aged between 18 and 28. The court case focused mainstream media attention on the incident and exposed the rapists, the victim and the local community where the sexual assault took place. “The girl is to blame,” local community representatives declared.¹⁴ An online media campaign was launched in July 2015 by the mainstream media portal *adevarul.ro* to support the victim, who had been blamed

by the rapists’ families and the local community. Meanwhile, an aggressive online counter-campaign was launched on Facebook by the rapists’ mothers, and the rape victim became the target of cyber bullying by a friend of the perpetrators. Mainstream online media named and shamed the seven rapists under investigation, while social media gave space for inflamed comments and online clashes between the patriarchal establishment and human rights defenders, between rural community representatives and younger urban netizens. The outburst of hate speech online on both sides shows a lack of dialogue in our cyber culture, and the need for more civic action towards gender equality in online and offline contexts.

LOG IN: A civic initiative against gender-based violence online

A local Romanian association called the Association for Freedom and Gender Equality (ALEG)¹⁵ developed a project¹⁶ aimed at combating and preventing online gender-based violence among teenagers. The initiative, suggestively called “LOG IN”, consisted of workshops based on a peer-to-peer education methodology and organised in schools and other public spaces used by teenagers. The project consisted of four key activities:

- Developing two training modules: one targeted at youngsters aged 14-18, and the other at parents and educators.
- Testing training activities on 250 high-school students, with the support of project personnel, and then on 750 high-school students through peer-to-peer education. Meanwhile, 400 parents and educators were targeted by the project team in order to raise awareness on the topic of cyber harassment. A series of creative and interactive methods were used such as developing a project slogan collectively, creating short videos, and designing content for online social platforms such as Facebook and Twitter.
- Evaluating the pilot activities via questionnaires before and after key events.
- Dissemination: students’ public performance.

The project has been implemented in the central Romanian city of Sibiu, with EU funding of EUR 44,647.08 (USD 49,608.04),¹⁷ and the partnership

¹⁰ European Union Agency for Fundamental Rights. (2014). Op. cit.

¹¹ https://joinup.ec.europa.eu/sites/default/files/ckeditor_files/files/eGov%20in%20Denmark%20-%20January%202015%20-%20v_17_o_Final.pdf

¹² [https://joinup.ec.europa.eu/sites/default/files/ckeditor_files/files/eGov%20in%20Romania%20-%20January%202015%20-%20v_12_o_Final\(1\).pdf](https://joinup.ec.europa.eu/sites/default/files/ckeditor_files/files/eGov%20in%20Romania%20-%20January%202015%20-%20v_12_o_Final(1).pdf)

¹³ <https://statistica.ancom.org.ro:8000/sscpds/public/files/89>

¹⁴ adevarul.ro/locale/vaslui/acasa-cele-sapte-brute-violat-lesin-eleva-asa-i-trebuie-plans-i-au-arestat-fata-e-vina-poveste-terifianta-satul-depravator-1_55a6839ef5eaafab2c99889b/index.html

¹⁵ Asociația pentru Libertate și Egalitate de Gen (ALEG), an NGO from the central Romanian city of Sibiu. The word “aleg” also means “I choose”.

¹⁶ aleg-romania.eu/wp-content/themes/Aleg/login.html

¹⁷ Though the European Commission’s Daphne Funding Programme, January 2013-December 2014.



Gender-based violence and responsible use of social media. Cover of a booklet for the LOG IN project. Source: ALEG Association.²⁰

of local authorities and multistakeholder support from three countries: Cyprus, Italy and Lithuania.

The main tangible result of the project was the high participation of teenagers in training activities and in the creation of videos on the topic of gender-based violence online. In addition, youngsters from the Romanian city of Sibiu got involved in a global campaign against sexual violence called One Billion Rising, organised on 14 February 2014.¹⁸ Meanwhile, parents and educators were acquainted with the opportunities and challenges of social media environments and given tips and tools on how to initiate a conversation, give support and be there for their children or students. A comprehensive booklet – dealing with gender-based violence and the responsible use of social media – was designed for them.¹⁹ The educational material developed for the project contains short and practical advice on how to tackle cyber bullying, how to protect personal data, how to talk with children and youngsters on cyber security, and on cyber bullying issues.

Although taking a somewhat moralising tone, the ALEG initiative was timely and practical, with

a highlight on trending issues such as online dating, privacy protection, cyber harassment and gender-based violence. For example, the project material recommends: “When posting and tagging photos with friends and acquaintances, ask yourself whether or not you are intruding on their privacy.”²¹ Several myths related to bullying in general, and cyber bullying in particular, are busted: “Myth: Victims of bullying are usually weak persons... Myth: Bullying someone on Facebook is not so serious as doing it face-to-face...”²² Meanwhile, important data is presented on the impact of the internet on children and teenagers in Romania: “Statistics show that 81% of children aged 12-15 use the internet to do their homework, and nearly 50% of them for online gaming.”²³

The video-contest “Respect, not only likes!” was perhaps the most creative part of the LOG IN Romania educational project. Students worked in teams and created short films presenting stories of gender-based violence in online and offline contexts. The most creative videos were celebrated and posted online. An example can be seen in the screenshot included here.

¹⁸ www.onebillionrising.org/about/campaign

¹⁹ aleg-romania.eu/wp-content/themes/Aleg/documents/Brosura%20pentru%20parinti%20si%20cadre%20didactice_RO.pdf

²⁰ aleg-romania.eu/wp-content/themes/Aleg/documents/Brosura%20pentru%20parinti%20si%20cadre%20didactice_RO.pdf

²¹ *Ibid.*, p. 9.

²² *Ibid.*, p.19.

²³ *Ibid.*, p.24.



Gender-based violence storified. Screenshot of an award-winning video from the LOG IN project. Source: ALEG Association.²⁴

Conclusions

Romanian post-totalitarian society is patriarchal, both online and offline. Gender-based violence is not consistently discussed and debated in public spaces. However, EU norms and policies on one hand, and local civil society initiatives on the other hand, offer opportunities for bringing the issue to the forefront of public discourse.

The LOG IN project is a positive example of mobilising local resources using EU funds and international connections in order to educate key stakeholders – teenagers, educators and parents – on the topic of gender-based violence in general, and cyber harassment in particular. The implementing NGO, an active advocate of gender equality and freedom of expression, is developing further projects on the topic of gender-based violence, connecting local and global, and online and offline contexts. It is the result of a new generation of activists socialised in a free society.

Meanwhile, the 2014 gang rape case and the cyberstorm it generated shows the need for more educational civic actions targeted at the young generation in Romania.

Action steps

- Projects such as LOG IN should be promoted in the mainstream media, and replicated by other local, regional and national organisations concerned with tackling gender-based violence in general, and cyber harassment in particular.
- Civil society organisations, governmental agencies and businesses should act in partnership to promote a safe, harassment-free society. Education and civic action that use art and other creative outputs are useful tools to reach this goal.
- With the disseminating power of the interactive web, the social impact of civic action can be enhanced significantly.

²⁴ Video contest for teens: Respect, not only likes! <https://www.youtube.com/watch?t=90&v=1ByNCf8zr8>

RUSSIA

ONLINE AND UNDER ATTACK: THE INTIMIDATION AND STIGMATISATION OF RUSSIA'S LGBT COMMUNITY



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Introduction

The protest was not large – some 50 people at most, who had stuck red masking tape across their mouths to symbolise how Russia's lesbian, gay, bisexual and transgender (LGBT) movement is being silenced. As they made their way from St. Petersburg's Vosstaniya Square to Kazansky Cathedral this April, the abuse started. Beer was thrown; pepper gas sprayed. Their posters were snatched and burnt with the warning: "This is what is going to happen to those who support faggots."¹

Such intimidation was expected by the marchers. Since 2013, when Russia's internal political discourse became dominated by the need to "return to traditional values",² attacks on the LGBT community and its supporters have become all too common. What made the April rally in St. Petersburg noteworthy was not the harassment, but what those present were protesting against: the repression against Russia's LGBT community, now also occurring online.

Policy and political background

The federal legislation "For the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values" – more commonly known as Russia's "anti-gay propaganda" law – was signed into force by President Vladimir Putin on 30 June 2013.³ It bans the dissemination among children of "propaganda for non-traditional sexual relationships", which in practice means lesbian, gay and bisexual relationships.

The law's passage and adoption has coincided with a spate of violence and discrimination against the LGBT community. A Moscow gay club was the

subject of a gas attack.⁴ In Volgograd a gay man was sexually assaulted with beer bottles and then tortured to death.⁵ Three men were jailed for the murder of a man they stabbed and set on fire because they believed he was homosexual.⁶ Teachers known to be in LGBT relationships were forced to resign in six Russian regions, often following a campaign by parents.⁷ LGBT public events have been banned, with the authorities citing concern that children might witness such activities.

As a result, Human Rights Watch has warned that the law has created an environment that "openly discriminates against LGBT people, legitimizes anti-LGBT violence and seeks to erase LGBT people from the country's public life."⁸

No safe haven

In a social and political environment where admitting to be gay risks stigmatisation, the threat of physical violence and state discrimination, there are few places Russia's LGBT community can turn without fear of reprisal. Increasingly required to hide and even deny their sexuality in public, one such place – at least until recently – was the internet. Svetlana is an example of someone for whom the anonymity of the online world provided an important and rare opportunity to voice her fears and worries.⁹ Aged 16 and living in a small town in central Russia where a man had been killed for being a homosexual, she posted: "I am scared that they will find me and lynch me. Sometimes I want to cry out: 'Accept me for who I am!'"

1 QueerRussia. (2015, 19 April). Clashes and Flashmobs on the Day of Silence in St Petersburg. *QueerRussia*. queerussia.info/2015/04/19/19492/#sthash.USS1oflH.dpbs

2 Kaylan, M. (2014). Kremlin Values: Putin's Strategic Conservatism. *World Affairs*, May/June. www.worldaffairsjournal.org/article/kremlin-values-putin%E2%80%99s-strategic-conservatism

3 pravo.gov.ru/proxy/ips/?docbody=&vkart=card&nd=102337335&rdk=&intelsearch=135-%D4%C7

4 Nichols, J. M. (2014, 25 November). Gas Attack At Moscow Gay Club Central Station Rattles Russia's LGBT Community. *Huffington Post*. www.huffingtonpost.com/2013/11/25/poison-gas-russia-gay-club_n_4337823.html

5 McCormick, J. P. (2013, 12 May). Russia: Tortured and killed gay man was 'raped with beer bottles'. *PinkNews*. www.pinknews.co.uk/2013/05/12/russia-tortured-and-killed-gay-man-was-raped-with-beer-bottles

6 Day, A. (2014, 7 February). The 25 most shocking anti-gay stories from Russia so far. *PinkNews*. www.pinknews.co.uk/2014/02/07/the-25-most-shocking-anti-gay-stories-from-russia-so-far

7 Human Rights Watch. (2014, 30 June). Russia: Anti-LGBT Law a Tool for Discrimination. <https://www.hrw.org/news/2014/06/29/russia-anti-lgbt-law-tool-discrimination>

8 Ibid.

9 O'Flynn, K. (2013, 10 August). Gay Russian teens communicate in secret to avoid law on 'propaganda'. *The Guardian*. www.theguardian.com/world/2013/aug/10/gay-russian-teens-avoid-propaganda-law

The site where she made this plea is Deti-404.¹⁰ Since the passing of the anti-gay propaganda law it has become one of the country's most important online havens for the LGBT community, and particularly for teenagers seeking help from professional psychologists or wishing to share their experiences about bullying and homophobia. Deti-404 means "Youth-404" in English. The name is a reference to the common web error message for a link that does not exist – "404 Page Not Found" – and was intended by its founder, Russian journalist and LGBT activist Lena Klimova, as a comment on Russia's desire to deny the existence of its LGBT youth.¹¹ Initially existing primarily on two social networks – Facebook and its Russian equivalent VKontakte – its forums became an online community filled with letters and photos from LGBT Russians looking to express themselves.

When she started the site in March 2013, Klimova did not realise how important it would become. At first it was intended as merely another forum for conversation, advice and assistance. It was only when the anti-gay propaganda law was passed that it became a much-needed refuge. She tells of the reaction the legislation provoked: "Many youngsters got very upset. Many were scared. Many are seriously discussing the possibility of emigrating abroad to study."¹² She explains that "their lives are far from easy. Coming-outs are associated with many and serious risks. In the worst cases, parents can go so far as forcing their children to leave, beating them, blocking phone and internet use, sending them to be 'treated' by a psychologist, placing them in a psychiatric hospital, or subjecting them to threats and harassment." In a survey she conducted of LGBT teenagers, she found that a number had considered suicide, and fewer than half had come out to their parents. Svetlana, the 16-year-old quoted above, has told how her mother called all homosexuals "mutants" and how her father said he would like to get out his gun and kill them. That is why, as part of the Deti-404 project, Klimova helps at-risk LGBT teenagers to get to talk to a specially trained psychologist if they wish.

It was in November 2014 that the Russian authorities turned their attention to Deti-404 in what has become the most symbolic example yet of how the limitations being placed on the country's LGBT

community in the "real world" are now also being imposed online.¹³ The country's media watchdog, Roskomnadzor, opened a case against Klimova for breaking the anti-gay propaganda law. "The information uploaded onto the community site is mostly geared towards creating a positive image of non-traditional sexual relations in the eyes of children, to make them seem equivalent and, in some cases, superior to traditional ones," its report said. Klimova was fined 50,000 rubles (USD 857, or twice the average Russian monthly salary). An appeal against the fine was meant to be heard on 6 April but, on arriving at court, Klimova found it had already been upheld at a secret session on 25 March to which she had not been invited. St. Petersburg lawmaker Vitaly Milonov has already demanded that the site be shut down.¹⁴ Now that Klimova has been tarred through the failure of her legal appeal as someone spreading "gay propaganda", the path is clear for Roskomnadzor to block her site whenever it wishes.

Nor is Deti-404 alone in finding itself under attack. In some cases the limitations being placed on the LGBT community in the digital sphere border on the farcical. The game *The Sims 4*, for example, was banned in Russia from being sold to anyone under the age of 18, as it historically allows same-sex relationships in-game.¹⁵ Then there was the denouncing of the new U2 album distributed free by Apple as part of its iTunes update – the cover image was criticised for being gay propaganda as it showed a man with a shirtless 18-year-old boy. It was in fact the group's drummer, Larry Mullen, embracing his son, Elvis.¹⁶ But the ridiculous nature of such examples should not hide the increasingly ubiquitous nature of what is occurring. The newspaper *Molodoi Dalnevostochnik* ("Young Dalnevostochnik") was fined for publishing a story about a gay teacher as in it he was quoted as saying that "homosexuality is normal."¹⁷ During the 2014 Winter Olympics in Sochi

¹⁰ www.deti-404.com/

¹¹ Isaacson, B. (2014, 25 February). Read the Heartbreaking Online Letters of Young, LGBT Russians. *Huffington Post*. www.huffingtonpost.com/2014/02/25/lgbt-russians_n_4823323.html

¹² Café Babel. (2013, 4 September). What's life like for Russia's LGBT youth? www.cafebabel.co.uk/society/article/deti-404-interview-whats-life-like-for-russias-lgbt-youth.html

¹³ Tétrault-Farber, G. (2015, 25 January). Russian LGBT Activist Fined for Disseminating 'Gay Propaganda'. *The Moscow Times*. www.themoscowtimes.com/news/article/russian-lgbt-activist-fined-50-000-rubles-for-disseminating-gay-propaganda/514867.html

¹⁴ Human Rights Watch. (2015, 2 April). Russia: Court Hearing against LGBT Group. <https://www.hrw.org/news/2015/04/02/russia-court-hearing-against-lgbt-group>

¹⁵ Malberg, E. (2014, 10 May). *The Sims 4* gets adults only rating in Russia because it depicts same-sex relationships. *GameSpot*. www.gamespot.com/articles/the-sims-4-gets-adults-only-rating-in-russia-because-it-depicts-same-sex-relationships/1100-6419552

¹⁶ Meduza. (2015, 30 April). Russian politician denounces Apple's U2 album gift as 'gay propaganda'. *The Guardian*. www.theguardian.com/world/2015/apr/30/russia-politician-denounces-apple-u2-album-gift-gay-propaganda

¹⁷ Duffy, N. (2014, 30 January). Russia: Newspaper editor fined under anti-gay law for printing 'being gay is normal'. *PinkNews*. www.pinknews.co.uk/2014/01/30/russia-newspaper-editor-fined-under-anti-gay-law-for-printing-being-gay-is-normal

a gay dating app was banned.¹⁸ But, like Deti-404, these are just the high-profile cases. Perhaps the most disturbing element of the online LGBT repression occurring in Russia today is the daily, usually unreported and often highly organised hunt for anything, however large or small, appearing on the internet which could be tarred as “non-traditional”.

Late last year a cartoon started to spread on Russian social networks of a long-haired, bearded man clutching a rainbow flag being crushed by a giant hand, while a little boy in green overalls looked on.¹⁹ Its caption read: “Any virus must be crushed instantly! LGBT, drug dealers and the propaganda of perverts are calling for the destruction of our future.” The cartoon was created by MediaGvardia, a new pro-Kremlin youth organisation whose stated aim is to purge the internet of anything that could “corrupt” children. It quickly recruited 4,000 online volunteers to monitor any new material appearing. So far this digital army has filed complaints against 18,767 sites and successfully had 2,475 of them closed. It was MediaGvardia that mobilised the opposition to Deti-404 that enabled Roskomnadzor to act.

And then there are the trolls. It is hard to quantify the scale of this problem but the anecdotal evidence is not only extensive but disturbing. LGBT activists all report receiving regular online abuse. Anti-LGBT groups have also used social media to connect with gay men, posing as potential love interests, before luring them into situations where they will be attacked, a process they refer to as “safaris” using “bait”.²⁰ Klimova now receives almost as many death threats as letters from the LGBT community. In response she has launched a new online project titled “Beautiful People and What They Say to Me” which is meant to shame those sending such messages.²¹ It features publicly available photos of people going about their everyday lives, overlaid with the threatening messages they’ve sent Klimova on Vkontakte.²² It is these messages that fully expose the vitriol that LGBT people in Rus-

sia now routinely face, not only in public but online, if they seek to express their sexuality. “I’ll be the first to set fire to the stake you’re going to burn on,” says one. “If I saw you, I’d strangle you with my own hands,” writes another. “Gunning you down, you little bitch, is just the beginning of what you deserve,” is a third.

Conclusion

The online repression of Russia’s LGBT community is not occurring in isolation. The current bias towards conservatism in the country is built into a wide range of domestic and foreign policy initiatives. Indeed the promotion of traditional values was a key element in Putin’s campaign to return to the presidency in 2012.²³ One consequence of this is the lack of educational materials that presently exist in Russia to enable greater understanding of LGBT issues. It is, for example, a widespread view that homosexuality is an illness. This has also impacted on health initiatives. The number of registered HIV cases in children under 14 years of age in Russia jumped by 32% in 2014. Campaigners say that the trend in the under-17 age group is in particular driven by a lack of HIV prevention and education, much of which was previously provided by NGOs run by the LGBT community.²⁴

There is a tragic irony in the fact that organisations such as Deti-404 are singled out for promoting “gay propaganda” when their purpose is to allow LGBT people to share the reality of their lives, and these lives are often filled with stories of fear, abuse and stigma. As one Deti-404 supporter says: “If anybody thinks that we are trying to promote gay relationships then come and see how we are beaten, how we are humiliated, how we are bullied. Come and see how wonderful it is [to be gay in Russia].”²⁵ Russia’s anti-gay propaganda law was drafted with the stated objective of protecting children. Its effect – whether through stigmatising young members of the LGBT community or through the wider impact on AIDS awareness – has been the opposite. If the Russian authorities really want to protect children they need to condemn homophobia and prosecute

18 Duffy, N. (2014, 3 February). Russia: Gay dating app blocked, users threatened with arrest. *PinkNews*. www.pinknews.co.uk/2014/02/03/russia-gay-dating-app-blocked-users-threatened-with-arrest

19 Balmforth, T. (2015, 26 March). Meet The Kremlin’s Young Army Of Cybersnitches. *Radio Free Europe*. www.rferl.org/content/russia-mediaguardia-stalin-era-internet-snitching/26921838.html

20 Parkinson, H. J. (2014, 11 February). How anti-gay groups use ‘Russian Facebook’ to persecute LGBT people. *The Guardian*. www.theguardian.com/technology/2014/feb/11/russia-violent-anti-gay-groups-vkontakte-lgbt-sochi

21 Rothrock, K. (2015, 20 April). The ‘Beauty’ of Russian Homophobia. *Global Voices*. globalvoicesonline.org/2015/04/20/the-beauty-of-russian-homophobia

22 https://vk.com/album6184701_214830577

23 Shadrina, A. (2015, 5 May). What is threatening ‘traditional family values’ in Russia today? *OpenDemocracy*. <https://www.opendemocracy.net/anna-shadrina/what-is-threatening-%E2%80%99traditional-family-values%E2%80%99-in-russia-today>

24 Fitzgerald, N., & Ruvinsky, V. (2015, 22 March). The fear of being gay in Russia. *Politico*. www.politico.com/magazine/story/2015/03/russia-putin-lgbt-violence-116202.html#_VblmDNJvHbc

25 Edwards, M., & Wade, I. (2014, 12 June). Russia’s invisible youth. *OpenDemocracy*. <https://www.opendemocracy.net/od-russia/maxim-edwards-imogen-wade/russia%E2%80%99s-invisible-youth>

homophobic aggression, both online and offline. Then there could be an answer to the question that one 15-year-old wrote on Deti-404: “What should I do? How to find love if you have to hide?”

Action steps

In this context, the following action is recommended for civil society activists:

- Lobby Western media companies present in the Russia market, such as Facebook, to have a zero tolerance policy on anti-LGBT abuse by users of their products and platforms.
- Support Deti-404 through public information campaigns and financial assistance.
- Disseminate the legal work that has already been done that demonstrates how the “anti-gay propaganda” law contravenes existing legislation on the Russian statute book.²⁶
- Gay rights, human rights and internet freedom groups should lobby Russian businesses and politicians to publicly denounce online anti-LGBT repression.
- Social media engagement with Russia’s LGBT community to ease the sense of isolation felt by many LGBTs would offer some measure of support.

²⁶ Examples of such work include Johnson, P. (2015). ‘Homosexual Propaganda’ Laws in the Russian Federation: Are They in Violation of the European Convention on Human Rights? *Russian Law Journal*, III(2). papers.ssrn.com/sol3/papers.cfm?abstract_id=2251005; Poldsofer, S. (2014). Pride and Prejudiced: Russia’s Anti-Gay Propaganda Law Violates the European Convention on Human Rights. *American University International Law Review*, 29(5). digitalcommons.wcl.american.edu/auilr/vol29/iss5/4; Engle, E. (2013). Gay Rights in Russia? Russia’s Ban on Gay Pride Parades and the General Principle of Proportionality in International Law. *Journal of Eurasian Law*, 22. papers.ssrn.com/sol3/papers.cfm?abstract_id=2296803; and Bauweleers, T. (2014). *The legal situation towards homosexuals in Russia: A closer look at the law on propaganda*. Masterscription for the degree of Master in Eastern European Languages and Cultures, University of Ghent. lib.ugent.be/fulltxt/RUG01/002/162/541/RUG01-002162541_2014_0001_AC.pdf



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Introduction

The population of Rwanda is young, which implies that it is sexually active. Today, people between 0 and 35 years old are estimated to account for 79% of the whole population of over 11 million.¹ While 49% of the total population is between the ages of 0 and 18 years, those aged 15 to 24 constitute 20%.

According to a behavioural survey conducted in 2009² among youth aged between 15 and 24, 31% of the respondents reported that they have had sex. Among those who had experienced sex, 47% were males and 53% females. The median age at first sexual intercourse was 16 for male and 17 for female respondents. According to a Save the Children report quoted by Grover and Sandhu,³ 13 million children are born worldwide each year to women who are under the age of 20; more than 90% of these children are born in developing countries. Complications of pregnancy and childbirth are the leading cause of mortality among women between the ages of 15 and 19 in developing countries.

This report will focus on sexual rights in Rwanda *vis-à-vis* the existing policies and legal framework, and efforts and challenges in educating young people on sexual reproduction. The role of new media in bridging the current gaps in sexual education and what can be the potential effect of harmful internet content on unsupervised young people will also be explored.

Policy and political background

In 1990, Rwanda signed the Convention on the Rights of the Child (CRC) and reports on it regularly.⁴ The CRC gives young people the right to information on sexual and reproductive health.⁵ However, talking about sex in Rwanda is still a taboo topic, be it at home between parents and their children, be it at school between teachers and pupils, or be it between partners.⁶ This situation makes it difficult for the youth to have the right information and knowledge about sexuality. In some cases, they get plied with information from people with bad intentions, which may lead to consequences such as undue anxiety, unwanted pregnancies, an inability to say “no” to unwanted sexual advances, or an inability to negotiate safe sex.

Some local media, especially radio stations, online media houses and the Media High Council (MHC) have started discussing topics linked to sexuality.⁷ But the reaction from the public is three-fold: one part of the population views such programmes as an act of propagating obscenity, another part prefers to use euphemistic language so that children may not guess what they are talking about, and the last category of people enjoy these discussions. For many, the discussions are the only sure way of getting information on sexuality that parents, schools and society are not providing.

Some of the public discussion on sexuality has been provoked by films and song clips appearing on the topic due to the emerging multimedia industry in the country. For example, one local movie in 2012 started causing a stir in the public even before its official launch. The furor mainly arose over concerns that the film might contain scenes of obscenity and nudity.⁸ A tendency empirically observed in the

1 www.statistics.gov.rw

2 Rwanda Biomedical Center. (2010). *Behavioral Surveillance Survey Among Youth Aged 15-24 Years. Rwanda-2009*. rbc.gov.rw/IMG/pdf/behavior_and_biological_survey_among_youth_15-24_years_rwanda_2009-2.pdf

3 Grover, N., & Sandhu, K. (2009). Teenage Pregnancy: Too much too soon. *South Asian Federation of Obstetrics and Gynecology*. www.jaypeejournal.com/ejournals/ShowText.aspx?ID=390&Type=FREE&TYP=TOP&IN=_ejournals/images/JPLOGO.gif&IID=41&isPDF=NO

4 UN Committee on the Rights of the Child. (2013). Concluding observations on the third and fourth periodic reports of Rwanda, adopted by the Committee at its sixtythird session (27 May–14 June 2013). www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-RWA-CO-3-4.pdf

5 Ministry of Health. (2012). Adolescent Sexual Reproductive Health and Rights Policy 2011-2015. www.moh.gov.rw/fileadmin/templates/policies/ASRH_and_Right_policy.pdf

6 Ibid.

7 www.mhc.gov.rw/fileadmin/templates/PdfDocuments/Reports_and_Publications/Others/Raporo_ku_muco.pdf

8 Rwanda Show. (2012, 7 September). Rwanda movie industry making stride. *Rwanda Show*. www.rwandashow.com/shows/821/rwanda-movie-industry-making-stride

last category mentioned above, those who support discussions of sexuality, is that it contains groups of people who are making big money through selling pictures of naked girls, especially of girls and young women under 18 years old.⁹

To date, there is no specific law regulating new media, nor how children can access and use the internet. However, stakeholders have started a process to establish child online protection strategies: “Our children are there online and we cannot deny them access but we want to protect them as we nurture them,” the minister of youth and ICT in Rwanda said.¹⁰ When it comes to issues of violence and obscenity, Article 7 of the Code of Ethics of Media Practitioners in Rwanda states: “A journalist shall avoid broadcasting or publishing news inciting violence or obscene news encouraging hostility or other illegal activities.”¹¹ The current Penal Code simply envisages prohibition of child pornography. In Article 230, it provides that “any person who displays, sells, rents, disseminates or distributes pornographic pictures, objects, movies, photos, slides and other pornographic materials involving children shall be liable to a term of imprisonment of five years to seven years and a fine of five million to twenty million Rwandan francs.”¹²

Sex work is not criminalised under the Penal Code of Rwanda.¹³ Nevertheless, Article 205 implies its illegality and stipulates that whoever engages in prostitution shall fulfil the following obligations:

- Not to leave territorial limits determined by the court
- Not to go to certain places determined by the court
- To be subjected to surveillance measures
- To seek medical treatment
- To periodically report to administrative services or authorities determined by the court.

Looking at the current draft ICT bill,¹⁴ Article 17 stipulates that in order to protect the public from any threat to public safety, and to safeguard public

health or in the interest of national security, the minister has the power to direct the communications regulatory authority to issue to any person a directive suspending or restricting that person’s entitlement to “provide an electronic communications network or services or any associated facility.” In general the ICT bill is expected to ensure the interests of consumers, and includes clauses on cyber security, privacy, and consumer protection from inappropriate content.

On different occasions the Ministry of Health attempted to pass legislation to legalise abortion and access to contraception for adolescents, but these efforts were blocked by lawmakers who argued that the changes were against Rwanda’s cultural values.¹⁵

Homosexuality is not illegal in Rwanda, but is strictly against societal norms according to religious leaders,¹⁶ with a strong cultural resistance regarding its existence as read in the Rwanda HIV and AIDS National Strategic Plan (2009-2012),¹⁷ which states that men who have sex with men (MSM) “remain a hidden population in Rwandan society because of social stigma associated with sexual orientation.” In addition, there is limited information about groups such as homosexual men, lesbians or sex workers in Rwanda.¹⁸ Traditional gender norms promote heterosexual relationships and do not condone homosexuality. These very strong cultural and gender norms and ideals for both men and women can be seen as the origin of the stigma and discrimination of homosexual men and other members of the lesbian, gay, bisexual, transgender and intersex community (LGBTI).¹⁹

These gender norms are especially affecting the sexual and reproductive health of adolescents, who, when confronting issues of their own sexuality and identity, face many barriers in understanding the biological and emotional issues they are experiencing.

Challenges at schools

In Rwandan culture, having sex before marriage and not falling in line with existing marital norms is seen as a curse, not only for yourself but also for your entire family. As seen above, sexuality in Rwanda is

9 www.igihe.com/amakuru/u-rwanda/article/kigali-itsinda-chocolate-pictures

10 Mugabo, J. (2015, 17 July). Govt moves to protect children from cyber attacks. *The New Times*. www.newtimes.co.rw/section/article/2015-07-17/190688

11 Rwanda Media Commission. (2013). Rwanda Journalists and Media Practitioners’ Code of Ethics. rnc.org.rw/wp-content/uploads/2014/08/COE-ENG.pdf

12 www.police.gov.rw/uploads/tx_download/Official_Gazette_no_Special_of_14.06.2012-4.pdf

13 *Ibid.*

14 www.parliament.gov.rw/uploads/tx_publications/DRAFT_LAW_GOVERNING_INFORMATION_AND_COMMUNICATION_TECHNOLOGIES.pdf

15 Ministry of Health. (2011). Rapid Assessment of Adolescent Reproductive Health Programs in Rwanda. pdf.usaid.gov/pdf_docs/paooj35h.pdf

16 www.radiomaria.rw/imyanzuro-yinama.aspx

17 rbc.gov.rw/library/sites/default/files/Final%20NSP_2013-2018.pdf

18 Ministry of Health. (2012). *Op. cit.*, page 20.

19 Rwanda Biomedical Center. (2013). Gender Assessment of Rwanda’s National HIV Response. www.rbc.gov.rw/IMG/pdf/gender_assessment_report_b5_fin.pdf

something that people do not want to discuss and express publicly. The publication of erotic images or stories is considered harmful to children.

Recent stories in the news on the increasing number of unintended teenage pregnancies and the consequences that follow suggest that some young girls, especially students from primary school to the tertiary level, engage in unsafe sex because of limited knowledge on sexuality.

In November 2011, the Ministry of Health issued a communiqué against condoms in schools. In it Minister of Health Agnes Binagwaho stated that the government was in favour of sexual reproductive health education and not condoms in schools: “The Ministry of Health would like to make it clear that our position as a government is to encourage sexual reproductive health education in our secondary schools, aimed at opening the minds of our youth to the dangers associated with early sexual encounters as opposed to distribution of condoms.”²⁰

Some members of civil society have pushed against this decision, most of them recognising that access to contraception and abortion are fundamental issues for adolescents. They said: “We shall continue to explain to the various stakeholders why we are advocating for condom accessibility in secondary schools. We don’t have the mandate and capacity to distribute them, but rather [can advocate] for easy accessibility.”²¹

The high unwanted pregnancy rate amongst teenagers is being observed in both educated and non-educated sectors of the population. Recent reports demonstrate this:

- In 2012, the University of Rwanda recorded a rise in unwanted pregnancies in the student community: 59 unplanned pregnancies were identified.²²
- In 2013, the *New Times*, one of the daily newspapers in Rwanda, reported what they called a “pregnancy scandal” that had engulfed Groupe Scolaire Nsinda, a rural school in Rwamagana in the Eastern Province, where 26 students were found pregnant over a two-year period.²³

- On 30 March 2015, a local online newspaper²⁴ reported that 55 girls got pregnant in a period of one year in a “cell” (the name for an administrative entity approximately 12 square kilometres in size) in a remote sector called Rutare, in the Gicumbi district in the Northern Province.

These reports are a concern to society at different levels, and can have a profoundly negative impact on the people involved. As for reaction, in the case of the report in the *New Times*, the governor of the Eastern Province, Odette Uwamariya, said: “It is disgusting to hear what happened to the girls. I want to see to it that culprits are brought to book.”²⁵

For the reporter, the causes of this situation are the limited knowledge on sexuality and a lack of capacity to refuse unsafe sex or negotiate safer sexual relationships. The reporter asked himself questions: “Who is teaching them ‘how to say no’? Who is explaining to them how, and let me whisper it, to have safe sex? We can keep our heads in the sand like ostriches, but the fact of the matter is a sexual revolution of sorts is upon us. ... The advent of mobile phones connected to the Internet, social media and globalization (or western value systems; whatever you wish to call it) has totally changed the game. Our children are exploring their sexuality a lot more than we ever did.”²⁶

Findings from a national survey on the incidence of unintended pregnancy and abortion in Rwanda show that in 2009, 47% of pregnancies in Rwanda were unintended. During the first Rwanda family planning day event held on 23 March 2013 in Kigali, it was revealed that about half (47%) of all pregnancies in the country were unintended, of which 22% of those were ending in induced abortion.²⁷

In urban areas, in middle class families who employ domestic workers, it has been observed that some children under their care are exposed to pornographic videos stored on the domestic workers’ mobile phones, which they share with the kids in the absence of their parents.

These domestic workers spend many hours with the children compared to the children’s parents. By being exposed to this pornographic material young people who might not have the opportunity

20 Kaitesi, M. (2011, 10 November). Gov’t against condoms in schools. *The New Times*. www.newtimes.co.rw/section/article/2011-11-10/36664

21 Rwanda Civil Society Platform. (n/d). Gov’t against condoms in schools. *RCSP*. www.rcsprwanda.org/spip.php?article63

22 Ubumenyi. (2013, 20 March). Unplanned pregnancies at NUR worry officials. *Ubumenyi*. www.ubumenyi.com/?p=1147

23 Ntayomba, S. (2013, 6 February). Rwanda’s recent spate of teenage pregnancies is our fault. *The thing is...* <https://sunnintayombya.wordpress.com/2013/02/06/rwandas-recent-spate-of-teenage-pregnancies-is-our-fault>

24 www.makuruki.rw/spip.php?Article3910

25 Ntayomba, S. (2013, 5 February). Teenage pregnancies our fault. *The New Times*. www.newtimes.co.rw/section/Printer/2013-02-05/62592/

26 Ibid.

27 Basinga, P., et al. (2013). *Unintended Pregnancy and Induced Abortion in Rwanda: Causes and Consequences*. www.sph.nur.ac.rw/IMG/pdf/Rwanda_monograph_ENG_Final_4-18-13.pdf

to discuss this with their parents can be negatively affected.²⁸

The majority of parents interviewed for this report reported that they do not talk to their children about reproductive health issues because they find it extremely difficult, and due to a lack of knowledge about the topic. Some say they feel shy to talk about sex, or they are too busy to find time to talk about it. They believe that children receive reproductive health information from school, or they assume that children do not want to talk about sex with parents.²⁹

Finally, it is worth mentioning that children need open discussions about sexuality in ways that address their everyday realities. An emerging phenomenon which is being observed in Rwanda is the sexual harassment of boys by older women called *gupfubura*. “*Gupfubura*” is a Kinyarwanda word that refers to a married partner – male or female – who is not satisfied sexually and looks for an outside partner for sexual satisfaction. For the coordinator of the National Women’s Council in Muhanga district, Prisca Mukayibanda, *gupfubura* can result in sexual violence because in some instances innocent people get affected. She laments: “If a young boy is asked by a married woman to give her sexual satisfaction [she] harasses him sexually... [The] boy is lured into sex because of material things.”³⁰

Conclusions

Freedom to access information on sexuality and reproductive health is a right that needs to be realised in Rwanda. While the internet offers potential to bridge this gap, online information can be misguided, simply wrong, and, in the case of pornography, harmful. This can in particular have a negative effect on the population under 18 years old.

The challenge is the limited supply of age-appropriate online and digital content. There is a need to mitigate the harmful use of new technologies through the adoption of specific laws addressing cyber crimes, including sexual violence online.

Action steps

Given that the majority of the Rwandan population is young, and taking into consideration how young people can be negatively affected by restrictive social norms, harmful content and the use of technology to commit crimes, the following actions need to be taken:

- Rwanda should speed up the process of providing effective legislative protection for children against all forms of cyber offences.
- There is a need for effective mechanisms and capacity to monitor sites promoting violence, harmful pornography, hate speech, and other content that may negatively affect the behaviour of young people.
- Internet users should be educated on how to use the internet safely and responsibly.
- Campaigns should be conducted to raise awareness among young people about safe sex.
- Measures are needed to build the confidence of parents to discuss reproductive health with their children openly.

28 www.izuba-rirashe.com/m-13563-bamwe-mu-bakozi-bo-mu-rugo-banduza-abana-ngo-bababaze-ababyeyi-babo.html

29 Ministry of Health. (2012). Op. cit.

30 Together Rwanda. (2012, 15 July). Rwanda: Gender based violence committee dubs infidelity a form of sexual harassment. *Together Rwanda*. www.togetherwanda.com/2012/07/rwanda-gender-based-violence-committee-dubs-infidelity-form-sexual-harassment



Share Foundation

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Introduction

This report focuses on online hate speech targeted at the lesbian, gay, bisexual and transgender (LGBT) community in Serbia. According to the European Commission, the general situation regarding the rights of LGBT persons is something that the Serbian government needs to work on. Nevertheless, the successful staging of the Pride Parade in September 2014 without major violent incidents marked an important step towards the effective exercise of LGBT rights.¹ At the same time, the legislative and institutional framework for the protection of minority rights in Serbia, as will be discussed later, is comprehensive and in line with the international standards. Given this, the main problem with the online abuse of LGBT persons and other minorities targeted by hate speech seems to be the ineffective enforcement of legal provisions. Another issue that presents an obstacle for a more tolerant society is the attitude of the general population towards the LGBT community, seen during the annual hosting of the Pride Parade. This event still divides the population of Serbia on whether or not it should be held – a division that has resulted in violent confrontations in Belgrade in the past and numerous examples of hate speech on social media platforms and news portals.

Policy and political background

In the Serbian legal framework, hate speech and discrimination are prohibited by the provisions of several regulations, including the Constitution,² the Criminal Code,³ the Law on Public Information and

Media⁴ and the Law on Electronic Media.⁵ There is also a Law on the Prohibition of Discrimination, which prohibits the expression of “ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.”⁶ It should be noted that even though the legal framework in Serbia prohibits any kind of discrimination, there have been cases of public officials discriminating against the LGBT population. In 2011, Belgrade City Assembly Councillor Nebojša Bakarec authored an article on the website *vidovdan.org* in which he stated that homosexuality “is not normal” and should be “treated by psychiatrists and psychologists.”⁷ Serbian LGBT rights organisation Gay Straight Alliance (GSA - *Gej strejt alijansa*) filed a lawsuit against Bakarec, and in 2012 a First Basic Court in Belgrade ruling that his article was indeed discriminatory became final as he had not appealed in time.⁸

Offering some measure of protection

Hate speech is not only forbidden by law – it also creates an atmosphere of intolerance, which cannot be the foundation to a fully democratic society. With the growth in internet access in Serbia, and web 2.0 platforms that allow peer-to-peer communication and user comments on online content, various kinds of hate speech and inflammatory expressions have

1 European Commission. (2014). *Serbia 2014 Progress Report*. Brussels: European Union. www.ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

2 Republic of Serbia. (2006). Constitution of the Republic of Serbia. Official Gazette of the Republic of Serbia, no. 98/2006. Available in Serbian at: www.paragraf.rs/propisi/ustav_republike_srbije.html

3 Republic of Serbia. (2014). Criminal Code (last amended in 2014). Official Gazette of the Republic of Serbia, nos. 85/2005, 88/2005 - correction, 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014. Available in Serbian at: www.paragraf.rs/propisi/krivichni_zakonik.html

4 Republic of Serbia. (2014). Law on Public Information and Media. Official Gazette of the Republic of Serbia”, nos. 83/2014 and 58/2015. Available in Serbian at: www.paragraf.rs/propisi/zakon_o_javnom_informisanju_i_medijima.html

5 Republic of Serbia. (2014). Law on Electronic Media. Official Gazette of the Republic of Serbia, no. 83/2014. Available in Serbian at: www.paragraf.rs/propisi/zakon_o_elektronskim_medijima.html

6 See Article 11 of the Law on the Prohibition of Discrimination (2009), available in English at: www.ravnopravnost.gov.rs/images/files/Zakon_o_zabrani_diskriminacije_i_prevodi.pdf

7 Bakarec, N. (2011, 16 September). “Second October 2011”, *Vidovdan Magazine*. www.vidovdan.org/index.php?option=com_content&view=article&id=18284:drugi-oktobar-2001-godine&catid=39:drustvo&Itemid=66

8 Gay Straight Alliance. (2012, 23 October). Verdict on Nebojša Bakarec for severe discrimination of LGBT population became final www.en.gsa.org.rs/2012/10/verdict-on-nebojsa-bakarec-for-severe-discrimination-of-lgbt-population-became-final

appeared more frequently online. Much of this is directed at the LGBT community in the country.

Although there are mechanisms to report this kind of content, the questions of who created the content and who should be held responsible for it remain. The general rule is that in cases where it amounts to hate speech or is otherwise illegal, the user should be responsible for the content he or she posted. However, several years ago, the GSA filed a lawsuit against Press Online (“*Pres onlajn*”),⁹ the news portal for the daily newspaper *Press*, because of reader comments. Press Online published a story about a young man openly expressing his homosexuality on a TV show.¹⁰ Soon after the story was published, most of the 85 reader comments that were posted in reaction to the story contained insults and threats aimed at LGBT persons. The High Court in Belgrade, in its first ruling in 2011, explained that these comments instigated hatred, violence and discrimination against the LGBT population and represented hate speech, as prescribed by the Law on the Prohibition of Discrimination and the Law on Public Information (which was then in force). Also, there was a notice on Press Online’s website that hate speech is forbidden and that comments containing hate speech will not be published, which was not the case.¹¹

In a second ruling, the Court of Appeals in Belgrade confirmed the initial ruling. The court’s opinion was that the prohibition of hate speech does not represent censorship, because the goal of the prohibition on hate speech is to prevent the dissemination of ideas that can have unimaginable negative consequences on the democratic process and the development of the society as a whole. The hateful comments were removed from the Press Online website after the GSA filed the lawsuit, but were nevertheless available for more than 10 days on the website.¹² This case has shown that although the internet enables relatively free communication between people, and allows users to engage with media platforms, there are legally established limitations on the kinds of content that can be posted, which need to be respected. In addition, the com-

munity guidelines of almost all news portals prohibit hate speech, so both users and publishers must be very careful when it comes to issues such as LGBT rights.

We had an opportunity to talk to GSA attorney Aleksandar Olenik about this. He told us that in the past year they had started one civil court proceeding for a case that was not related to the internet. We also wanted to know what the most common examples of online hate speech directed at the LGBT population are. According to Olenik, there are a wide variety of messages that discriminate and endanger LGBT persons, from serious ones such as death threats to disparaging statements such as LGBT people need medical treatment.¹³

While we already knew that the judicial system in Serbia was inefficient, we did not realise the extent of inefficiency in cases where the rights of the LGBT population must be protected. “The judiciary is very slow, and in 70% of the cases the outcome is negative for LGBT persons,” said Olenik.¹⁴ It means that our system does not recognise the importance of online hate speech, and how this can influence the safety of the LGBT community. GSA President Lazar Pavlović also said that at first the authorities did not know how to manage cases involving LGBT persons. “Later they found ways to use the Criminal Code and prosecute the offenders. There were some mistakes in the beginning – the defence could find ways to bring down the charges through ‘holes’ in indictments. It does not function perfectly, but the situation is much better,” he added.¹⁵

According to Pavlović, online threats against the LGBT community intensify between the announcement of the Pride Parade and the event itself and slowly fade away afterwards. “People who make threats on the internet are mostly around 18 years old, while those who do it in the street are older, between 25 and 30,” Pavlović explained.¹⁶ This can lead us to a conclusion that “millennials” are more comfortable using the online environment to make threats and post hateful content because they feel protected.

Every year the GSA publishes a report on the state of human rights for LGBT persons in Serbia. In the report for 2014, it is stated that there were several first and final judgements before the High Court in Belgrade against people who made death threats and threatened violence against members of the LGBT community on social networks. The indictments and prosecution were led by a special department of the

9 www.pressonline.rs

10 D.M. (2009, 2 July). “I will be a gay icon”. *Press Online*. www.pressonline.rs/zabava/dzet-set/70974/bicu-gej-ikona.html

11 Gay Straight Alliance. (2011, 7 June). First verdict for hate speech against the LGBT population in Serbia - verdict to “Press” daily newspaper after GSA’s claim. www.en.gsa.org.rs/2011/06/first-verdict-for-hate-speech-against-lgbt-population-in-serbia-verdict-to-press-daily-newspaper-after-gsas-claim

12 Gay Straight Alliance. (2012, 16 February). Court of Appeals in Belgrade confirmed that hate speech against LGBT persons cannot be justified by freedom of speech and information. www.en.gsa.org.rs/2012/02/court-of-appeal-in-belgrade-confirmed-that-hate-speech-against-lgbt-population-can-not-be-justified-by-freedom-of-speech-and-information

13 Email correspondence with GSA attorney Aleksandar Olenik, 24 June 2015.

14 *Ibid.*

15 Interview with GSA President Lazar Pavlović, 26 June 2015.

16 *Ibid.*

High Prosecution Office for Cybercrime in Belgrade. All accused persons were sentenced for the criminal offence of “endangering security”. They received suspended prison sentences of varying lengths, ranging from three to six months, which will be executed if they commit a new criminal offence within one to two years from the time of final judgement. Penalties were imposed after a trial or after a guilty plea was entered by the accused, and GSA activists have appeared before the court as witnesses for the victims.¹⁷

According to our research, the first case that involved hate speech on Facebook was against Simo Vladičić. He was the first person prosecuted and convicted for threats directed at members of the LGBT community on a Facebook group called “500,000 Serbs against Gay Pride”. In the first court ruling, Vladičić was sentenced to three months imprisonment, suspended conditionally for two years, also for the criminal offence of endangering security. Unfortunately, we do not have more information about this proceeding and whether there was a final judgement in this case.¹⁸

Conclusions

As we can see from these examples of cases that were settled in court, the internet in Serbia is often used to discriminate against persons with different sexual orientation. The situation therefore cannot be considered satisfactory: Serbia is still a highly polarised society, especially when it comes to the right of LGBT persons to freely express their sexual identity without being targeted with hate messages and threats. Although we presented the most notable examples where the courts offered members of the LGBT community some measure of redress, these are all situations when the damage was already done.

Another issue is that state bodies in Serbia (e.g. courts, prosecutors and the police) in most cases do not understand how the online environment works and how to efficiently deal with cases of online hate speech. What needs to be taken into account are the prevention and reporting mechanisms (e.g. the “Report” button of Facebook or blocking users on Twitter) on online communication platforms. User-generated and third-party content is the driving force behind today’s digital communication, but it is important to strike the right balance between allowing expression that is critical and thought provoking and banning or at least reducing the amount of content that clearly represents hate speech and other forms of expression

forbidden by the law. What is also problematic is that the persons responsible for publishing this content are given a heavy burden to decide what is legal and what is not, especially as they are usually not competent enough to make that decision.

It is also important to note that an awareness of the impact that people’s actions online can have is not very high in Serbia. Most people do not think that what they do or say on the internet can influence their own and other people’s lives. But this influence is growing, as more people come online. A scenario where someone actually decides to physically harm an LGBT person after writing or reading hateful content on the internet is not hard to imagine, particularly in a society such as Serbia.

Still, whenever there is a proposal for measures that could hinder legitimate free speech on the internet, policy makers, civil society, internet content providers and other relevant actors need to look out that they do not fall into a trap of over-regulating a free and open information space such as the internet. Any kind of automatic filtering or blocking of content to prevent hate speech would surely be a disproportionate measure. The results would also be questionable, as there are ways to circumvent these kinds of technical filtering tools.

Action steps

In order to provide a space for free debate on matters of public interest without hate speech, discrimination and threats – not just to protect the LGBT community, but all internet users in Serbia – we can offer a set of recommendations to make online communication more civil and acceptable:

- Online platforms should create short, clear and straightforward rules and guidelines for commenting and posting content and notify users if content is pre-moderated (everything is checked by moderators before publishing online) or post-moderated (everything is published instantly, only reported posts are removed upon notice).
- Online platforms should give clear explanations of what is considered hate speech under the law and demonstrate through a few obvious examples.
- Content moderators need to be educated to recognise hate speech and find the balance between legitimate and damaging speech.
- Activists and internet users in general should be encouraged to report hate speech on social media and other platforms and immediately contact the relevant authorities if the violations are serious.
- Better cooperation between advocacy groups, state bodies and internet content providers through meetings, campaigns and joint policies against hate speech should be encouraged.

17 Gay Straight Alliance. (2015). *Yearly report on the state of human rights of LGBT persons in Serbia for 2014*. Belgrade: Gay Straight Alliance. www.gsa.org.rs/wp-content/uploads/2015/03/GSA-izvestaj-2014.pdf

18 Gay Straight Alliance. (2013). *Yearly report on the state of human rights of LGBT persons in Serbia for 2012*. Belgrade: Gay Straight Alliance. www.gsa.org.rs/izvestaji/GSA-izvestaj-2012.pdf

SEYCHELLES

SEX EDUCATION, YOUNG PEOPLE AND THE INTERNET IN SEYCHELLES



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Introduction

The Seychelles, an archipelago of 115 islands in the western part of the Indian Ocean, is often referred to as the “islands of love”.¹ Tourism websites and promotional material successfully use the expression to appeal to couples, honeymooners and those looking for a romantic getaway. For the islands’ inhabitants there is no escape from the fact that this microstate of 90,000 inhabitants is currently beset by acute and somewhat disproportionate social problems, many of which affect young people in particular. Some of these problems clearly point to difficulties that adolescents and youths face when trying to cope with the various aspects of sexual maturation.

National context

Internet services

The country currently tops the list of African countries for use of the internet among the population. According to the International Telecommunication Union (ITU), 54% of the Seychellois population used the internet in 2014.² Access is unrestricted and the authorities do not regulate internet content. Therefore, use of the internet is essentially self-regulated by users who decide what or what not to access. The country’s Department of Information and Communications Technologies (ICTs) offers detailed and thorough information on its website about staying safe online,³ although recently reported incidents of Seychellois business people being scammed by overseas sites indicate that the useful information provided by the ICT department may not be fully appreciated.

A country report by the United States government on human rights practices in the Seychelles⁴ refers to claims that the government blocked access to opposition party websites and that electronic traffic such as emails, internet chat room content and blog sites were monitored. This report was officially rejected by the Seychelles Ministry of Foreign Affairs.⁵

Sexual and reproductive health indicators

There are alarming trends in teenage and youth sexual and reproductive health in the country. Recorded figures show that the teenage fertility rate per 1,000 women grew from 39.5 in 1999 to 68 in 2012.⁶ The total annual number of new HIV/AIDS cases has dropped, but data show that the 21 to 25 age group is currently the most affected segment, representing 24% of new cases in 2011, with the 16 to 20 age group representing 17% of new cases in that year. In 2012 there was a 67% increase of new reported cases of HIV-positive pregnancies compared to 2011, and about 40% of these were in the 15 to 24 age group.⁷

The Youth Health Centre’s Annual Report for 2009 clearly showed that underage sex, unwanted pregnancies and abortions among adolescents are a “huge challenge” in the Seychelles.⁸

Legal context: Sex and sexuality

The age of consent to sex is 15 years. The age of majority is 18 years. Young people under 18 need parental consent to have access to contraception (except for condoms), even in cases where they have already had children. This discrepancy has

1 This notion was probably launched in the 19th century when General Gordon claimed that Praslin, Seychelles’ second largest island, was the site of the Garden of Eden. There, he had come across the *coco de mer*, an endemic plant with female trees producing a large double coconut resembling the female pelvis and male trees producing a giant catkin. archives.chicagotribune.com/1899/04/03/page/5/article/site-of-garden-of-eden

2 www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx

3 www.ict.gov.sc/publicInfo/security.aspx

4 US Department of State. (2014). Country Report on Human Rights Practices 2013: Seychelles. www.state.gov/j/drl/rls/hrrpt/2013/af/index.htm

5 Ministry of Foreign Affairs. (2014, 13 March). Seychelles issues strong message against United States of America’s State Department country report. www.mfa.gov.sc/static.php?content_id=36&news_id=726

6 Ministry of Foreign Affairs. (2013). Millennium Development Goals Status Report 2013. www.nsb.gov.sc/archives/2521

7 Republic of Seychelles. (2014). Global AIDS Response Full Country Progress Report. www.unaids.org/en/regionscountries/countries/seychelles

8 Ibid.

been the subject of a discussion which started in the early 2000s and which culminated in a debate at the National Assembly in November 2014. No concrete action has yet been taken. Condoms are accessible to teenagers⁹ but youths complain that “the authorities refuse to distribute condoms [to youths] or tell young people how to use them.”¹⁰ The 2012 Seychelles HIV, AIDS and STIs Knowledge, Attitudes, Practice and Behaviour (KAPB) Study¹¹ shows that out of the 1,691 people surveyed aged 15 to 64, 10% reported first sex under the age of 15, and 36% reported first sex between the ages of 15 and 17, admittedly after the age of consent but under the age of majority.

Same-sex activity between men is criminalised although the law has not been enforced for decades. According to many, there is generally little visible discrimination against gays and lesbians. In mid-June 2015, the British High Commissioner in Seychelles officiated at the first same-sex marriage in the Republic – the ceremony was held at the Commissioner’s residence and therefore technically on British territory.¹²

Sex education in the Seychelles

The personal, social and citizenship education (PSCE)¹³ component of the school curriculum is intended to provide age-appropriate sex education, but an official of the Ministry of Education states that “the problem... is that topics dealing with sexuality are becoming more and more taboo at school. Yet... there have been surveys that show that the youth are not sufficiently informed about all aspects of sexual education.”¹⁴ A representative of Youth Action Movement (YAM) Seychelles affirms that “in Seychelles society, people generally avoid the subject of young people’s sexuality, even in schools. Many teachers (including personal and

social education teachers) refuse to talk about it.”¹⁵ There is a tendency to think that sexuality is shameful. This leads to problems; often students do not know enough so they either make things up or they remain ignorant.”¹⁶

Members of the lesbian, gay, bisexual and transgender (LGBT) community in the Seychelles also feel that young people are not given comprehensive information on sexuality. A 28-year-old gay man comments that “sexual rights” is a “very taboo subject”. “Some people are very open about their sexuality,” he says, “but many people remain closeted. Pressures come from religion, culture and small-island mentality. In schools, they avoid the topic [of homosexuality] and it is not mentioned as a normal variation of human sexuality, leaving LGBT teens feeling alone.” He tells of the almost unbearable loneliness he felt as an adolescent: “My teenage years were very dark ones. I felt extremely alone, with no-one to talk to about my feelings. I had internet access at home, and through some internet cafés, I was able to freely access information online and realised that I was not alone as a gay person.”¹⁷

Some organisations are attempting to remedy the situation. YAM Seychelles, which was set up in 2012 within the Alliance of Solidarity for the Family (ASFF), is engaged in community work and in tackling youth issues related to sexual and reproductive health; it has 200 members aged 15 to 25, a Facebook page, a Facebook group and a WhatsApp group. According to a representative, YAM has not yet launched major internet-based activities because the group is quite new and still rather small, although this kind of work is being planned.

In 2014 a Seychellois judge facilitated the visit of an Irish legal expert to the Seychelles to give a presentation on LGBT rights. The meeting fostered considerable networking and two young members of the community subsequently drafted a constitution for an NGO whose aims are to educate the Seychelles public about LGBT issues, to tackle the laws that criminalise homosexuality, and to attempt to bring about marriage equality.¹⁸

9 Seychelles Nation. (2008, 9 October). National Assembly-Government supports churches in tackling social ills. *Seychelles Nation*. www.nation.sc/article.html?id=220980

10 Bodwell, A. (2012, 8 August). Why Seychelles should do more to tackle teen pregnancies. *The Guardian*. www.theguardian.com/society/2012/aug/08/seychelles-tackle-teen-pregnancies

11 www.unaids.org/en/regionscountries/countries/seychelles

12 Uranie, S., & Amla, H. (2015, 13 June). First same-sex union in Seychelles takes place at British high commissioner’s residence. *Seychelles News Agency*. www.seychellesnewsagency.com/articles/3128/First+same-sex+union+in+Seychelles+takes+place+at+British+high+commissioner+residence

13 The PSCE is both a curriculum topic (like Social Sciences) and a class subject. See Seychelles National Curriculum Framework 2013, p. 24. www.ibe.unesco.org/en/worldwide/unesco-regions/africa/seychelles/curricular-resources.html

14 Today in Seychelles. (2014, 6 October). PSE threatened? *Today in Seychelles*. <https://www.facebook.com/todayinsey/photos/a.41778501592599.84226.414719135232569/726401287397684/>

15 In 1976, just before independence, the last British Governor of Seychelles had referred to the general discomfort with issues relating to sexual reproduction as follows: “Whenever one mentions population growth or planned family policy in Seychelles one notices a general cooling of the atmosphere. Some people look embarrassed and others seem to feel uneasy as though one is discussing an unmentionable subject.” Rosalie, M. (2000). *Population Processes in the Seychelles*. Unpublished PhD thesis, p. 190.

16 Bodwell, A. (2012, 8 August). Op. cit.

17 R. Gendron, email message to the author, 19 May 2015.

18 Today in Seychelles. (2015, 22 June). The Big Interview with Fabianna Bonne. *Today in Seychelles*.

In April 2015 the Seychelles National Youth Council (SNYC) launched the telephone-based Youth Coaches Programme,¹⁹ sponsored by telecommunications company Cable and Wireless. The aim is for retired teachers, nurses and social workers to interact with young people by answering their questions or discussing problems they have. The company also offers free internet access to all primary, secondary and post-secondary schools in the Broadband for Schools Programme,²⁰ which includes a “Secure and Managed Internet Sharing Solution”. Another telecommunications company, Airtel, has opened ICT resource centres at the Ministry of Education and in two post-secondary institutions targeting the Seychelles Institute for Teacher Education, the School of Advanced Level Studies and the School of Visual Arts. While these initiatives do not have a sex education dimension they make it possible for youth to find relevant information online while also being protected by the internet security measures in place. Meanwhile, Airtel in conjunction with the SNYC offers the Youth Mobile Plan for young people aged 16 to 21 who are involved in SNYC programmes. The scheme gives members a 70% discount on Airtel’s products.²¹

Each year, health workers give talks and organise activities on HIV/AIDS day in December and during the ABC of Safer Sex campaign²² in February, but this is described by a worker in child protection as “limited and fragmented”.²³ A young medical doctor started a Facebook page in mid-2014 to increase local health literacy online. The service has over 2,000 likes and followers. This doctor comments that the page “has become popular mostly for health posts that have little to do with sexual issues... [Sexual] health education is not so popular as nobody wants to be seen as seeking sex information. Adding it as part of overall health education has made a bigger impact.”²⁴

Parents, on the other hand, are concerned about the increased use of technology by their children.²⁵ A psychologist working for the National Council for Children (NCC) urges parents to limit or control the

use of “chat” on the phone or access to TV channels or internet websites with adult content. The NCC has been advocating internet safety for kids through the use of filters and through parents learning to manage and follow their kids online, as there are currently no safety mechanisms in place.

In a TV debate²⁶ among leading educators in May 2015 about mobile phones at school, only one participant from a private school expressed the view that the judicious use of phones at school was acceptable, as it was sometimes the only means for some children to download homework which was posted on that school’s website.

Cable and Wireless appears to be the only internet service provider in the country offering internet security packages to clients²⁷ although these are not very visible in the marketing of their internet services generally. Imported commercial internet security packages are also on offer in electronics shops, but their cost is prohibitive for the average internet user. Some rely on free downloads which might or might not offer the kind of protection they need. There also seems to be no helpful information readily available for parents on monitoring internet usage, setting restrictions, blocking access or limiting apps on computers or smartphones.

Conclusions

The above clearly highlights the reluctance of many responsible adults in the Seychelles (parents, teachers or others) to give adolescents and young people ready access to information they need to a) understand their own sexual development and b) make appropriate, safe and healthy decisions regarding sex. This tends to disregard and minimise the physical, emotional and mental “challenges” that adolescents face at this stage of development. It may leave them unprepared for entry into mature sexuality and ill-equipped to make wise choices when growth spurts occur and the effects of hormonal changes kick in.

There seems to be an overwhelming fear that teaching youths about sex will lead them to practise it. But as the YAM representative aptly puts it: “We are all very aware that students are having sex. It is impossible to stop underage sex, so we should provide students with the necessary precautionary measures.”²⁸ Data from a study on adolescents in the islands of the South-West Indian Ocean confirms that premarital sexual activity during adolescence

19 www.pfsr.org/national-highlights/snyc-youth-department-launch-youth-coaches-programme

20 www.cwseychelles.com/about-us/media-center/press-release/2007/04/schools-go-online-free-broadband

21 <https://www.facebook.com/todayinsey/posts/827652647272547>

22 www.nation.sc/article.html?id=241179

23 Email message to the author, 3 June 2015.

24 Dr. Naomi Adeline, email message to the author, 10 June 2015.

25 Meriton Jean, S., & Barnerias, S. (2015, 9 February). L’utilisation des technologies aux Seychelles, inquiètent les parents. *Seychelles News Agency*. www.seychellesnewsagency.com/articles/2336/Lutlisation+des+technologies+aux+Seychelles,+inquietent+les+parents.

26 Seychelles Broadcasting Corporation. (2015, 18 May). Zoom – TV debate.

27 www.cwseychelles.com/internet/internet-vas/safenet

28 Bodwell, A. (2012, 8 August). Op. cit.

is viewed by Seychellois adolescents themselves as normal and acceptable.²⁹

It might also be useful to consider if a lack of information (or “ignorance” in sexual matters) might not actually promote experimentation and whether treating sex as a taboo subject does not add to its allure precisely because it is then seen as the proverbial forbidden fruit.

The track record in regard to sex education targeting young people is rather dismal, and sex education on the internet specially targeting the youth in the Seychelles is virtually non-existent, despite some brave efforts by a few representatives of civil society, and some good intentions of the Ministry of Education and the Ministry of Health, which, unfortunately, seem limited in coverage, reach and implementation. Civil society groups and NGOs clearly need to play a greater role in convincing parents and adults generally of the need for sex education.

The internet and social media allow young people to reach out for support and information, locally and internationally, but the relatively unhampered access is a source of concern for parents who may neither fully understand what they need to do, nor have easy access to the tools required to protect their children from online dangers.

Action steps

The following advocacy steps are suggested for the Seychelles:

- Review the approach and content of PSCE sex education classes. To make up for possible parental shortcomings and existing social taboos, classes should cover sexual feelings, sexual choices and sexual behaviour in addition to the biological aspects of sexual maturation. The internet and related media could become invaluable aids in making the delivery of classes easier and possibly more effective, especially given current Seychellois cultural norms.
- Target a change of perception through sustained popular activities and meetings around the theme – to be organised by a wider range of NGOs and civil society groups. Simple “how to” tips could encourage more parents to engage with their children on this topic.
- Organise public media campaigns to make everyone a) conscious of the need to remain safe online and b) aware of the support provided by the ICT department. It is probably not enough to make good online security information available only on an official website.
- Find ways to ensure that easy and affordable online protection, as well as self-help information, are as readily available to users as the easy and affordable internet packages that are so vigorously marketed.

²⁹ Calves, A., & Gopaul, M. (2009). Adolescent perspective on sexual debut in the South-West Indian Ocean: a regional study. *International Journal of Adolescent Medicine and Health*, 21(1), 15-27.

SPAIN

TECHNOPOLITICS, SEXUAL RIGHTS AND SEX WORKERS' RIGHT TO THE CITY



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Introduction

A campaign for sex workers' rights called "Prostitutas Indignadas" ("indignados" means indignant or outraged) was launched in April 2012 in Spain. It announced itself as the gathering of "voices against the prohibition of sexual rights in the street."¹ The social and political context in the country at the time was unsettled, with strong social movements, such as the 15-M Movement, also known as Los Indignados,² calling the legitimacy of politicians into question. This movement, similar to the Occupy movement in the United States (US), led to a change in the strategy of civil movements in Spain, revolutionising politics, and the use of social networks.

"Technopolitics" is defined as "the tactical and strategic use of digital tools for organisation, communication, and collective action. It is the ability of connected communities... to create and change social movements."³ In Spain, technopolitical thinkers from the 15-M Movement who were linked to the organisations Xnet⁴ and Free Culture Forum⁵ organised a workshop in 2012 called "Radical Community Manager". They expressed the need for this intervention in the following way: "We live at a crossroads, where defending net neutrality and enhancing our collective ability to use the power of intervention – on and through the internet – is a necessary condition in order to extend and coordinate the emergence of a connected global civil society and to improve the impact of social struggles in all areas of society. The internet is a battlefield for everyone."⁶

It was based on this philosophy that Prostitutas Indignadas was born: a campaign that goes from

the street to the net and from the net to the street. It allows the connection between sex workers' demands for their right to the city and the visibility of dissenting sexualities to be made.

Institutional context

Achieving sexual rights is a long process, and can be related to several axes of struggle. In this case, the demand for the sexual rights of sex workers and the feminist solidarity it generated make the campaign special. It became clear that the right to the city and the right to sexual self-determination have much to do with each other, and the virtual space made this intersection and encounter possible.

Feminism talks about how public space is a patriarchal field where women are excluded and heteronormative dissidence should not take place. Street sex workers are political subjects who break this framework. Partly because of this they are at the receiving end of gender and institutional violence, and are harassed, fined and prosecuted by the authorities. For example, it was common practice in the streets of Barcelona for the police to search through women's handbags to find those who carry condoms as evidence of being prostitutes. Because of their extremely marginalised status, a campaign that pushes for the sexual rights of sex workers is a guarantee of rights for all.⁷

The virtual space is still an area in dispute. Feminism is engaging in technopolitics through the tactical and strategic use of digital tools for organising, communicating and calling for collective action. Prostitutas Indignadas achieved its aims by understanding the logic of online networks and the change they can generate in the distribution of power offline.

Cyber feminism has spent years gaining ground in social spaces online – the internet has the potential to support an ethic of freedom, what some call the "hacker ethic".⁸ Social networks such as Twitter and Facebook, although being corporate monopolies, are still based on this idea of openness.

1 <https://prostitutasindignadas.wordpress.com/about>

2 BBC. (2012, 15 May). Spain's Indignados protest here to stay. *BBC*. www.bbc.com/news/world-europe-18070246

3 www.feminicidio.net/articulo/curso-online-internet-m%C3%A1s-all%C3%A1-lo-obvio-viaje-al-centro-la-tecnopol%C3%ADtica

4 fforum.net/ca

5 fforum.net/ca

6 <https://xnet-x.net/radical-community-manager-reloaded-16-y-17-de-marzo>

7 Heim, D. (2011). Prostitución y derechos humanos. *Cuadernos electrónicos de filosofía del derecho*, n^o23.

8 Padilla, M. (2012). *Kit de la Lucha en Internet*. Madrid: Traficantes de Sueños.

The radical nature of *Prostitutas Indignadas* is not only that it recognises social networks as way to distribute power, but also as a way to introduce and make links between struggles in the public sphere. It means recognising that the rights of sex workers is not just their problem, but a broader social issue.

From theory to practice

The *Prostitutas Indignadas* campaign began as a theoretical application of technopolitical knowledge to support the demands of sex workers in the neighbourhood of Raval, in Barcelona.

In March 2012 the city council of Barcelona passed an amendment to a municipal law regulating the use of public space. The new law seriously harms sex workers, increasing the cost of fines and intensifying the police persecution of sex workers in the streets.

The amendment coincided with a city rejuvenation strategy, and the gentrification of Raval. The area is one of the few remaining places in Barcelona where the neighbourhood still lives a street life, making Raval popular, with its own character.

The heavy pressure put on the sex workers by the police made the sex workers seek help. They decided to publicly expose the police harassment. Networks were formed in solidarity, and grew in strength. Together activists decided to start a campaign that would raise public awareness of what it meant to “clean up” the neighbourhood from the sex workers’ perspective. In this way, the link between human rights, sex workers’ rights and the right to the city could be shown.

We then set up online platforms for sex workers, organisations and other activist allies, opening a Twitter⁹ and Facebook¹⁰ account, and also starting a blog.¹¹ We decided to carry out a campaign on the internet in parallel to the campaign in the streets. We used the 15-M Movement as a point of reference for the campaign.

On social networks and blogs we created a collective identity, using the name *Prostitutas Indignadas*. The online snippets and memes were reproduced with the same anonymous type of action in the streets, by going out at night to spray paint stencils and put up posters.

We then decided to hold a demonstration in the street, to create further visibility for the online campaign. In less than two weeks we created very positive interactions on social networks: 2,000 Twitter followers, hundreds of “likes” on our Facebook page, and

dozens of signatures to a manifesto we had developed. The support came mainly from organisations dedicated to sexual and reproductive rights.

Thousands of people, many of whom self-identified as “sluts” and were connected to sex worker struggles, interacted on our social media platforms. On 26 April we took to the streets, with more than a thousand people. In the following months the group of sex workers had meetings with Barcelona’s Ombudswoman, the Councillor for Women and Civil Rights, the Mayor of Barcelona and the Interior Councillor of the government. All of this was thanks to the impact of the online campaign.

Prostitutas Indignadas is still running, and the empowerment process has been strong for all who have been involved. The social networks are now managed by the sex workers themselves, who also campaign in the street. This process has shown the kind of agency that feminist technopolitical strategies can produce.

Inverting patriarchal semantics

Twitter hashtags were used to combat the stigma of prostitution. These included #MejorPutaque¹² (“It’s better to be a slut than”), or ones calling for support for the sex workers’ struggle, such as #26AlaPutacalle¹³ (“26 of April all together to the fucking street”) and #Putamani¹⁴ (“Fucking Demo or Slut Demo”).¹⁵ The language used in the hashtags, which played on words like “slut” as a way of reclaiming identity, aimed to generate strong interest and support for the call for sex workers’ rights to be realised, and to encourage people to join the sex workers in their street protests.

By analysing the campaign on Twitter we came to realise that many of the social media messages generated by the campaign were in support of sexual diversity, and free abortion, or against gender violence.¹⁶ Here are some examples of statements: “More sex, less violence”, “sexual freedom”, “Get your rosaries out of our ovaries”, “Happy hooker”, and “I rule my body and the streets”.

The idea of the sex worker in the social imaginary has a number of features that reflect sexist fantasies and myths about female sexuality.¹⁷ Because of this,

9 <https://twitter.com/PutasIndignadas>

10 <https://www.facebook.com/.../Prostitutas-Indignadas>

11 <https://prostitutasindignadas.wordpress.com>

12 topsy.com/s?q=%23mejorputaque&offset=10&mintime=1333238430&maxtime=1341100850

13 topsy.com/s?q=%2326Alaputacalle&window=a&offset=40

14 topsy.com/s?q=%23Putamani&window=a&type=tweet

15 In addition to meaning slut or prostitute, the word “puta” can also be used as an adjective in a similar way to “fucking” in English.

16 twitpic.com/9e2h22

17 Osborne, R. (Ed.) (2004). *Trabajadoras del sexo. Derechos, migraciones y trafico en el siglo XXI*. Barcelona: Edicions Bellaterra.

much of the solidarity with the online campaign comes from feminists, who are reclaiming dissident sexualities and the right to our own body. By popularising the struggle of sex workers and overcoming discriminatory and derogatory attitudes against women involved in prostitution, the rights of all women and dissident sexualities are secured.

Sex workers, in as much as they are women, reclaim their sexual and reproductive rights. This works towards ending the stigma associated with the whore-mother dichotomy. For example, during the campaign an image of a sex worker caring for her child in the street went viral.¹⁸

The slogan “Yo también soy puta” (“I am also a whore”) also went viral. By appropriating derogatory categorisations such as “whore”, the slogan becomes an act of subversion. Words that have the intention of degrading their subjects are redefined, neutralising their negative effects, and recasting them in a positive light.

The fact that many people in the campaign were claiming the identity of a “whore” shows that we are transgressing patriarchal limits on female sexuality. We are saying we actually *want* to be “evil”, “bad” or “dirty”, as defined by “the establishment”. We are challenging stereotypical definitions, but simply asserting our sexual interests and desires.

From the net to the street

The campaign made explicit references to the issue of anonymity, starting with the ambiguity of a collective social media identity and ending with the use of Anonymous masks in demonstrations to protect the sex workers’ identity.¹⁹ The idea was to act according to the hacker ethic, which promotes anonymity and ambiguity: more open and less specific things become most replicable. If everybody is wearing a mask, who is a sex worker and who is not? If we all talk about sexual rights on the internet, who cares if our profession is related to sex or not?

The slogan on the official banner used in the march was: “Do not forbid my rights”. Following the deliberate ambiguity of discourse used in the campaign one can ask: *What rights?* And the answers were there, on banners made by individuals who demanded their sexual rights – the right to be in the street, and the right to free sexuality – demands that were also made on Twitter.

¹⁸ codigoneuvo.com/el-street-art-sirve-como-medio-para-regular-la-prostitucion

¹⁹ https://twitter.com/Ahurea_/status/393685287647576064

Empowerment and the agency of the media

Coverage of the campaign in the mass media was strong and can be measured at different levels. First, there was coverage of the campaign itself as an innovative form of communication. Three articles appeared in the mass media within two weeks of its launch regarding the strength and momentum of the campaign. They talked about the emergence of the collective identity in social networks and recognised the great impact it was having in such a short space of time.²⁰

The political achievements of the campaign were also echoed in the press. We would find different media talking about the meetings between sex workers and politicians to discuss public policies and the legal status of prostitution.²¹

The international impact of *Prostitutas Indignadas*’ achievements was also felt. For example, we can find articles published in France, a country where there is very restrictive legislation regarding sex work.²² We can also find news about a European Parliament debate on the decriminalisation of prostitution, where the *Prostitutas Indignadas* campaign was frequently mentioned.²³

Finally, regarding sex workers’ representation in the media, it has meant a very important change. Up until the campaign, sex workers have always emerged as marginal subjects of the street, almost never interviewed and appearing on TV without their consent, even if their faces are not shown. The campaign allowed sex workers to have a leading role and to decide how to be represented and what to say.

With the *Prostitutas Indignadas* campaign we feel we achieved the redistribution of power associated with our technopolitical goals. Cyber feminism has been opening spaces, and the dynamic change seen in transforming gender roles in the campaign is a strong example of this. The campaign, as we have seen, has helped and still helps sex workers to become political agents and to avoid press marginalisation.

²⁰ Some examples: www.lavanguardia.com/vida/20120426/54285531200/protesta-prostitutas-raval.html www.publico.es/espana/prostitutas-indignadas-acoso-institucional-barcelona.html

²¹ <https://www.diagonalperiodico.net/libertades/trabajadoras-sexuales-hablan-claro-xavier-trias.html>

²² www.lemonde.fr/europe/video/2012/04/27/les-prostituees-espagnoles-manifestent-dans-les-rues-de-barcelone_1692536_3214.html

²³ pt.globalvoicesonline.org/2012/12/22/luta-contra-o-traffic-de-mulheres-abolir-ou-regulamentar-a-prostitucia

Conclusions

Since the 15-M Movement in Spain, there have been several analyses²⁴ of how technopolitics is an effective organising tool. Technopolitics acts as a mechanism that joins internet activism with street activism in a feedback loop, producing exponential growth for a campaign message and support for a cause.

In the Prostitutas Indignadas campaign we realised that feminist technopolitics can have a great impact on society. The values of technopolitics – such as collaborative participation, the “hive” mind, a horizontal communications approach, among others – are related to feminist values of autonomy, rights and freedoms. This is important.

However, there is a big gap in practice between feminist movements, the internet rights movement and technopolitics. Through the campaign we found some intersections that allowed us to work together. This meant *being* in the net, not only using it. Becoming a different kind of agent of the internet means recognising it as a new public space in which we can cast a spotlight on issues which in the traditional public space – the street – are forbidden and marginalised. We share with the internet rights movements the fight for this space.

The internet is a transformative public and political space that facilitates new forms of citizenship which allow individuals to claim their rights. Sex workers from Raval in Barcelona, nowadays, are a part of this space. They have gone through a process of empowerment by accessing the internet. Prostitutas Indignadas is a clear example of the net amplifying alternative and diverse narratives of women’s realities.

Action steps

Our learning so far leads us to affirm the following steps:

- Keep empowering sex workers to be part of social networks and use feminist technopolitics to achieve their demands and to organise for feminist social justice.
- Use social networks as a tool to fight against institutional violence, especially for the rights of those who have no citizenship or those, such as the prostitutes in Barcelona, who do not have the legal protection offered by a regulated working environment.
- Keep promoting the right to privacy and anonymity in corporate social networks such as Facebook. This allows users to express diverse sexualities and sexual rights in an anonymous way.
- Speak out against censorship by the corporations who own the networks. Private sector censorship affects everyone who uses online platforms, regardless of the different laws governing each country.

²⁴ codigo-abierto.cc/el-metodo-15m-como-sistema-operativo-de-la-nueva-era-de-partidos

SUDAN

STAYING ONLINE: RESTRICTIONS AND CHALLENGES FOR SEXUAL RIGHTS ACTIVISTS IN SUDAN



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Introduction

Internet rights – which include the protection of lesbian, gay, bisexual and transgender (LGBT) privacy rights online – are one of the major concerns of human rights activists in Sudan. In a society where homosexuality is criminalised, and discussions on sexuality are taboo, the internet has become one of the ways in which the information needs of LGBT people can be met, and a place where they can connect and find a home. However, the restrictions on freely accessing information on the internet negatively affect the advocacy and online work of human rights defenders, and limit the dissemination of information on sexual rights and health and educational content concerned with these issues.

Homophobic oppression is most extreme in the Islamist states, and Sudan is no exception. According to Article 151(1) of the Criminal Act of 1991, homosexuality is an offence of “gross indecency” that is punishable by “whipping, not exceeding forty lashes” or “imprisonment, for a term not exceeding one year”. Third-time offences are punishable by death or life imprisonment. In line with this, the government regulates internet content, filters websites and prevents the free flow of information. The 2001 National Strategy for Building the Information Industry states that the internet will be filtered for content that is “morally offensive and in violation of public ethics and order.”¹ The National Telecommunications Corporation (NTC) blocks some websites deemed offensive to public morality, and prevents the use of most proxy servers. The National Intelligence Security Service (NISS) has also established a special unit to monitor online content, and to implement the government’s filtering policies. The primary target of this is pornography, but LGBT content, dating sites, and any sites publishing images of people in “provocative attire” are also subject to this censorship.

In this context, it makes it difficult for activists to stay online.

Risks and challenges faced by activists

Fatima Sedieg (not her real name) is a lawyer and one of the founders of a women’s group defending LGBT rights in Sudan called Freedom Sudan.² Since its establishment in 1995 as an underground network, it has been offering health information and support, including legal aid, to its members. The group manages to reach out to youth groups, women’s activists and university students, mostly in the capital Khartoum. Recently the group began to actively use the internet – including social media – to reach its members and to disseminate information about sexual rights and health.³ Freedom Sudan collects online information from around the world using proxies, and re-posts it using WhatsApp and Facebook. The LGBT community benefits greatly from these activities, and the work of Freedom Sudan has become well known to many people. However, the circulation of the information, which the government considers “immoral and against religion and tradition”, puts the group’s leaders at risk. Fatima, as well as others active in Freedom Sudan campaigns, faces many challenges and difficulties. Her email account and Facebook page have been hacked several times. She has received threatening messages, and her family and relatives have also been targeted. She has been forced to hide her identity on the internet and to stop her public activities defending LGBT rights. After a trial of five men in a public order court, Fatima, who acted as the men’s lawyer, received SMS death threats. The men stood accused under Article 152 of the Criminal Act of 1991, which prohibits indecent and immoral acts. Unknown people also broke into her office and stole documents which included the personal information of her clients. In an interview with Fatima for this report, she explained that “society and religious extremists considered defending the accused [to be] against society’s and religious values, so they wanted me to stop my work or to put me at risk.”

² freedom Sudan.webs.com

³ <https://www.facebook.com/Freedom-Sudan-the-sudanese-LGBT-association-111198078982850/timeline>

¹ www.ntc.gov.sd/index.php/en/consumers/blocking-websites

She did not feel safe. She said she always expected bad things to happen to her. She said, “I will leave the country. I can’t stay here anymore: my life is threatened, I lost my clients and no one will come to my office anymore. I will not be able to run the office and to pay the rent.” She added, “They followed me everywhere, they read my emails, spied on my communication and insulted me on Facebook; they posted sex videos on my Facebook page.” While she understood that she was dealing with sensitive issues in taking on LGBT issues in Sudan, and expected many problems and difficulties, she did not expect the extent of the troubles and challenges she faced.

Fatima’s story is one of many stories which explain the challenges and risks which LGBT defenders face because of their work on sensitive issues in a hostile environment, and the difficult context they work in. Despite these challenges and risks, different groups, especially youth groups such as Rainbow Sudan,⁴ have been successful in using the internet to further their causes and to defend LGBT rights.⁵ Freedom Sudan’s goals are listed on its website.⁶ They include pushing for the social acceptance of LGBTs, the recognition of their human rights, and the abrogation of the death penalty for homosexuality.⁷ The group lists education as a key objective and provides counselling sessions for LGBT individuals and their families. The group became more active on the internet after August 2010, when 19 men were lashed 30 times and fined 1,000 Sudanese pounds (USD 120) each. Their offence: cross-dressing and “womanly behaviour” at a private party. The activists defending the case faced many challenges. They received abusive messages, death threats and some of their Facebook accounts were hacked.

Finding information online about sexual rights is not easy in Sudan.⁸ The government’s website filtering system divides websites into different categories, the most important of which is pornography.⁹ The other categories include websites relating to drugs, bombs, alcohol, abuse of Islam,

and gambling.¹⁰ According to an OpenNet Initiative report, “The NTC has set up a special filtering unit to screen the internet media before it reaches the users in Sudan. The NTC asserts that sites are filtered based on their content rather than their names [they use key words], and that filtering is needed to conserve the ethical and moral values of society.” The NTC stated that the unit receives requests to close certain websites, as well as requests to unblock websites blocked by mistake, on a daily basis.¹¹ This policy deprives many from accessing online information on their health and human rights, and sharing information that is useful to them. It also limits the opportunities to seek membership in the global LGBT network. Last year Sudanese officials announced that more measures to block websites would be put in place.¹²

In 2011 Sudan established a special unit called the “Cyber Jihad Unit” and installed sophisticated computer spyware to manipulate information and to spy on government opposition, journalists, human rights activists and different youth groups. According to a report published in February 2014 by The Citizen Lab,¹³ the remote control system spying software has been imported from Italy.

The number of websites blocked increases every day. Recently the authorities blocked the website of a publisher of LGBT books and confiscated hard copies of a novel written by Abdel Aziz Baraka Sakin. According to a report by the African Centre for Justice and Peace Studies, the novel “focuses on diversity in Sudanese life and culture, particularly illuminating the daily lives of marginalized and hidden groups in Sudan.” The novel, *Alango Masamir Alardh* (“Nails on the Ground”) deals with the gay community in Sudan.¹⁴

4 Stewart, C. (2014, 16 September). Rainbow Sudan seeks LGBTI rights in Sudan. *Erasing 76 Crimes*. 76crimes.com/2014/09/16/rainbow-sudan-sogi-news

5 Rainbow Sudan Project. (2014, 3 September). Gay Rights: the Rainbow Sudan Project. *Everyone*. www.everyonegroup.com/Everyone/MainPage/Entries/2014/9/3_Gay_Rights_theRainbow_Sudan_project.html

6 freedomsudan.webs.com

7 SudaneseDrima. (2010, 24 January). Sudan’s First LGBT Rights Organization? *Global Voices*. <https://globalvoices.org/2010/01/24/sudans-first-lgbt-rights-organization>

8 OpenNet Initiative (2009). *Internet Filtering in Sudan*. opennet.net/sites/opennet.net/files/ONI_Sudan_2009.pdf; <https://opennet.net/research/profiles/sudan>

9 www.ntc.gov.sd/index.php/en/consumers/blocking-websites

10 Republic of the Sudan National Telecom Corporation. (2008). Country case study: Incident management capability. Presentation at ITU Regional Cybersecurity Forum 2008, Lusaka, Zambia. www.itu.int/ITU-D/cyb/events/2008/lusaka/docs/hamed-sudan-case-study-lusaka-aug-08.pdf

11 OpenNet Initiative (2009). Op. cit.

12 Sudan Tribune. (2014, 25 March). Sudan steps up measures to block “negative” websites. *Sudan Tribune*. www.sudantribune.com/spip.php?article50432

13 Marczak, B., Guarnieri, C., Marquis-Boire, M., & Scott-Railton, J. (2014, February 17). *Mapping Hacking Team’s “Untraceable” Spyware*. The Citizen Lab. <https://citizenlab.org/2014/02/mapping-hacking-teams-untraceable-spyware>

14 African Centre for Justice and Peace Studies, & Journalists for Human Rights. (2013). *Sudan: No space for free expression*. www.acjps.org/sudan-no-space-for-free-expression

Solidarity online

Sudan's regulatory frameworks, the isolation of its society, and control over the daily life of the LGBT community and defenders have a negative impact on the LGBT community. This situation reduces the opportunities for them to be involved in decision making at different levels, to participate in politics, to share opinions and experiences, and to identify their priorities using the internet.

LGBT individuals face psychological pressure as a result of this isolation. However, they find solidarity through connecting with local and regional networks such as Freedom Sudan and Bedayaa.¹⁵ Bedayaa is an LGBT organisation based in the Nile Valley area (in Sudan and Egypt). The organisation promotes acceptance of homosexuality in both countries.¹⁶

Recently, regional and local organisations conducted several training workshops on digital security and protection. This helped activists and encouraged them to continue their work, but gaps remain. Most of the training was low profile and done in secret locations: "It is not easy. We can't do the training at the offices of any organisation. We don't want to put them at risk. Most of the time we use someone's home, or some other private venue," said Fatima. She explained to me that most of the training is conducted in the capital and other big cities, and most of their members in rural and remote areas do not participate in the training, a lack of funding being the main reason.

This kind of support and training is critical for the activists, many of whom are volunteers, working for change in their private time: "The members of Freedom Sudan have been called many things. But when they come home from universities or day jobs, they log online to continue their struggle for a cause that affects their lives every day. Freedom Sudan's website is one of the few places they can be themselves."

Action steps

Recalling Sudan's obligations under Article 19 of the International Covenant on Civil and Political Rights,¹⁷ Article 9 of the African Charter on Human and Peoples' Rights¹⁸ and Article 39 of the National Interim Constitution,¹⁹ the Sudanese government is obliged to:

- Guarantee the respect of human rights and fundamental freedoms including freedom of expression, privacy, equality and non-discrimination and sexual rights.
- Reform all discriminatory legislation which violates freedom of expression and privacy rights.
- End harassment and arbitrary detention of human rights defenders and online activists.
- Reform filtering policies that violate freedom of expression and association.

LGBT activists and human rights defenders should do the following:

- Lessen the risks and challenges that LGBT people face in Sudan through international pressure on the state to respect freedom of expression and association.
- Strengthen networking between different groups and activists at national, regional and international levels.
- Secure funding for the legal defence of human rights and LGBT rights activists.
- Build strong and effective strategies to raise public awareness on sexual rights and other human rights, including through the use of social media, staging public events, and seeking the support of community leaders to develop appropriate messages.
- Hold capacity-building workshops for LGBT rights activists focusing on digital security. In particular, funds should be raised so that activists living in rural or remote areas can participate.
- Organise online training on sexual rights and sexuality.
- Conduct further research into sexuality and sexual rights online in Sudan to understand the specific possibilities and levers for advocacy and change.

¹⁵ bedayaa.webs.com

¹⁶ www.freewebs.com/bedayaa/whoware.htm

¹⁷ www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

¹⁸ www.achpr.org/instruments/achpr

¹⁹ www.wipo.int/wipolex/en/details.jsp?id=10720

SWITZERLAND

SEXUAL RIGHTS: STILL A LONG WAY TO GO



Comunica.ch

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Introduction

Switzerland is known as a multilingual and multicultural country trying its best to organise the differences between cultures under a coherent national framework – “coherence” in this context is a key word in Swiss modern history. The word refers to the inclusion of different languages and cultures – German, French, Italian and Romansh speakers – but also signifies respect for minorities in general. There are not many countries in the world with comparable records of respect for their diverse minorities.

On the other hand, Switzerland is also primarily a Christian society with around 39% Catholics and 27% Protestants and dominated by their corresponding traditional values¹ – nowadays more in rural areas than in cities. In this hegemonic culture marked by Christian beliefs and traditions, sexual orientations, behaviours and rights – other than heteronormative sexual relationships – are a relatively new phenomenon, face various prejudices and common misunderstandings and are frequently rejected. This dynamic creates an ongoing quarrel between traditional (mainly rural) and more liberal (mainly urban) parts of the Swiss society.

Policy and political background

The legal framework that guarantees sexual rights in Switzerland is clear, starting with the Federal Constitution and the European and international human rights treaties. These include: the Federal Constitution, Article 8 (Equality before the law),² the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 (Prohibition of discrimination on any grounds),³ Protocol No. 12 to the Convention for the Protection

of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, Article 2,⁴ the International Covenant on Economic, Social and Cultural Rights (Part II), Article 2⁵ and the International Covenant on Civil and Political Rights (Part II), Article 2 and 26.⁶ Because of this it is clear that the problem is not the lack of legal standards and guarantees, but is more a question of the enforcement of these standards.

Registered partnerships are relatively recent in Switzerland. In a nationwide referendum in June 2005,⁷ 58% of the population approved a law allowing registered partnerships. This grants same-sex couples the same rights and protections as opposite-sex couples. However, they may not adopt children, seek fertility treatment and use the registered partnership to facilitate the Swiss naturalisation of a foreign partner. The law became effective in January 2007.⁸

Finally, despite the legislative guarantees, the European branch of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)⁹ has analysed legal standards for LGBT people across Europe, and in this ranking Switzerland was placed 31st out of 49 countries, fulfilling only 28% of the criteria for full equality.¹⁰

Loopholes in the law

The history of lesbian, gay, bisexual and transgender (LGBT) people is similar in neighbouring European countries.¹¹ Regarding legal frameworks, human rights violations and the unequal treatment of LGBT people should be a matter of the past in Switzerland. This is the position of the Lesbian Organisation Switzerland (LOS),¹² the Pink Cross,¹³

1 Languages and religions – Data, indicators Religions, Swiss Statistics 2015, Federal Office of Statistics, Neuchâtel. www.bfs.admin.ch/bfs/portal/en/index/themen/01/05/blank/key/religionen.html

2 <https://www.admin.ch/ch/e/rs/1/101.en.pdf>

3 conventions.coe.int/Treaty/en/Treaties/.../005.htm

4 www.un.org/Overview/rights.html

5 www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

6 www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

7 https://en.wikipedia.org/wiki/Swiss_referendum,_June_2005

8 https://en.wikipedia.org/wiki/Registered_partnership_in_Switzerland

9 www.ilga-europe.org

10 www.pinkcross.ch/recht/rainbowmap#

11 https://de.wikipedia.org/wiki/Geschichte_der_LGBT#Das_21._Jahrhundert

12 www.los.ch/de

13 www.pinkcross.ch

the Transgender Network Switzerland¹⁴ and the Umbrella Organisation for Rainbow Families¹⁵ who launched a common human rights campaign in April 2012 in Zurich.¹⁶

The organisations take the position that although the UN adopted the Universal Declaration of Human Rights more than 60 years ago, some human rights are still repeatedly infringed on, even in Switzerland. One violation listed on a flyer published by the organisations and accompanying the human rights campaign is the right to physical integrity of transgender people, who currently have to undergo sterilisation in order to change their registered sex.¹⁷ In addition, Switzerland does not provide protection to asylum seekers coming from countries where gays and lesbians are prosecuted or even condemned to death, when this is used a reason for seeking asylum. The lack of equality of rights in the fields of adoption and family law is another important concern.

A spokesperson for the Pink Cross has referred to “rifts and loopholes in the laws” that do not protect the people concerned from discrimination, and which could be “easily fixed”.¹⁸ Similarly, LOS has complained that Switzerland is not implementing the respective recommendations of the UN Human Rights Council Universal Periodical Review regarding human rights. An ongoing concern of these communities is the denial of the right to raise children, which is inscribed in the Swiss constitution, Article 14.¹⁹ However, adoptions are still legally refused to LGBT people on the restrictive basis of the registered partnership law. In a ruling of the Federal Court in May 2011, the supreme judges denied adoption to a woman living in a registered partnership since 2007. In her claim, the plaintiff pointed to several legal prescriptions – such as the Swiss constitution, the European Convention on Human Rights as well as the UN Convention on the Rights of the Child²⁰ – without success.²¹ However,

observers noted that the Federal Court had focused on very formal aspects of the law only, while not considering the broader context. The plaintiff can only appeal to the European Court of Human Rights (ECHR) where similar cases are pending. A similar situation occurred at the parliamentary level in Switzerland: two motions (a common instrument in the Swiss parliament) were submitted years ago, one demanding the introduction of stepchild adoptions for same-sex couples (Motion Fehr), the other the general abolition of adoption restrictions for registered partnerships (Motion Prelicz-Huber). The Federal Council (the Swiss government) has however indicated its disagreement and sees no need to revise the relevant article of the registered partnership law.

Such special and complex cases usually do not get much attention from the broader public and the national media. To them the issue concerns a minority of Swiss people. As long as LGBT minorities (and other minorities for that matter) are not making themselves too visible in public, they do not mind. Tolerance is usually linked to good behaviour in public – what people do in their private sphere and behind closed doors is considered none of their neighbours’ business. Despite these unwritten rules and social norms, a change of culture can be observed compared to the more bigoted 1970s and 1980s – even in a conservative and tradition-minded society like Switzerland. Nevertheless, the fact remains that LGBT people have to live and face all sorts of discrimination in their day-to-day life, most of it outside of the public’s perception.

A bishop out of control

Summer 2015 somehow exemplified the diverse realities and contradictions in Switzerland when it comes to sexual rights. At the beginning of August, the foremost tabloid daily *Blick*²² surprised the public with a tale of rampant homophobia. Vitus Huonder, the Catholic Bishop of Chur (a stronghold of religious fundamentalism in the east of Switzerland), elaborated on his beliefs and convictions during a church gathering dedicated to “delighting in faith” in Fulda, Germany (another stronghold of religious fundamentalism way up in the north). In his speech the bishop argued for “real” Catholic values, which he said were against abnormalities such as progressive ideas of sexual orientation, gay marriage, divorce and sexual education. While referring to his strict interpretation of the Bible – precisely two excerpts from the Book of Leviticus in the Old Testament – he called for severe consequences,

14 www.transgender-network.ch

15 www.humanrights.ch/en/service/swiss-human-rights-players/ma-z-details?detail=299

16 www.humanrights.ch/en/switzerland/internal-affairs/groups/gays-lesbians/internal-rights-gays-lesbians-bisexual-transgender-people

17 *Ibid.*

18 Human Rights for All, media release by LOS, the Pink Cross, the Umbrella Organisation for Rainbow Families and the Transgender Network Switzerland, April 2012 (in German). www.humanrights.ch/upload/pdf/120426_Medienmitteilung_LGBT.pdf

19 <https://www.admin.ch/ch/e/rs/1/101.en.pdf>

20 www.ohchr.org/en/professionalinterest/pages/crc.aspx

21 Bundesgericht bestätigt Adoptionsverbot für gleichgeschlechtliche Paare, Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR), July 2011, www.skmr.ch/de/themenbereiche/geschlechterpolitik/artikel/bge_adoptionsverbot.html

22 www.blick.ch

including the death penalty.²³ Even worse, there was no murmuring of surprise in his congregation, but applause. The Pink Cross was “shocked and upset” about the statements and demanded a public apology from the bishop. Furthermore, the Pink Cross announced that it would consult lawyers to see if what the Bishop said amounted to hate speech, underlining that “no church representative lives in a legal vacuum.”²⁴

When confronted with media and consternated public responses to his statement, the bishop quickly talked about “misunderstandings” and said that he “didn’t mean it” – of course.²⁵ A few days later Catholic Church associations clearly distanced themselves from the bishop’s viewpoint and called it “irresponsible and cruel”, while referring to situations in some countries where “homosexuals are fearing for their lives, may be flayed, stoned or even killed.”²⁶ While organised Swiss Catholics expressed their outrage and their solidarity with the LGBT community, the Swiss Bishops Conference²⁷ pussyfooted around again and called their fellow minister “difficult”, underlining that “the church welcomes all people unconditionally, independent from their sexual orientation.”²⁸ Meanwhile, three law suits were filed by two individuals and the Pink Cross,²⁹ – the potential outcome of these actions hovering between uncertain or predictable. Within weeks, the Huonder case received so much public attention that more members of the church hierarchy publicly expressed their disagreement by admitting that “he crossed a red line.”³⁰

The reverse side

At the end of August 2015 – a month of contrasts indeed – the 24th Zurich Street Parade³¹ attracted

around a million people. The Street Parade became the most attended technoparade³² in Europe since the end of the Love Parade in 2010. Comparable to Berlin’s Love Parade, the Street Parade has, since 2001, been one of the largest techno parties in the world, and the largest annual event in Zurich.³³ Originally it was thought of as a demonstration for freedom, love and tolerance. As it became more and more commercially viable for the Swiss metropolis, the key messages of the festival became more and more diluted. Nevertheless, the Street Parade can be understood as a statement against the Swiss *Biedermeier* – the traditionalist’s world view – mobilising around one eighth of the Swiss population. For Swiss conservatives and religious fundamentalists it must look like an annual provocation and nightmare.

Conclusions

My conclusions on the issue of sexual rights in Switzerland are informed by personal experiences and references. Changes of norms, traditions, values, prejudices and stereotypes take time, and generations. During my study years in Heidelberg, Germany, I lived in a gay commune, the only “heterosexual” there. This was just as the German law that criminalised homosexuality in the early 1970s was being reconsidered (specifically paragraph 175 of the German Criminal Law).³⁴ Switzerland had officially abolished the criminalisation of homosexuality in 1942, provided that the actors involved were over 20 years of age.³⁵ Germany and Austria only followed decades later – Germany in 1994, and Austria in 2002.³⁶

In the early 1970s I had the privilege and honour to meet elderly people and gay friends who had survived German concentration camps between 1933 and 1945 (the Nazi period and barbarity). They had been accused of being “Jews”, “socialists”, “communists”, or “homosexuals”, or all together – usually a sure death verdict in Nazi Germany. From their testimonials I learned that being gay or sexually “irregular” was not considered “abnormal” in the educated and artist scenes in Berlin or Paris (leading metropolitan areas) up until the 1920s – in Germany until the takeover of Nazi power in 1933. The cultural impact of anti-gay and “abnormal sexual

23 Huonder quoted Leviticus 20:13: “If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.” www.blick.ch/news/schweiz/mit-dem-tod-bestaft-boese-schwulen-attacke-von-bischof-huonder-id4034615.html

24 www.blick.ch/news/schweiz/mit-dem-tod-bestaft-boese-schwulen-attacke-von-bischof-huonder-id4034615.html

25 www.blick.ch/news/schweiz/schwule-werden-mit-dem-tod-bestaft-bischof-huonder-hats-nicht-so-gemeint-id4035586.html

26 www.blick.ch/news/schweiz/es-reicht-jetzt-laufen-auch-die-kirchen-sturm-gegen-huonder-id4042198.html and www.kath.ch/medienspiegel/aeusserungen-von-bischof-huonder-zu-homosexualitaet/

27 The coordinating body of the Roman Catholic dioceses in Switzerland.

28 www.blick.ch/news/schweiz/dem-bischof-drohen-bis-zu-drei-jahre-knast-schwule-zeigen-vitus-huonder-an-id4054175.html and www.tagesanzeiger.ch/news/standard/schwulendachverband-zeigt-bischof-huonder-an/story/13408816

29 Ibid.

30 www.nzz.ch/zuerich/die-einsamkeit-des-vitus-huonder-1.18598133 and www.woz.ch/1533/katholische-kirche/jesus-machte-keinen-unterschied

31 www.streetparade.com

32 <https://en.wikipedia.org/wiki/Technoparade>

33 https://en.wikipedia.org/wiki/Street_Parade and www.tagesanzeiger.ch/29573065/print.html

34 https://en.wikipedia.org/wiki/Paragraph_175

35 https://de.wikipedia.org/wiki/Geschichte_der_LGBT#Das_20._Jahrhundert

36 Ibid.

orientation” campaigns must have been enormous across Europe until the 1970s.³⁷

But values and public perceptions have changed considerably over recent decades. Just as an example: the “coming out” of a homosexual person until the 1970s or 1980s usually had severe consequences for his or her professional life, career and economic existence. When the German minister of foreign affairs, Guido Westerwelle (2009-2013), came out as a homosexual living in a same-sex partnership, it was just an issue for the gossipy yellow press. Over the last 20 years the internet and social media have supported and illustrated sexual diversities by including marginal realities and identities. They have strengthened emancipatory processes of all those who have not always been the focus of old media. Discriminated groups who lived in the shade of societies and had no voice are all using the internet to express their sexual identities, to find support, and for advocacy.

Anti-LGBT propaganda campaigns are still mainly the work of religious fundamentalists from the Roman Catholic, orthodox or Islamist persuasions. Gay friends and observers who have struggled for multicultural rights in European societies for most of their political life confess that they are rattled and scared about recent developments. They say that for some time the fundamentalist Catholic fraction has been losing more and more influence in modern and educated Western societies. But recently we are confronted with a younger migrant generation with a Middle Eastern background who have strongly expressed and revitalised anti-gay stereotypes and propaganda by ignoring constitutional basics.³⁸ Their anti-modern ideas, merely based on religious bias, are considered a dangerous force against the rights of LGBT people, or anybody not corresponding to traditional or archaic norms.

Transformation processes in societies are usually not linear, but broken or interrupted by backlashes – as can be seen by the story of the bishop discussed above. Decades ago religious fundamentalists could have counted on the silent approval of the public, but nowadays these church representatives are seen more as a dying species. But there is still a long way to go – in Swiss society and abroad – until LGBT people are considered just as “normal” and equal as usual heterosexuals.

Action steps

Some of the demands of LGBT organisations are:

- To finally remove the exclusion of gay people from donating blood, allegedly because of higher risks of HIV transmission. The Pink Cross considers this practice discriminatory. The Federal Council already agreed and called upon blood services to change such rules.
- To introduce a particular anti-discrimination article to prohibit hate speech against LGBT people. More coherence between different legislation is needed.
- As the right to marriage is inscribed in the Federal Constitution, equal rights and standards for gays and lesbians are overdue. Similar demands for gay people to adopt children are still on the advocacy agenda (the revision of Article 28 of the registered partnership law is necessary).
- LGBT people are still confronted with discrimination at the workplace. Regulation is needed to stop and change these practices.
- LGBT communities and organisations should step out of their closed circles by creating broader alliances with like-minded citizens. They should use internet-based campaigning tools and platforms (such as Avaaz and Campact)³⁹ to mobilise solidarity. The internet offers this chance and opportunity.

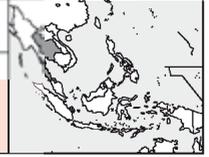
³⁷ Various personal conversations with gay friends in the early 1970s, where they told me about their personal histories and sufferings. None of them wanted to record their personal stories in public because they were still afraid.

³⁸ Talks and discussions with people from the gay community who do not want to be personally quoted.

³⁹ <https://www.campact.de/gleichstellung/appell/empfehlen>

THAILAND

CYBER SEXUALITY IN THAILAND: THE USE OF THE INTERNET IN THE SEX TRADE



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Introduction

Thailand has a population of about 67.2 million people¹ and has an internet access rate of about 35%.² It also has a reputation for openness and tolerance when it comes to issues of sexuality. But this is a view that is only partly correct. While Thailand is famous for sex tourism, beautiful transgenders and the skills of its sexual reassignment surgeons, the Thai authorities are not so proud of this fact.

The red light districts in the country attract tourists from around the world. The sex trade amongst local people is also vibrant. Although the sex trade is actually illegal, the Thai authorities turn a blind eye to it.

Thai society is still dominated by patriarchal values, firmly held by the older generation and strongly influencing the formal sectors, such as the governmental agencies. Lesbian, gay, bisexual and transgender (LGBT) people are in general accepted and play a prominent role in the entertainment and sex industry. According to a recent poll,³ about 89% of the respondents were comfortable with having gay friends and colleagues and about 80% of the respondents said they would accept a gay family member. However, discrimination is still prominent, especially in the professional work sector. LGBT people are also heavily stigmatised by the media.

Policy and political background

Thailand is now ruled by a military dictatorship, which partly legitimises its power by enforcing Thai conservative and nationalist values, including conservative views on sexuality. The junta-appointed lawmakers are now deliberating several laws related to sexual rights. They scrapped a marriage equality clause for all sexual orientations, gender identifications and expressions (SOGIEs) in deliberations for a draft constitution for Thailand. Because of this, laws that would give LGBT people the right to civil partnership have a dim future.

The term “public morality” is found in several Thai laws, and plays a key role in controlling public expressions of sexuality, since sexual practices and services can be interpreted as contravening public morality. In the name of public morality, prostitution, pornography and sex toys are illegal under the Criminal Code in Thailand and penalised with up to 15 years of prison. Nevertheless, the law is not strictly enforced, and such services and products are easily found on the streets of Bangkok.

The Thai Computer Crime Act (CCA) has also banned pornographic sites and information related to them in the name of public morality. Under the CCA, anyone who posts immoral or obscene information or pornography on the internet can face a maximum imprisonment of five years or a fine of no more than USD 32,000 or both. Authorities use the CCA as a magic pill to deal with all problematic content on the internet. The law is now being used more and more frequently for online defamation. Whenever the state, private companies or individuals are dissatisfied with content posted on the internet, they file a court application using the CCA, instead of the defamation law itself. Since the CCA carries a heavy penalty it is also used as a way of legal bullying: internet users are told to delete content if they do not want to face CCA charges. Article 14 (4) of the CCA bans the downloading of any pornographic content.

Protecting “Thai values”

In order to protect “Thai values” and to control the flow of information online generally, the junta is aiming to pass several laws to control the internet and digital media. One is the Prevention and Suppression of Temptations to Dangerous Behaviours bill,⁴ which initially aimed to suppress child pornography. However, the draft law also criminalises “media which may lead to dangerous behaviour”, considered to be mostly available on the internet. The following sexual practices are defined as dangerous and must be banned: bondage, discipline, domination and submission (BDSM), group sex, swinging, incest, bestiality and necrophilia.

1 data.worldbank.org/country/thailand
2 data.worldbank.org/indicator/IT.NET.USER.P2
3 news.voicetv.co.th/thailand/228414.html

4 Kummetha, T., & Areerat, K. (2015, 10 February). Thai junta's new censorship bill the first to define right/wrong sexual acts. *Prachatai*. prachatai.org/english/node/4772

Although the idea of “public morality” has been part of Thai legislation for some time, these sexual practices have never been declared illegal. So the question needs to be asked: Why should it be illegal to view these sexual practices online?

According to the bill, anyone distributing content which contains unlawful sexual acts could face up to five years imprisonment and a fine of up to about USD 50. Moreover, any internet intermediary who knows that this content exists on the network under their control, and who does not remove the content, faces a jail term of up to five years or a fine up to about USD 14,000, or both. The bill also empowers the police to search computers for illegal content without a court’s search warrant.

This is an alarming trend. The banning of content that expresses alternative sexual identities further suppresses the freedom of individuals to pursue pleasure in the ways they like.

Alternative sexual services online

Although there is not much awareness of alternative sexual practices among Thais in general, Thailand is popular for providing these services. But because of the social stigma attached to them, they are not offered openly in the country’s red light districts. The customers, most of them foreigners, have to access these services using the internet.

Based in Bangkok, Mistress Pasaya (aka Fon) is a popular BDSM blogger and dominatrix in great demand who makes about USD 13,000 per month. She runs a website where potential clients can book a session with her. She receives about 150 requests for BDSM sessions a month, but only 60 will be accepted. In order to be one of the 60, one has to compete by writing emails to attract her, and most importantly, show that one is truly a submissive. But how? The trick is revealed in her blog posts.

Mistress Pasaya and her dominatrix mentor, Mistress Jaa, have written about 1,000 blog posts about their experience of teasing, seducing, forcing and hurting men. The blog shows that the most challenging side of BDSM is not to hurt or force, but the seduction, teasing and denial. The blog also shows how professional they are, and how intellectually demanding their work is, rebutting the myth that sex work is an unskilled job. “I enjoy BDSM because I play with my clients using my brain, my imagination and my understanding of how men think,” Pasaya, who claims to have gone to college in Australia, writes on her blog.

If one is not a fan of BDSM, there are dozens of escort services, most of them for foreign tourists, that can be booked online too. The websites provide photos and information about the girls and the

kinds of services the clients can expect from them. For Thais, a popular type of sexual service is called “bath-sauna-massage”. A session of the service comprises bathing, a massage and sex. Since there is fierce competition between massage parlours, the internet is used to differentiate services and to attract customers. There are also dozens of online communities of parlour goers who share experiences of sex services through reviews. This allows sex workers and parlour owners to review feedback from clients, and to change or improve their services where necessary.

The reviewers of massage parlours have developed a set of ratings. The ratings cover four aspects: “body”, “face”, “service”, and “girlfriend factor” (GF). The girls who have big breasts, skinny figures, cute faces and fair skin usually get high scores in the first two categories. Girls who perform several different sexual acts, especially the uncommon or unhygienic ones, such as oral sex under water, usually get high scores in “service”. Meanwhile, GF relates to interpersonal skills with clients, and whether the sex workers can make their clients feel at ease – as if the client is spending time with a girlfriend.

In each review, the reviewer will say which parlour they visited, and which worker serviced them. Then they tell their stories in detail, from the moment they walk into the parlour. Unsurprisingly, they read like erotic stories. They then rate the service and say whether they will return to the parlour again. The community has also developed a list of common terms that are used in reviews. For example, they have several terms to describe the types of women’s breasts and sexual acts performed.

Some parlours offer discounts to customers who say they are visiting the parlour after reading a review online.

The internet is also a space where people share experiences of sexual reassignment surgery. There are web forums and blogs where those who have undergone the operation write extensively about the surgery with pictures. Since most of the clients are foreigners, the sexual reassignment surgery clinics use websites to attract and communicate with potential clients. Foreigners can write emails to the clinic and make an appointment online before they come to Thailand.

The internet also offers ways of asking for counsel on sexual health and sexualities anonymously. Due to social norms, women and people with different types of SOGIE find it difficult to discuss issues of sexual health. However, the internet allows people to anonymously and openly discuss sexual and reproductive health. The topics range from sexually

transmitted infections, to planned and unplanned pregnancy, to sexual pleasure. Doctors have also joined these forums to offer advice. There are also forums for people with different types of SOGIE to find friends and sex partners. The forums have search categories such as “Find gay king”, “Find gay queen”, and “Find lesbians”.

Meanwhile conservative Muslims in Thailand, most of whom live in the three southernmost provinces, use Facebook to promote the “good” behaviour of Muslim women. For example, the Muslimah page⁵ on Facebook promotes the proper attire of Muslim women, such as how long the hijab should be, and how to fit the cloth so that it should be in accordance with Islamic norms. It also condemns Muslim women who post pictures of themselves online, saying their beauty should only be revealed to their husbands. This shows that the internet can be used to promote more freedom or less freedom – freedom of expression online is not simply about offering a voice for progressive values and human rights.

Conclusions

Given the above discussion, the following conclusions can be reached:

- The internet is crucial to the development of sex tourism in Thailand. The internet serves as a space where clients express their needs, allowing the sex trade to meet these needs. Sex workers also empower themselves by using the internet to connect with potential clients directly.
- The internet also helps sex workers to articulate their realities and identities. This fosters a better understanding of people with different types of SOGIE and those involved in prostitution.
- The internet allows for a relaxation of patriarchal norms. The potential to express one’s sexual orientation anonymously, and to discuss sexuality openly, leads to better sexual health.
- At the same time the internet is used to promote conservative values that repress sexual differences and alternative identities.

Action steps

The following advocacy steps are suggested for civil society:

- Sexuality has to do with personal taste and this should be a clearly guaranteed right in the constitution.
- Instead of suppressing sexual activities, services and products, forcing users to go underground, the Thai authorities should decriminalise and regulate them in order to better control standards, safety and the age of consumers and providers.
- The Computer Crime Act should be amended to decriminalise pornography and obscene websites, but establish measures, such as age verification, to regulate access to this content.
- The Prevention and Suppression of Temptations to Dangerous Behaviours Bill should be amended. It should not criminalise content which is an expression of sexual diversity and different sexual tastes.

5 <https://www.facebook.com/Muslimah.Oy>

TURKEY

DISGUISED FORMS OF CENSORING SEXUAL EXPRESSION ONLINE IN TURKEY



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Introduction

This report discusses how the freedom of sexual expression is currently being censored in Turkey through existing legislation, and takes a look at the prevalence of hate speech and threats of violence online. We view the issue within its wider context – not just limited to the lesbian, gay, bisexual, transgender and intersex (LGBTI) communities – but impacting on all those who are confronted by hate speech or who have to endure threats of violence for not conforming to traditional (or patriarchal) values. We investigate the role of the government in perpetuating censorship and facilitating online bullying, hate speech and threats of violence against sexual expression, either by its actions or omissions. While there is nothing in Turkey’s criminal code that acts punitively towards online sexual expression of any kind, hate speech and threats of legal action produce a form of self-censorship, and have a chilling effect on online freedoms. Therefore, there is in effect indirect censorship of the rights to online sexual expression. We argue here that in this way, the government subtly manages to disguise its authoritative and draconian nature.

Policy and political background

Despite becoming a republic in 1923, Turkey has struggled with democratisation and the strengthening of human rights until today. The country has endured several coups d’état, and its present constitution still remains highly restrictive in terms of attaining a reformist society. Despite numerous progressive steps taken in the past 15 years, especially becoming a member of the European Union (EU), Turkey still lacks a legal framework that provides a safe environment for freedom of expression. This is all the more the case when it comes to the internet. Due to the banning of social media platforms on several occasions, Turkey is now named among countries with the most draconian online surveillance and censorship laws. This only grew worse after the countrywide Gezi uprisings that took place

in June 2013, where social media was one of the primary tools of communication among protesters. While restrictive regulations do not specifically target freedom of sexual expression, they are often used for that purpose as well.

Online content is strictly monitored and kept under control by several laws. Apart from the specific laws that regulate online content – such as Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications – other laws that regulate different types of violations, such as the Turkish Criminal Code under articles 122, 125, 216 and 299,¹ are also

1 Article 122 (Discrimination): “Anyone who practices discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect or other reasons; a) preventing the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the conditions listed above, b) withholds foodstuffs or refuses to provide a service supplied to the public, c) prevents a person from carrying out an ordinary economic activity shall be sentenced to imprisonment for a term of six months to one year or a judicial fine.”

Article 125 (Insult): “1) Any person who attributes an act or fact to a person in a manner that may impugn that person’s honour, dignity or prestige, or attacks someone’s honour, dignity or prestige by swearing shall be sentenced to a penalty of imprisonment for a term of three months to two years or a judicial fine. To be culpable for an insult made in the absence of the victim, the act should be committed in the presence of at least three further people.

2) Where the act is committed by means of an oral, written or visual medium message addressing the victim, the penalty stated in the above section shall be imposed.

4) Where an insult is committed in public, the penalty to be imposed shall be increased by one sixth....”

Article 216 (Inciting the population to enmity or hatred and denigration): “1) Anyone who openly incites sections of the population to enmity or hatred towards another group on the basis of social class, race, religion, or sectarian or regional difference, in a manner which may present a clear and imminent danger in terms of public safety shall be sentenced to imprisonment of from one to three years.

(2) Anyone who openly denigrates a section of the population on grounds of their social class, race, religion, sectarian, gender or regional differences shall be sentenced to imprisonment of from six months to one year.

(3) Anyone who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment of from six months to one year, where the act is sufficient to breach public peace.”

Article 299 (Insulting the President): “Anyone who insults the President of the Republic shall be imprisoned for a term of from one to four years.”

English translation source: www.tuerkeiforum.net/enw/index.php/Translation_of_selected_Articles_of_the_Turkish_Penal_Code

used for court decisions. But none of these articles offer any specific protection for the right to gender identity and sexual expression, nor do they deal with hate speech online. Similarly, globally recognised rights to sexual identity do not enjoy specific protection under the Turkish Constitution. The only articles which come close to being interpreted (rather widely) in terms of providing protection for LGBTI people are articles 10 (dealing with equality before law) and article 20 (affirming the right to privacy, which foresees the duty of the state to take necessary precautions to guarantee the protection of LGBTI people against any type of harassment including hate speech). The unlawful dissemination of personal data is also a crime under articles 132 to 140.

However, a progressive step to note is that in 2011 Turkey was the first country that signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention.² This provides legal protection for women against “any sort of violence and discrimination”, and imposes a duty on signatory states to amend their laws and domestic policies to bring about full gender equality between men and women. Another improvement was introduced in 2014 when the Turkish constitutional court ruled that referring to LGBTI people as “perverts” on the basis of their sexual orientation and gender identity is hate speech and subject to criminal prosecution.³

Creating conditions for self-censorship online

Despite the above protections, online bullying and hate speech have a chilling impact on freedom of expression in Turkey, and appear to be a natural outcome of the Turkish state’s reluctance to implement progressive laws that may exist on paper (what we call its strategy of “doing and not doing”). All those – including sexual minorities – expressing themselves online in a way that does not tally with traditional gender codes in Turkey have met with online bullying and hate speech. Online newspapers and portals run by conservative Islamists have, in particular, systematically targeted LGBTI communities, leading social or political figures, and their allies from non-government movements, amongst other things calling them “perverted”. Although

victims of online hate speech have tried to take legal action, there are insurmountable problems regarding the way justice functions, and until now no perpetrator has been punished. Up to this point, the state’s inactivity entails not properly conducting effective prosecutions, and a narrow interpretation of “gender” as protected by article 216/2 of the Turkish Criminal Code, in accordance with the ruling of the European Court of Human Rights⁴ and the decisions of UN Human Rights Council resolutions.⁵ The failure to investigate and punish perpetrators encourages other potential perpetrators to attack any identity or expression that does not comply with prevalent heteronormative patterns. This implicitly guarantees perpetrators that there will be no legal prosecution or punishment of hate-driven harassment of LGBTI people.

Online bullying is one of the least discussed or visible topics in Turkey. A pertinent example is the harassment that followed the Twitter hashtag *#sendeanlat* (which can be translated as “tell your story too”), which appeared right after the brutal murder of Özgecan Aslan.⁶ Özgecan was a 20-year-old university student who was stabbed to death as she resisted an attempted rape in Mersin on 11 February 2015 while travelling by bus to her home during the evening. The social media hashtag campaign attracted wide public attention, resulting in around 6.5 million people tweeting about the incident, in addition to around 800,000 tweets⁷ from women of different age groups sharing their harassment, rape and assault stories online. The content of the tweets varied from stories of daily harassment on the streets or on public transport systems, to overt or covert assaults. However, women who “came out” against gender-based violence in everyday life in Turkey received online threats or replies such as that levelled at Nihat Dogan, a well-known pop singer: “Do not scream as you wear miniskirts and are harassed by perverts demoralised by this secular system.”⁸ A sinister type of bullying involves trolls who tried to eroticise these sexual harass-

2 For more information on the Istanbul Convention, see: www.coe.int/en/web/istanbul-convention/home

3 Constitutional Court decision 2013/5356 of 8 May 2014. English translation: www.anayasa.gov.tr/en/inlinepages/leadingjudgements/IndividualApplication.html

4 For more information on the wide interpretation of “gender” status of the court, see this judgement: [hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-3353755-3754421#{"item id":"003-3353755-3754421"}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-3353755-3754421#{)

5 www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx

6 BBC World Service. (2015, 24 February). Sexual Harrassment in Turkey. *BBC*. www.bbc.co.uk/programmes/p02kq3pb

7 Alfred, C. (2015, 25 February). Women In Turkey Share Devastating Stories Of Sexual Harassment In #Sendeanlat Twitter Campaign. *Huffington Post*. www.huffingtonpost.com/2015/02/17/turkey-sendeanlat-twitter-campaign_n_6699702.html

8 cemedib.blogcu.com/ozgecan-aslan-cinayeti-ve-sendeanlat-kalkismasi/19987304

ment stories, in this way hijacking a movement aimed at protesting sexual harassment.

While the hashtag campaign is still active, these kinds of reactions discourage women from talking openly about harassment, assault and even rape. This is especially true of online harassment, bullying and hate speech, which is very weakly monitored – due both to legal shortcomings and the inability of websites or social media platforms to implement preemptive measures.

Besides this, there is the new and intriguing way in which the former prime minister – now president – Recep Tayyip Erdoğan prompted an escalation of censorship and self-censorship. Following the Gezi protests, Erdoğan filed lawsuits against ordinary Twitter or Facebook users on the grounds that they had “insulted” him or “insulted the president”. This was done by resorting to articles 125 and 299 of the Turkish Criminal Code. Prior to the legal amendment which enabled him to file these charges with the ludicrous and unsubstantiated accusation of “insult”, he was indirectly involved in many prosecutions against Gezi protesters, simply because they had also criticised him on Facebook or Twitter.⁹

Among the many suits¹⁰ Erdoğan filed was one against Levent Pişkin, an openly gay lawyer and activist based in Istanbul. The incident followed a tweet by Erdoğan that said: “If being Alevi¹¹ means to love Prophet Ali, then I am a perfect Alevi” (a statement aimed at rejecting the accusations of the Turkish government’s discriminatory practices against Alevis in the country). As Erdoğan has been found to resort to authoritative rhetoric quite often, Pişkin tweeted a tongue-in-cheek response: “I’m expecting from Erdoğan to say ‘I am a perfect queer, you cannot teach me how to be a queer.’ Kisses. #LGBTinconstitution”.¹² Since Erdoğan interpreted “queer” as an insult, he filed a lawsuit using article 125 of the Turkish Criminal Code against Pişkin, claiming compensation for non-pecuniary damages. Legal proceedings ordered Pişkin to pay 1,500 TL (approximately USD 520) to Erdoğan.¹³

Before this, Erdoğan filed a similar lawsuit against columnist Hakan Demir, who mockingly commented on Twitter in response to a claim made on repeated occasions by then prime minister Erdoğan during the Gezi protests: “I am the primary environmentalist, we are not going to learn how to be environmentalists from these [Gezi protesters], we have planted 3 billion trees”. On 30 June 2013, against the backdrop of both the Gezi protests and a gay pride protest that took place in Istanbul, Demir tweeted: “We expect a statement from the Prime Minister saying: ‘We are not going to learn how to be a homosexual from these people; I am the primary homosexual; I planted 3 billion homosexuals’”. Demir was accused by Erdoğan of resorting to “heavy insult and [using a] shameful figure of speech” in his capacity as a publicly known person. Nevertheless, unlike Pişkin, Demir was not found guilty by the court. The court found he had exercised his right to free speech.¹⁴

Conclusions

The three examples illustrate how the state’s approach of “doing and not doing” is designed to politically oppress and intimidate potential dissent. The Pişkin case is a good example of how the right to access justice can be abused by people in power to suppress online freedom of expression and the right to choose sexual orientation. Legal codes have no standard application and how they are applied changes case by case, usually in favour of the people in power, or those who hold traditional hetero-normative moral values. This, with its direct link to self-censorship, should be read as a new form of censorship.

Action steps

The following advocacy steps are suggested for civil society in Turkey:

- Article 10 of the Turkish Constitution should be amended to constitutionally protect the right to sexual orientation and gender identity.
- As advised by the Yogyakarta Principles, the UN,¹⁵ and European Union recommendations,¹⁶ the Turkish state should amend the relevant

9 Anadolu Ajansı. (2014, 21 April). Erdoğan İzmir’deki “twitter davası”na müdahil oldu. www.aa.com.tr/tr/turkiye/316344-basbakan-erdogan-izmirdeki-quot-twitter-davasi-quot-na-mudahil-oldu

10 According to an online media report, President Erdoğan filed 67 lawsuits from December 2014 to March 2015: <https://line.do/tr/son-uc-aydaki-cumhurbaskanina-hakaret-davalari/e6m/vertical>

11 Alevism is a branch of Islam whose followers are found in Turkey but are a significantly minority group compared to the predominant Sunni branch.

12 Tahaoglu, C. (2014, 29 August). Newly-Elected President Sues LGBTI Activist. *Bianet*. www.bianet.org/english/gender/158200-newly-elected-president-sues-lgbti-activist

13 Soylemez, A. (2014, 18 November). Columnist Acquits From Erdoğan’s “Queer” Complaint. *Bianet*. www.bianet.org/english/gender/160052-columnist-acquits-from-erdogan-s-queer-complaint

14 Cumhuriyet. (2014, 18 November). Erdoğan’ın “Eşcinsel Davasında” beraat. www.cumhuriyet.com.tr/haber/turkiye/143307/Erdogan_in_Escinsel_Davasinda_beraat.html#

15 See the UNESCO page dedicated to the internet and freedom of expression: www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-expression-on-the-internet

16 See the EU 2014 Progress Report on Turkey: avrupa.info.tr/resource-centre/news-archive/news-single-view/article/the-2014-progress-report-on-turkey-is-published.html

legislation and enact new legislation in order to explicitly protect the right to gender identity, sexual orientation and gender expression on online platforms.

- Law 5651 should be amended to protect freedom of expression online, and to ensure that any blocking of websites, IP addresses, ports, network protocols or social networks is in accordance with international standards.¹⁷
 - Article 216/2¹⁸ of the Penal Code should be reformed to bring it in line with article 17 of the International Convention on Civil and Political Rights (ICCPR), article 4 of the Council of Europe
- Convention on Preventing and Combatting Violence Against Women and Domestic Violence, judgments of the European Court of Human Rights and the Constitutional Court.
 - All legal and public actors, but especially public prosecutors, judges, relevant public authorities and bureaucrats, should be trained on how to stop any sort of online violence against sexual expression and identities.
 - The Turkish state should collaborate with national and international NGOs fighting for online freedoms, by raising awareness online, and running campaigns, conferences and workshops.

¹⁷ ARTICLE 19. (2014, 3 December). Statement on freedom of expression in Turkey UPR pre-session, December 2014. www.article19.org/resources.php/resource/37833/en/statement-on-freedom-of-expression-in-turkey-upr-pre-session,-december-2014

¹⁸ www.yogyakartaprinciples.org



Maria M. Pasholok

Introduction

The image of young, blonde Ukrainian women with half-naked bodies and sexual rights slogans painted on their breasts has become one of the most recognisable and scandalous phenomena worldwide in recent years. They are Femen,¹ one of the best-known feminist carnivalesque protest groups, founded in Ukraine to fight for sexual equality and sexual and political freedoms.

Despite the obviously provocative component of their spectacular protests (or even performances?), the group largely owes its worldwide popularity to new media and the internet. For example, in 2010 Google searches for “Femen” had surpassed searches for “feminism” and “sextremism” (a term coined by the group leaders).² Focusing on Femen in my report, and especially on their idea of promoting revolutionary sexuality as opposed to the patriarchal eroticism and pornography found on the internet, I would like to discuss the broader context of sexual rights in the Ukraine – a country of Soviet heritage whose citizens “endure regular discrimination and violence for which there is rarely accountability.”³

I will especially focus on the violence and abuse that Femen has to face during each of their public appearances, and the way the group deals with it online.

Policy and political background

Human Rights Watch regularly reports on violations of sexual rights in the Ukraine in its yearly World

Reports. 2014 raised perhaps the biggest concern in legal terms as two homophobic bills were pending in parliament, proposing fines or a prison sentence of up to six years for the production, publication or distribution of materials aimed at the “promotion” of homosexuality among children.⁴ The same year, Rada – the Ukrainian parliament – twice postponed consideration of amendments to the Labour Code protecting against discrimination on the grounds of sexual orientation.

All this happened at the time of a serious political and military crisis that is still unfolding in Ukraine as a result of the 2014 Euromaidan movement⁵ which led to the re-election of parliament and the annexation of the Crimean peninsula by Russia in March 2014.⁶

It is important to understand that the Euromaidan movement in Ukraine started as a desire among citizens of the country to join the European Union (EU). The EU requires Ukraine to adopt comprehensive anti-discrimination legislation on sexual rights, and so the sexual rights agenda in Ukraine during that time became highly politicised. Femen took an active part in these processes. Notably, the range of issues addressed by the movement also grew, and now started to include a lot of different political statements.

A new kind of radical feminism

In February 2008 a group of half-naked Ukrainian women protested against sexism in Ukrainian universities by re-enacting X-rated provocative scenes of sexual inequality in the classroom. This example is only one of the numerous protests organised by

1 femen.org

2 The term “sextremism” is believed to combine three related concepts: sexism, extremism, and feminism. It was used in Femen’s manifesto, but has not gone far beyond the group’s own vocabulary. Some experts tend to understand it as an extreme form of feminism.

3 The most recent example was the Kyiv Equality March that took place in June 2015, and was followed by violent attacks in which nearly two dozen police officers and participants were injured. See Human Rights Watch. (2015, 5 August). *Joint Letter to the President of Ukraine on Sexual Orientation and Gender Identity as Grounds of Non-Discrimination in the Constitution*. www.hrw.org/news/2015/08/05/joint-letter-president-ukraine-sexual-orientation-and-gender-identity-grounds-non

4 Human Rights Watch (2014). *World Report 2014: Ukraine*. www.hrw.org/world-report/2014/country-chapters/ukraine

5 A political movement that was part of the Ukrainian crisis of 2013-2014, and which called for the country to join the European Union and for the resignation of President Viktor Yanukovich.

6 The Euromaidan protests lasted for three months, from December 2013 to March 2014. The protests reached a climax on 18-20 February, when police and protesters fired guns, and several people were killed on both sides. Following these tragic events, Ukrainian President Viktor Yanukovich promised the opposition and the people to end the crisis, having signed an agreement on the settlement of the political crisis. However, in spite of the agreement, people of the Euromaidan claimed they would engage in armed conflict if Yanukovich did not resign by 10:00 a.m. 21 February. The next day, Yanukovich was removed from office by parliament, and the government was replaced with a pro-European one.

Femen since 2008, when their organisation was founded by Hanna Hutsol.

At the moment, Femen are a well-known yet unregistered group of female protesters, who regularly go topless with traditional Ukrainian flower garlands in their hair, wear knickers made from surgical masks, and even mud-wrestle naked to draw attention to their cause. The group has about 400 members, all with Ukrainian backgrounds, located across the world. They are in their 20s, look like models, and have all gone to university. Hutsol is still the ideological leader of Femen and takes care of the group's management, logistics and financial and creative concerns, as well as developing ideas and designs for the new protests.

From the very first protests, the media claimed Femen was the advent of a new kind of radical feminism "causing outrage among feminists and traditionalists alike."⁷ Hutsol has made it clear that Femen's main motive is to highlight the negative impact that sex tourism and prostitution have had on the Ukraine since the fall of the Soviet Union. However, she has chosen to address this in a very unusual manner.

Tracking Femen's activities on the internet since their formation in 2008, I have noticed several highly creative and unexpected methods with which the women address their chosen topics.

For example, they start their manifesto in a pseudo-Biblical style, hinting at the universality of their approach:

In the beginning, there was the body, feeling of the woman's body, feeling of joy because it is so light and free. Then there was injustice, so sharp that you feel it with your body, it immobilizes the body, hinders its movements, and then you find yourself your body's hostage. And so you turn your body against this injustice, mobilizing every body's cell to struggle against the patriarchy and humiliation. You tell the world: Our God is a Woman!⁸

What follows is a touch of romanticism:

FEMEN is an international women's movement of brave topless female activists painted with the slogans and crowned with flowers.⁹

Moving on towards a clear and bold political statement:

We live in the world of male economic, cultural and ideological occupation. In this world, a woman is a slave, she is stripped of the right to any property but above all she is stripped of ownership of her own body. All functions of the female body are harshly controlled and regulated by patriarchy. Separated from the woman, her body is an object to monstrous patriarchal exploitation, animated by production of heirs, surplus profits, sexual pleasures and pornographic shows.¹⁰

And ending with an original and highly creative message:

FEMEN's naked attack is a naked nerve of the historic woman-system conflict, its most visual and appropriate illustration. Activist's naked body is the undisguised hatred toward the patriarchal order and new aesthetics of women's revolution.¹¹

We can see that Femen have a strong and well-thought-out agenda, the group using their bodies as a means of political activism. The images of these bodies became viral on social media, making the girls recognisable and famous. These steps were "inevitable", in the words of the group's organisers, in order for them to be heard.

One of Femen's leaders, Inna Shevchenko, admitted in an interview in *The Guardian* that no one had been listening before they started stripping off. "At the beginning, we were not protesting topless but we realised we had to do something really radical. We don't have people to promote or help us, or big money. Everywhere – from TV channels to magazines – you see naked girls selling something. We are trying to say: 'You should not show your body like that; you should use it to protest and fight.'"¹²

Such a perspective has not only resulted in various responses from the public, but has also at times placed the topless women in real danger. In December 2011 several Femen activists protested against long-serving Belarus President Alexander Lukashenko. The young women wearing Lukashenko style moustaches had red stars painted on their chests and bellies alongside the slogans "Freedom to Political Prisoners" and "Long Live Belarus". Soon afterwards the three Femen women and a

7 Khaleeli, H. (2011, 15 April). The nude radicals: feminism Ukrainian style. *The Guardian*. . www.theguardian.com/lifeandstyle/2011/apr/15/ukrainian-feminists-topless-campaign

8 femen.org/about

9 *Ibid.*

10 *Ibid.*

11 *Ibid.*

12 Khaleeli, H. (2011, 15 April). *Op. cit.*

photographer who accompanied them during the Minsk protest went missing. Later it was revealed that the women were kidnapped by six unknown men, who Femen claimed were Belarusian secret police. They took the women to the forest, made them strip, cut their hair short and threatened to kill them.¹³ Afterwards the women were found and brought to Ukraine safely; however, this incident proved in a paradoxical way that what Femen were fighting against was the reality of post-Soviet everyday life.

The incident indeed made them famous worldwide. From 2011 on, Femen started protesting weekly, addressing almost any topic that they considered worthy of public response. And every time, the public response online was immediate.

It is important to understand that Femen rely on the media for exposure – it serves their advocacy purpose when their protests are recorded and make the front pages. The media spectacle that is the result of their protests is as much a part of their advocacy agenda as the public symbolism of their naked bodies. From the start the media recorded and tried to explain the actions of the young female activists. Alongside coverage of the protests, they have also taken an interest in the everyday lives of the activists – in this way showing that the protests are the actions of normal, everyday people.

A Reuters photographer, Gleb Garanich, who had been photographing Femen for five years, says that they do not seem to be extraordinary at all: “I think they are normal girls with normal problems, ideas and ideals who manage to break out of the routine and desperation during their protests, which sets them apart from many others who have moved to Kiev from smaller cities and towns.”¹⁴

And paradoxically, this normality makes them strong. As Garanich says, “They have done more for Ukraine and its European aspirations than all the politicians and all the expensive adverts ordered by the government.”¹⁵

Conclusions

The Femen phenomenon will by no means become the rule in the global fight for sexual rights. On the contrary, the movement follows an exceptional strategy that cannot be generalised. In fact, many

feminist scholars even refuse to see Femen as a part of the global feminism movement, because the group goes far beyond “acceptable” feminist practices.¹⁶

On the other hand, the group has recently started employing more traditional methods in their protests. For example, Femen is taking part in an International Feminist Training Camp in France in August 2015,¹⁷ and, importantly, they will not be employing nudity.

Recent years have seen the spread of the Femen movement beyond the borders of post-Soviet states. By the end of 2012 the group claimed it had about 40 activists in Ukraine, and another 100 all over Europe. In October 2013, from their headquarters in Paris,¹⁸ Femen announced that the organisation had officially opened its Turkey office, and was hoping to establish a “homegrown” branch in the United Kingdom.¹⁹ But still their largest support base is online, with as many as 20,000 supporters in the Russian social network Vkontakte²⁰ and more than 30,000 on Facebook²¹ – and the numbers keep growing, with more supporters declaring themselves Femen internet activists.

Despite the many social stigmas that surround Femen, the group has now generated significant social capital with which it is able to advocate for sexual rights via the internet without putting their activists in actual danger. While Femen’s unorthodox tactics may still prevent them from cooperating with other activists, who might see the group as a distraction – a show for the sake of the show – their contribution to sexual rights activism in Ukraine and worldwide cannot be ignored. As anthropologist Jessica Zychowicz suggests, “Perhaps we have a lot left to learn from Femen as their movement changes and they learn from themselves; continuing to embed their words, their images, and their bodies in history.”²²

13 RT. (2011, 21 December). First FEMEN images after alleged KGB torture. RT. www.rt.com/news/kgb-protests-belarus-femen-337

14 Garanich, G. (2012, 1 March). The femem phenomenon. *Photographers Blog*. blogs.reuters.com/photographers-blog/2012/03/01/the-femen-phenomenon

15 Ibid.

16 See the relevant discussion in Zychowicz, J. (2011). Two Bad Words: FEMEN and Feminism in Independent Ukraine. *The Anthropology of East Europe Review*, 29(2), 215-227. scholarworks.iu.edu/journals/index.php/aeer/article/view/1266/1336

17 Débat d'idées – International Feminist Training Camp, 29-30 August 2015. www.eventbrite.fr/e/debat-didees-international-feminist-training-camp-2015-tickets-18190798167?aff=affiliate1

18 The group relocated after being unwelcome in the Ukraine, and also in order to establish a more international presence.

19 Holman, Z. (2013, 19 October). Fearless ... and topless: Femen activists to bring 'sextrémism' to the UK. *The Guardian*. www.theguardian.com/world/2013/oct/20/femen-activists-uk-branch-feminism

20 vk.com/club2672464

21 www.facebook.com/FEMEN.International.Official

22 Zychowicz, J. (2011). Op. cit.

Action steps

Taking the above into account, I can suggest the following advocacy steps for internet activists in the Ukraine and worldwide who would like to learn from Femen, the world's most provocative and arguably most visible sexual rights organisation. This might look like advice on how to successfully market yourself. However, one of the main lessons Femen has taught us is that modern activism, whether on behalf of a charity or a political organisation, is highly dependent on the mass media, both online and offline. It is therefore necessary to consider how to tailor your advocacy message so that it grabs the media's attention.

- *Choose just one target at a time.* The number of advocacy issues you take on can increase in the future once you are successful with the first one you have selected. Femen started with just sexual rights as their key concern, and only then expanded their advocacy concerns to include human rights and other political issues.
- *Be simple and original.* That does not necessarily mean being provocative. Arguably the Femen phenomenon received the kind of attention it did because the public meaning they created was easy to understand, and the expression of this meaning using their naked bodies was original.
- *Reflect content in form.* By using their bodies as symbols of protest, Femen represented women everywhere who had experienced violations of their sexual rights. In this way they gained trust.
- *Be smart and clear.* Most Femen activists have a higher education, some even two university degrees. They have a very clear message on their website, connecting their movement to the past and the future, cleverly referencing source material that shows they are well-educated and analytical in their approach.

UNITED KINGDOM

CAMERON'S WAR ON PORNOGRAPHY



Open Rights Group
Javier Ruiz
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Introduction

The UK government is currently embarked on a moral and legislative crusade against adult content on the internet. The ostensible aim of this crusade is the protection of minors from content that can harm their development and distort their views of sexual relationships.

This strategy has three distinct but connected strands: 1) getting internet service providers (ISPs) to implement default opt-out¹ network-level filtering; 2) banning the online distribution of content depicting specific sexual acts considered obscene; and 3) imposing strict age verification on adult sites. The first two of these developments were put in place by the former Coalition government,² and the newly formed Conservative government is preparing the details of the third.

Protecting children is a laudable goal, but as we explain below these proposals are very problematic in several respects. The sexual freedoms of minorities are particularly at risk, but these developments have serious implications for the freedom of speech and privacy of large segments of the population. Sexual freedoms online provide a microcosm of the wider issues around digital rights.

Policy and political background

In July 2013, Prime Minister David Cameron made a speech about a proposed crackdown on online pornography and making the internet safer for minors more generally. Cameron described the internet as an unregulated space where child abuse proliferates, and called on search engines to block certain search terms, which they agreed to do. In the same breath he also announced that ISPs would have to ensure that minors cannot access adult content.

Cameron's speech was part of a long campaign by religious groups, centred around SafetyNet.org.uk.³ By 2012, the campaign had gathered some 100,000 signatures "calling on the Government to force Internet Service Providers to make accessing pornography an adult only opt-in service," and enrolled the support of a prominent Conservative member of parliament, Claire Perry.⁴ In December 2012 she was made Special Advisor to the Prime Minister on Preventing the Commercialisation and Sexualisation of Childhood.

Perry, in her final report on Online Child Protection, in April 2012, recommended "a network-level 'Opt-In' system, maintained by ISPs, that delivered a clean internet feed to customers as standard but allowed them to choose to receive adult content."⁵ Following months of consultations and further political positioning, ISPs eventually agreed to deploy network-level filtering by December 2013.

SafetyNet has now wound down, and as their proposals were implemented they lost the support of high-profile groups such as Mumsnet.⁶ But the idea of controls on adult content has gained momentum in recent years among some mainstream organisations, such as the National Society for the Prevention of Cruelty to Children (NSPCC).⁷

The other strands of the government crackdown on online adult content – banning content depicting certain sexual acts and forcing age verification on hardcore pornography websites – have been less discussed in wider forums.

These policies are aligned with the increasing use of moral narratives by British politicians to describe their policies, and a constant reference to "values" in the public discourse in the absence of ideologies. The increasing interest of the Conservative party in regulating sexual behaviours has not

1 The filters were initially meant to be an opt-in measure based on an active choice around equal options, but in the end they became opt-out: if customers do not do anything they will get filtered internet by default.

2 The Conservatives and Liberal-Democrats ran a coalition government between 2010 and 2015. This kind of government is very unusual in the UK, where a constituency-based electoral system favours a strong two-party system.

3 www.safetynet.org.uk

4 www.claireperry.org.uk

5 Independent Parliamentary Inquiry into Online Child Protection. (2012). Findings and Recommendations. www.rcn.org.uk/development/nursing_communities/rcn_forums/children_and_young_people_field_of_practice/cyp_healthy/useful_links/?a=447806

6 An online discussion platform for new mothers that has become very influential, and has a very broad social base. www.mumsnet.com

7 www.nspcc.org.uk/preventing-abuse/keeping-children-safe/online-porn

been challenged by the other parties, as critically engaging with the issues is politically toxic.

In addition, mixing up – as Cameron did in his speech – references to criminal child abuse imagery⁸ with underage access to lawful content makes it very hard to have a proper debate, as these are very different things. It must be stressed that in the rest of this report we are not dealing with child abuse images, only with representations of sexual behaviour among consenting adults.

Internet filtering

The UK is unique among Western countries in implementing default filters for adult content by all major ISPs. This has not been achieved through legislation, but after pressure from the government on those companies in private meetings and public statements condemning companies for not doing their bit. Default filtering has been in place for mobile data connections for some time⁹ with problems similar to those we describe below, but it did not affect as many people. All new customers to major ISPs are now faced with an unavoidable choice to filter the internet connection for the whole household, with a roll-out of the service for existing customers, who are forced to choose when they try to access a blocked site.

The process for implementing the filters is problematic. The filters were originally meant to be based on an “active choice” by users, but have ended up being a default where users have to opt out.¹⁰ In addition, the computer interfaces in most cases are designed to drive users towards the filters, with the use of pre-ticked boxes and buttons for setting up the filters several times bigger than those for opting out. The government’s official line is that the success of the policy is based on people being presented with a choice, not necessarily taking up the filters, but they clearly expect companies to deliver uptake. There are even questions as to whether the filters would fit with the requirements to provide a neutral internet environment under EU legislation, which bans “managing web traffic by default.”¹¹

Despite these aggressive techniques, the available evidence is that customers may be rejecting the filters. The regulator Ofcom reported uptake for new customers in 2014 as low as 4%.¹² But unfortunately the report did not explain how many of these were households with children. Ofcom also reported higher numbers among existing customers, but this is to be expected, as there are simply a lot more existing customers compared to new installations. What matters is the total uptake percentage, ideally for households with and without children, and this has not been published.

The filters go beyond pornography, covering all kinds of content unsuited to minors: gambling, alcohol, dating, etc.¹³ The websites also cover very specific areas such as suicide and even sexual advice. In some cases the filters block potential malware websites as a separate category. Some companies have also implemented a gradual system with categories for different age groups that will selectively block gaming sites or social networks. All filters have a setting to stop websites in the category of “hacking and technology”, which can cover any internet tools to bypass censorship. Protecting minors from uncontrolled content has also led to the blocking of all kinds of online forums, blogs or any site that allows comments.

Minors have a human right to access information, and, for example, restricting websites that glorify suicide and self-harm should not stop children from accessing confidential sources of advice on those topics. There are also limits to what parents can do to shape their children’s views of the world. In a particularly egregious case, ISP BT gave parents the option – since removed – to block websites related to “gay and lesbian lifestyles”.¹⁴

In addition to issues around the filtering policies there are also concerns about websites being wrongly categorised and blocked on the basis of automated text analysis. This had already been an issue with the earlier mobile data filters, with, for example, church websites blocked as alcohol sites for their use of the word “wine” in the context of the holy communion.¹⁵ Claire Perry’s own site was blocked as she uses the word porn a lot in her

8 There is a growing consensus that referring to these kinds of images as “child porn” is not helpful. Child abuse and other forms of rape are more about power than sexuality.

9 Bradwell, P., Craggs, G., Cappuccini, A., & Kamenova, J. (2012). *Mobile internet censorship: What’s happening and what we can do about it*. Open Rights Group. <https://www.openrightsgroup.org/ourwork/reports/mobile-internet-censorship-what-happening-and-what-we-can-do-about-it>

10 Duggan, O. (2013, 15 July). ‘Active Choice+’ vs ‘Default On’: how Cameron’s crackdown on internet pornography became a rebranding exercise. *The Independent*. www.independent.co.uk/news/uk/politics/active-choice-vs-default-on-how-cameron-s-crackdown-on-internet-pornography-became-a-rebranding-8710076.html

11 Smith, M., & Whitehouse, H. (2015, 26 May). An EU ruling could make David Cameron’s porn filters illegal. *The Mirror*. www.mirror.co.uk/news/uk-news/david-cameron-told-porn-filters-5765153

12 Ofcom. (2014). *Ofcom Report on Internet safety measures*. stakeholders.ofcom.org.uk/binaries/internet/internet_safety_measures_2.pdf

13 Ibid.

14 Bloodworth, J. (2013, 20 December). BT allows parents to block children’s access to “gay and lesbian lifestyle” websites. *Left Foot Forward*. leftfootforward.org/2013/12/bt-allows-parents-to-block-childrens-access-to-gay-and-lesbian-lifestyle-websites

15 Bradwell, P. (2012, 17 December). Another church blocked by mobile networks. *Open Rights Group*. <https://www.openrightsgroup.org/blog/2012/another-church-blocked-by-mobile-networks>

campaigning,¹⁶ and a variety of other organisations have reported their websites as wrongly blocked.¹⁷

Concerns about the “overblocking” of content led to the formation of an official working group under the UK Council for Child Internet Safety (UKCCIS).¹⁸ The extent of problems with content is under dispute. The official working group downplays the issue in its final report as “very low”,¹⁹ based on industry reports of complaints. But the Open Rights Group ran automated tests through the Blocked.org.uk project and found that 11-21% of the top 100,000 most popular websites are blocked in one or another ISP, depending on the filtering settings applied.²⁰

Perhaps the main issue with the filters is that they may not be effective at precisely what they are trying to achieve: avoiding the exposure of minors to inappropriate online content. David Cameron promoted the idea that filters deliver “one click to protect your whole home and to keep your children safe.”²¹ But this is far from clear. One particular ISP, Talk Talk, had long pioneered offering system-level internet filters but they were criticised in a study for potentially increasing access to pornography if users relied on this system and turned off other protections.²² ISPs have long filtered websites serving child abuse materials – classified by the Internet Watch Foundation²³ – via the BT Cleanfeed system. That system has been criticised in the past for providing a way to actually find child abuse images.²⁴ In addition, filters may have limited effect on YouTube videos that contain graphic violence. Most experts admit that filters can only work as part of a wider strategy, where parental involvement in actively

monitoring their children’s internet use is central. The filters as such can provide a false sense of security.

Regulation of adult content

Ban on specific sexual acts

The UK Audiovisual Media Services Regulations (AMSR), approved in December 2014,²⁵ outlaw content on UK adult websites stronger than the British Board of Film Classification (BBFC) R18 classification certificate for hardcore pornography. The regulations are part of the implementation of measures allowed by the EU Audiovisual Media Services Directive to protect minors from “harmful content”. But the UK is the only country to apply such restrictive measures.²⁷ The regulations are enforced by ATVOD, the “independent co-regulator for the editorial content of UK video on demand services.”²⁸

R18²⁹ materials can only be supplied in licensed sex shops or special cinemas, and at present UK websites providing these materials must have some form of age verification system. Stronger content is unclassified and cannot be distributed on DVD or in cinemas or sex shops, but until now it had been distributed online by UK producers under similarly restrictive settings as for R18.

The BBFC guidelines list some content that is “not acceptable”,³⁰ and perceived as more extreme than R18, such as: spanking, aggressive whipping, penetration by any object “associated with violence”, physical or verbal abuse (regardless if consensual), urolagnia (known as “water sports”), role-playing as non-adults, physical restraint, humiliation, female ejaculation, strangulation, face-sitting and fisting. These acts are in principle legal to perform among consenting adults but any film showing such acts will not be classified by the BBFC and therefore will not be distributed in the UK. After these changes in the law, any UK-based website providing such materials can be shut down and their operators fined.

16 Worstall, T. (2013, 25 December). The Best Story Yet About The UK’s Online Porn Filters. *Forbes.com*. www.forbes.com/sites/timworstall/2013/12/25/the-best-story-yet-about-the-uks-online-porn-filters

17 <https://www.blocked.org.uk/personal-stories>

18 <https://www.gov.uk/government/groups/uk-council-for-child-internet-safety-ukccis>

19 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409958/2015_03_06_UKCCIS_Minutes_24_Feb.pdf

20 <https://blocked.org.uk>

21 Cameron, D. (2013, 22 July). The internet and pornography: Prime Minister calls for action. <https://www.gov.uk/government/speeches/the-internet-and-pornography-prime-minister-calls-for-action>

22 Arthur, C. (2012, 28 June). TalkTalk’s internet filter could give children access to porn, says magazine. *The Guardian*. www.theguardian.com/technology/2012/jun/28/talk-talk-internet-filter-porn

23 <https://www.iwf.org.uk>

24 Clayton, R. (2005). Failures in a Hybrid Content Blocking System. *Lecture Notes in Computing Science*, 3856, 78-92.

25 legislation.data.gov.uk/cy/ukcsi/2014/2916/made/data.htm?wrap=true

26 www.bbfc.co.uk

27 Metzdorf, J. (2014). The Implementation of the Audiovisual Media Services Directive by National Regulatory Authorities National Responses to Regulatory Challenges. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 5(2). www.jipitec.eu/issues/jipitec-5-2-2014/3998/#ftn.N10393

28 www.atvod.co.uk

29 The R18 category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. www.bbfc.co.uk/what-classification/r18

30 British Board of Film Classification. (2014). BBFC Classification Guidelines 2014. www.bbfc.co.uk/sites/default/files/attachments/BBFC%20Classification%20Guidelines%202014_5.pdf

The above list includes BDSM³¹ practices brought to the mainstream by films such as *50 Shades of Grey*, but the wording describing the acts does not fully explain what exactly is banned. Subtle and minor changes to how sexual acts are depicted by filmmakers – even down to angle and duration of the takes – are able to push films from 18 (normal distribution) to R18 (hardcore restricted distribution)³² or into illegality. The exact boundaries for how the acts are depicted, in order to be banned, are arcane, unclear and very complex.³³

The law has been widely criticised as “misguided”, “deeply sexist”, and an attack on the LGBT and BDSM communities without tackling some of the male-dominated taboo forms of pornography.³⁴ The choice of banned acts has also been criticised for not being based on evidence but moral judgement,³⁵ and affecting women disproportionately.³⁶ The government has argued that the changes simply bring the internet in line with already existing DVD ratings. But regulating video online has a broader social impact because it potentially covers the activities of many ordinary people, not just commercial media production companies and sex shops.

Although the BBFC provides the criteria, ATVOD drove the law through – and it has a history of conflict with UK BDSM producers,³⁷ such as the Urban Chick Supremacy Cell (UCSC).³⁸

Backlash is the leading UK group campaigning for the “freedom of sexual expression”, and it has legally challenged this law on the grounds that it is an assault on sexual freedoms and wider freedom of

speech.³⁹ The lawyer for Backlash, Myles Jackman, is the leading authority on obscenity legislation⁴⁰ and he is defending one of the two dominatrices currently being prosecuted by ATVOD under the new rules.⁴¹

AMSR 2014 is not the only restriction on sexual materials. The Obscene Publications Act (OPA) from 1959⁴² makes it an offence punishable with a fine and up to three years in jail to publish materials likely to “deprave and corrupt”. This law has been challenged since its inception – famously around the publication of D. H. Lawrence’s *Lady Chatterley’s Lover*⁴³ – and it is seldom followed through to prosecution, yet its occasional use is a constant source of concern for the BDSM community.⁴⁴

The above restrictions do not apply to the possession or viewing of such materials, which remain legal in themselves, but only to their production and distribution in a regulated context. Separately, it is a criminal offence punishable with three years in prison (five in Scotland) to possess extreme pornographic images or films.⁴⁵ Extreme images include threatening a person’s life, serious injury to a person’s anus, breasts or genitals, bestiality, and necrophilia – including realistic simulated images.

Age verification for adult sites and payment controls

In March 2014 ATVOD published a report that claimed there was evidence of widespread under-age access to online porn, and called for robust age verification controls. Since much of such content comes from foreign providers that did not fall under their jurisdiction, ATVOD called for new legislation to stop payments to websites without access controls. They found that most porn is viewed on free “tube” sites that would not be affected, but as those sites are funded by leading viewers to paid

31 <https://en.wikipedia.org/wiki/BDSM>

32 Jacking Off the Censor. The R18 Story, the legalisation of hardcore: Chapter 1: 1997. *Melon Farmers*. www.melonfarmers.co.uk/ar1oho1.htm (Warning: explicit detailed depictions.)

33 www.backlash-uk.org.uk/beyond-r18-verboden (Warning: explicit detailed depictions.)

34 Razavi, L. (2014, 2 December). No spanking or bondage: why the government’s new porn laws are arbitrary and sexist. *New Statesman*. www.newstatesman.com/politics/2014/12/government-s-new-porn-laws-are-arbitrary-and-sexist

35 Mullin, F. (2014, 1 December). British BDSM Enthusiasts, Say Goodbye to Your Favourite Homegrown Porn. *Vice*. www.vice.com/en_uk/read/the-end-of-uk-bdsm-282

36 Pons, G., & Beaumont, K. (2015, 13 January). Stricter rules for the pornography industry – what has changed? *Halsbury Laws Exchange*. www.halsburyslawexchange.co.uk/stricter-rules-for-the-pornography-industry-what-has-changed

37 ATVOD. (2014, 27 May). ATVOD acts against 29 UK video on demand websites to protect children from hardcore porn. *ATVOD*. atvod.co.uk/news-consultations/news-consultationsnews/atvod-acts-against-29-uk-video-on-demand-websites-to-protect-children-from-hardcore-porn

38 Quine, O. (2014, 15 August). Web dominatrix wins David and Goliath battle with regulators. *The Independent*. www.independent.co.uk/news/media/online/web-dominatrix-wins-david-and-goliath-battle-with-regulators-9672463.html

39 Nick. (2014, 1 December). New powers to censor digital media are a threat to free expression. *Backlash*. www.backlash-uk.org.uk/new-powers-to-censor-digital-media-are-a-threat-to-free-expression/

40 mylesjackman.com

41 Merrill, J. (2015, 5 May). Dominatrix becomes first to fall foul of porn laws for doing what a dominatrix does. *The Independent*. www.independent.co.uk/news/uk/home-news/two-dominatrix-pornographers-become-first-filmmakers-to-be-hit-by-new-online-porn-laws-10226769.html

42 Obscene Publications Act 1959. www.legislation.gov.uk/ukpga/Eliz2/7-8/66/contents

43 https://en.wikipedia.org/wiki/R_v_Penguin_Books_Ltd

44 Jackman, M. (2012, 6 January). Obscenity trial: the law is not suitable for a digital age. *The Guardian*. www.theguardian.com/law/2012/jan/06/obscenity-trial-law-digital-age

45 Covered by two different laws: England and Wales Criminal Justice and Immigration Act 2008, www.legislation.gov.uk/ukpga/2008/4/part/5/crossheading/pornography-etc and Scotland Criminal Justice and Licensing (Scotland) Act 2010, www.legislation.gov.uk/asp/2010/13/section/42/enacted

services, they expected financial restrictions to have indirect effect.⁴⁶

During the last general election campaign in April 2015, the Conservative Party pledged to modify the existing ISP filters to compulsorily block – not opt in or out – any British or foreign hardcore pornography⁴⁷ websites that failed to put in place age verification controls.⁴⁸ This followed a campaign on the exposure of children to online porn by the influential NSPCC.⁴⁹ In July 2015 Cameron announced a public consultation on the matter in the autumn, threatening legislation if industry failed to self-regulate.⁵⁰ Similarly to the ban on extreme pornography, the rationale is to bring existing restrictions on R18 materials to the online world.

The government has not given many details⁵¹ on what would constitute valid age verification. Credit cards are currently used, but debit cards are not considered by ATVOD a sufficient form of access control, as they “can be used by under 18’s,” and ATVOD has prosecuted some pay-per-view websites on this basis.⁵²

The UK adult content industry is currently heavily regulated, and so would welcome attempts to regulate foreign providers to create a level playing field.⁵³ For them it would also be easier to have someone else manage verification. A broad industry coalition is trying to preclude legislation, developing a system through the Digital Policy Alliance.⁵⁴

There are few details on how the “robust, consent based and confidential”⁵⁵ British standard system for age verification would actually work, but it appears to be based on the model of trust frameworks followed by the UK government’s Verify system.⁵⁶ But Verify has been recently criticised by security experts for serious privacy failures.⁵⁷

These proposals raise extremely serious privacy issues for end users and will confront very hard architectural challenges. Age verification and digital identities in general are some of the most complex policy and technical issues around the internet. There are some working examples, including a Japanese system that uses mobile phone subscriber data,⁵⁸ but nothing as ambitious as what is being proposed in the UK.

Conclusions

The protection of children is the most often used argument to control online content. While this is a laudable aim, forcing ISPs to control the websites they deliver can have very negative consequences for freedom of expression and other human rights. Internet filters can restrict legitimate access to information about sexual matters by minors. We have seen that some specific sexual minorities are disproportionately affected by controls on non-standard pornography.

Attempts to force all adult websites to implement age verification could completely change the nature of the internet. Right now internet users are regularly tracked by marketing companies via cookies and other tools, but if porn websites develop the technology to check attributes of their users, such as age, similar systems could be implemented in many other sectors.

The regulation of online porn also provides a good example of the tendency by government to force private companies to police online behaviour instead of providing for legislative measures and the use of courts. Restrictions on rights such as freedom of expression should be provided by clear law, and this approach is particularly unsuited to cases where there is no social consensus amongst the people affected.

46 ATVOD. (2014). *For Adults Only? Underage access to online porn: A research report by the Authority for Television On Demand (“ATVOD”)*.

47 We assume R18 equivalent.

48 Press Association. (2015, 4 April). Tories promise to enforce age limits on online pornography. *The Guardian*. www.theguardian.com/politics/2015/apr/04/tories-promise-to-enforce-age-limits-on-online-pornography

49 Minto, S. (2015, 31 March). ChildLine porn campaign confronts issue of young people and porn. *NSPCC*. www.nspcc.org.uk/fighting-for-childhood/news-opinion/sue-minto-we-cannot-shy-away-talking-about-porn

50 GOV.UK. (2015, 30 July). Curbing access to pornographic websites for under 18s. <https://www.gov.uk/government/news/curbing-access-to-pornographic-websites-for-under-18s>

51 Department for Culture Media and Sport, written question, answered on 4 June 2015. *They Work for You*. www.theyworkforyou.com/wrans/?id=2015-06-01.618.h

52 ATVOD. (2015, 10 February). ATVOD acts against two UK VOD services for failing to protect children from online porn. www.atvod.co.uk/news-consultations/news-consultationsnews/atvod-acts-against-two-uk-vod-services-for-failing-to-protect-children-from-online-porn

53 Gayle, D. (2015, 26 May). UK pornography industry proposes user ID checks for adult websites. *The Guardian*. www.theguardian.com/culture/2015/may/26/pornography-industry-user-id-checks-adult-websites-privacy

54 www.dpalliance.org.uk/age-verification-group

55 Virgo, P. (2015, 2 April). Times have changed: robust consent based, confidential, on-line age verification is now not only practical, it makes good business sense. *ComputerWeekly.com*. www.computerweekly.com/blogs/when-it-meets-politics/2015/04/times-have-changed-robust-cons.html

56 www.trustelevate.com/access_to_adult_pornography

57 Brandão, L. T. A. N., Christin, N., Danezis, G., & Anonymous. (2015). Toward Mending Two Nation-Scale Brokered Identification Systems. *Proceedings on Privacy Enhancing Technologies*, 2015(2), 135-155. doi.org/10.1515/popets-2015-0022

58 Wireless Watch Japan. (2011, 19 January). Mobile SNS Age Verification Service. wirelesswatch.jp/2011/01/19/mobile-sns-age-verification-service

One particular problem that stands out in all the cases we discuss above is the lack of consensus on the evidence for the policies being taken. Policy makers repeatedly quote figures of very high access to adult content, but the sources appear to be campaign materials without any scientific basis.⁵⁹

The NSPCC was severely criticised by experts when it claimed that 10% of 12- to 13-year-olds in the UK are “addicted” to porn. Its figures were based on commercial polling, rather than scientific research, and there is simply no consensus that the language of addiction is the best way to deal with these issues.⁶⁰ Instinctively we believe porn must be harmful, but there is a lack of agreed-upon research on the actual prevalence of porn amongst minors, and the exact impacts and harms.⁶¹ Much research conflates access by all minors without separation of young children and teenagers, and it is unclear how the situation compares to the pre-internet era.

For example, Ofcom research⁶² used in the process to ban unclassified websites did not provide conclusive evidence that R18 material “might seriously impair” minors’ development, nor clear, conclusive evidence of a lesser degree of harm. Nevertheless, Ofcom argued in the same report that some experts believe that there is evidence that exposure of minors to R18 material can have adverse effects. Therefore, it claimed, it cannot be confidently said that sexually explicit material carries no risk of harm to the development of minors, and on this basis it took precautionary action.

Action steps

Advocacy on filtering in the UK has been led by the Open Rights Group, which has campaigned against the filters and run several projects to this effect, such as the Department of Dirty satirical website.⁶³ One very important aspect is transparency and information about the filters. The Blocked.org.uk project has been the main point of reference for website owners and users to check whether pages are blocked by different providers. This tool is now being extended to other countries in collaboration with international NGOs.

The ban on selected sexual acts under AMSR 2014 threatens freedom of expression and the sexual rights of minorities, and digital rights organisations would primarily need to work with groups representing those directly affected while providing their expertise.

Proposals for age verification are in a very early stage and there is little organised advocacy around them yet. As in the case of filtering, information and close engagement will be important. Privacy organisations need to be involved, as well as technical experts who can unpick any flaws in the identity frameworks proposed.

Overall, regulation of sexual content online should be based on evidence, and governments should support the required research. Government-sponsored control over information should be replaced as much as possible by active involvement by parents. While some filtering can be appropriate in some cases, it should only be used as part of a broader strategy, ideally implemented at the device level in the operating system and coupled with admin controls, and with clear transparency over what is filtered.

One important aspect to ensure that minors are safe online is to prioritise education and empowering minors. Unfortunately, the Conservative Party in the UK refuses to promote sex education in schools after pressure from religious groups.⁶⁴

In a positive development, industry has set up the independent website Internet Matters, which includes information about the filters and very useful advice⁶⁵ ranging from setting up parental controls in various devices to teaching children e-safety.

59 www.safeynet.org.uk/thefacts.php

60 Mullin, F. (2015, 13 April). Children addicted to porn? Don't believe everything the surveys say. *The Guardian*. www.theguardian.com/media/shortcuts/2015/apr/13/children-addicted-porn-shouldnt-believe-surveys

61 www.apa.org/monitor/nov07/webporn.aspx

62 Ofcom. (2011). *Sexually Explicit Material and Video On Demand Services: A Report to DCMS by Ofcom*. stakeholders.ofcom.org.uk/binaries/internet/explicit-material-vod.pdf

63 www.departmentofdirty.co.uk/ukfiltering

64 Dunt, I. (2015, 17 February). Religious groups' war on sex education. *Politics.co.uk*. www.politics.co.uk/blogs/2015/02/17/religious-groups-war-on-sex-education

65 www.internetmatters.org/advice



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Introduction

The rapid proliferation of information and communication technologies (ICTs) has changed the way people relate to each other and to the world. But these changes have not been equal for men and women. To believe that ICTs are neutral when it comes to gender inequalities that persist in our society helps to perpetuate those disparities in the virtual world.

For a long time only the benefits that ICTs brought to different fields and activities were emphasised, which led to them being considered a fundamental tool for social and political development. However, positive indicators on access to technologies enjoyed by men and women have pointed to a more complex phenomenon that amplifies and builds new, invisible inequalities.

When it comes to sexual rights, ICTs have allowed people to access more information, and to take action. Progressive policies on sexual rights online have also been developed, and ICTs have been used as tools to help both men and women improve their lives.

Uruguayan feminist organisations have been very active in promoting access to information and offering support through ICTs. In this regard, the work of organisations like *Mujeres en el Horno*,¹ *Mujer y Salud en Uruguay*² and *Cotidiano Mujer*³ stand out.

But it is also through ICTs that sexual rights are violated – especially those of women. In this context, it is necessary to address situations of sexual harassment and abuse that occur on the internet, and which are increasing worldwide, in order to promote appropriate regulation and to ensure the respect and fulfillment of sexual rights online.

Policy and political background

Uruguay has been rocked recently by several cases that went public and which relate to the use of images that affect women's sexuality. According to

the National Directorate for Combating Organised Crime, allegations of cyber crimes involving the dissemination of private images on social networks in Uruguay quadrupled between 2013 and 2014. In 2014 there were 450 cases reported, compared to only 120 in 2013.⁴ Extensive analysis on the subject and changes to legislation seem not to have had much effect.

In our country, research into the impact that ICTs have had on gender inequalities in different areas is still in its infancy, and there have been no studies on sexual rights online.

This lack of information, both quantitative and qualitative, perpetuates the invisibility of the issue of sexual rights online and contributes to us seeing online sexual violations as sporadic events that arise mainly as a result of the “excesses” that youth face. For example, recent changes in Uruguay's legislation in the field of sexual and reproductive rights⁵ have not taken the internet into account. Similarly, the law on domestic violence does not address the internet as a field that reproduces violence.

Public policies have not fully addressed this problem either. For example, the Sexual Education Programme, which targets children in elementary school but also young students in secondary education, does not include technology as a new space in which children and adolescents can interact. On the other hand, specific programmes aimed at boosting ICTs in the field of education⁶ do not consider sexual rights online. While there may be certain initiatives from different institutions, these are very specific and they are not anchored to a policy.

This regulatory and policy vacuum means that when sexual violations happen on the internet, the justice system does not have the appropriate framework to prosecute offenders. What usually happens is that the legal system refers to criminal law as it stands, but which does not account for the kinds of violations that happen online. This continues to perpetuate the invisibility of the violations, which

1 mujeresenelhorno.org

2 www.mysu.org.uy

3 www.cotidianomujer.org.uy/sitio

4 www.minterior.gub.uy/index.php?option=com_content&view=article&id=2490

5 Law on Voluntary Interruption of Pregnancy (18.897) and Law on Sexual and Reproductive Health (18.426).

6 See, for example, Plan Ceibal, the Uruguayan One Laptop per Child initiative: www.ceibal.edu.uy

first and foremost impact on the sexual rights of women.

Currently the government is working on a draft reform of the criminal code. However, the challenge remains of how exactly to introduce online sexual rights violations as a punishable offence.

“It’s just a game...”

The following two stories reported in the media illustrate forms of sexual violence using technology:⁷

An underage teen decided to break up with her boyfriend. The young man refused and said, “That’s not going to happen.” He threatened to upload intimate pictures in order to make her change her mind.

Four young men were riding in a truck when they saw a couple having sex – a man and a teenaged girl. Three of them got out of the vehicle and began to film the couple. The man who was having sex with the teenager pulled up his pants and left. The video was filmed by one of the young men and went viral through WhatsApp. The teenager told him to stop filming several times. She looked at the man who was filming and said: “Can you stop filming the video, please?” Nevertheless, he continued. One of the young men said: “This is going to go straight to Instagram.” The young woman told them repeatedly, “Get out of here. Stop. Seriously, please.” Instead, the man filming said to her: “Look at the camera. Say ‘Hi’. This video is going on Instagram, then to Twitter and after that it’ll be posted on Facebook and then it’s going to go to WhatsApp. From WhatsApp it’s going to go to YouTube and then we’ll be super popular. One million views at least.” The girl interrupted repeatedly, raising her voice, saying: “No, seriously, please.”

These situations seem to be on the increase. What they have in common is that when these images leave the sphere of intimacy, they contribute to strengthening the structure of traditional gender inequalities. An affirmation of stereotyped “being-a-man” behaviour takes place which influences the behaviours that occur in certain cases of abuse against women. Also, the stereotype of what it is to “be a woman” emerges as an underlying attribute of these abuses.

Expressions like “it’s just a game among friends” or “she was the first to lose control of her actions” are common reactions to these abuses of power. To a lesser extent, some people reject these situations as wrong.

Public discourse is usually framed by the same cultural and moral perspectives used to control women’s bodies. So, in many instances, when intimate images of women are distributed without permission, the images themselves are considered a corruption of social and family norms, rather than the circulation of the images being seen as violations of the right to integrity and autonomy. Consequently, the morality of the person who is the subject of the abuse is called into question, and the situation is considered an embarrassment to her – the reason why the circulation of the images by the perpetrator happens in the first place.

The situation may get to the point that when women who are victims of these abuses decide to act – which exposes them even more than they already have been – it is as if they do not have the right to do so. The mere fact of them being involved (apparently) voluntarily in making intimate videos or videos of them participating in group sex, or allowing themselves to be photographed consuming alcohol or taking drugs, is seen as reprehensible from a “moral” standpoint.

This allows us to see the different dimensions that violence against women can have online. At the very least it impacts on their right to privacy and protection of personal and sensitive information, their right to humane treatment, to bodily autonomy and their right to the opportunity to defend themselves, among others.⁸

From within the feminist movement, voices have called for debate on the necessary action that must be taken to regulate content published on the internet – content that affects women’s personal freedom and autonomy. Feminists point out the powerlessness of women in these kinds of situations, focusing the discussion on the violation of rights, rather than the usual approach that targets their sexual behaviour. These cases also show the lack of information that women, especially teenagers, have about their sexual rights and how vulnerable they are. Some organisations – such as the Uruguayan Network against Domestic and Sexual Violence⁹ and Women and Health in Uruguay – promote the adoption of a

7 These fragments were published online. See: www.elpais.com.uy/informacion/video-procesan-tres-jovenes.html; www.montevideo.com.uy/auc.aspx?224935; elpais.com/elpais/2014/07/28/planeta_futuro/1406558912_158366.html; www.elpais.com.uy/informacion/ong-reclaman-tipificar-abuso-sexual.html; www.lanacion.com.ar/1762548-uruguay-buscan-a-jovenes-que-divulgaron-un-video-de-un-supuesto-abuso-sexual-en-una-playa

8 Fascendini, F., & Fialová, K. (2011). *Voices from Digital Spaces: Technology-related violence against women*. Association for Progressive Communications. www.apc.org/en/pubs/voices-digital-spaces-technology-related-violence-o

9 www.violenciadomestica.org.uy

new criminal code which recognises the violation of rights online.

Their advocacy has been supported by studies which highlight the need for a model that guarantees that violations of people's rights online will be properly investigated. Recommendations have included developing specialised investigative processes and strengthening the justice system on specific topics such as domestic violence and sexual offences.

This debate is new in our country, but it needs to continue and to deepen. As Rita Segato¹⁰ has said, these abuses are not social anomalies. They are not the actions of individual deviants who are mentally ill, but expressions of a deep symbolic structure that organises our actions and fantasies, where the offender and the community share the gendered imagery, speak the same language, and understand each other.

Final remarks

To problematise this issue in public discourse it is essential to start challenging some situations that would otherwise pass as harmless jokes between friends. It is necessary to question these dismissive responses. It is necessary to emphasise that violence against women online, as a form of violence against women, is not just a "personal" problem, but enacts structures of power and violence rooted in society, and which have been made invisible through the unconscious acceptance of gender hierarchies. To discuss this in public moves the debate out of the realm of the personal, and begins to address the cultural dimensions that these situations involve.

Action steps

The feminist movement has played a key role in driving this debate forward. But in order to continue to deepen the public dialogue and to achieve concrete actions to address these issues, some of the following steps could be taken:

- Encourage a debate between civil society organisations and other actors on the reform of the criminal code, taking into account the impact of the internet on sexual rights, and the need to adapt legislation to the online reality.
- Build public policies that support people affected by online violations, including monitoring mechanisms and support for victims of online violence.
- Develop a campaign on the responsible use of the internet. Internet service providers should ensure that women using their services understand what behaviours put their safety at risk and how to prevent and stop online violations. The government should be involved in this campaign, and should involve different sectors such as education, health and culture.
- Promote debate and discussion generally at different levels (in schools, in the community, in the media, among others) to build awareness and understanding of online rights.

¹⁰ Segato, R. (2004). *Territorio, soberanía y crímenes de segundo estado: la escritura en el cuerpo de las mujeres asesinadas en Ciudad Juárez*. www.forosalud.org.pe/territorio_soberania.pdf

YEMEN

“LIKE A RAVING MONSTER”: USING THE INTERNET TO CONFRONT SEXUAL HARASSMENT IN THE STREET IN YEMEN



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Introduction

In order to confront the phenomenon of sexual harassment against women and girls in the streets of Yemen, a group of female activists used the internet to circumvent the societal and cultural restrictions that have prevented women from speaking out about this long-ignored epidemic.

This report presents an example demonstrating how the internet helped Yemeni women speak out, arguably for the first time, against sexual harassment. Yemeni traditional norms have contributed to maintaining a deafening silence about this topic, forcing women to endure abuse for decades.

So what is it that made the internet the medium of choice for women to take this bold step? And how effective was the campaign? Those are the main questions that this report addresses, while highlighting the limitations of the internet in this respect and concluding with ideas that could support similar efforts in the future.

Policy and political background

Yemen is one of the world's most conservative countries, where addressing sexual rights of any kind is highly controversial due to extremely conservative norms that are influenced by a strict interpretation of Shari'a law.¹ Articles 263, 264, 267 and 268 of the Yemeni Penal Code impose penalties ranging from 100 lashes² to death by stoning for non-marital sex.³ Yemen is one of seven countries where homosexuality is punishable by death.⁴

Similarly, the country's 1990 press law prohibits the publishing of content deemed in violation of religious and cultural norms.⁵ With strict interpretation

of Shari'a law, it becomes apparent that the legal system would place content advocating for lesbian, gay, bisexual and transgender (LGBT) sexual rights in the prohibited category.

When the state-owned magazine *Al Thaqafiya* published an article in 2012 suggesting that homosexuality should be allowed based on a review of a lesbian love scene in the Egyptian film *Heena Maysara*, the writer received death threats and was accused by religious and political leaders of corrupting society, leading to the shutdown of the magazine and investigation of the editorial team.⁶

While there are no national laws governing the internet,⁷ nudity and pornographic content and LGBT websites are also categorised as a violation of Shari'a law and are often blocked. The act of blocking the sites is largely approved by the Yemeni society, as would be the case in Arab countries in general.⁸

Sexual harassment: An under-reported epidemic

Despite the fact that sexual abuse and harassment are crimes under Article 273 of the Yemeni Penal Code, women who fall victim to these crimes do not usually talk about it openly, mainly due to fear of being shamed by their family or community.⁹ They are often blamed and scorned by society, and are often unable to create a family or even marry.¹⁰

A 2009 study found that over 90% of Yemeni women surveyed indicated that they had been exposed to some kind of sexual harassment in the past.¹¹ The cultural norms in Yemen compel women

1 Immigration and Refugee Board of Canada. (2004). *Yemen: Situation for homosexuals in Yemen, including societal attitudes*. Ottawa: IRBC. www.refworld.org/docid/41501c7615.html

2 The words “whipping” and “flogging” are explicitly used in the Penal Code.

3 Law 12-1994, Yemeni Penal Code (in Arabic). www.unodc.org/tldb/showDocument.do?documentId=11097&country=YEM&language=ARA

4 www.refugeelegalaidinformation.org/yemen-lgbti-resources

5 Law 25-1990, Yemeni Press and Publications Law (in Arabic). yemen-media.gov.ye/DefaultDET.aspx?SUB_ID=418

6 Ireland, D. (2010, 1 May). Yemen Mag Shut For Pro-Gay Article. *LGBT Asylum News*. madikazemi.blogspot.se/2010/05/yemen-mag-shut-for-pro-gay-article.html

7 There have been calls to introduce a cyber crime law to deal with issues ranging from cyber terrorism to national security threats, but the law has not been adopted mainly due to the dysfunctional state of the parliament since 2011.

8 Al-Saqaf, W. (2014). *Breaking digital firewalls: Analyzing Internet censorship and circumvention in the Arab world*. Örebro: Örebro University. oru.diva-portal.org/smash/get/diva2:710477/FULLTEXT02.pdf

9 Manea, E. (2010). Yemen. In S. Kelly, & J. Breslin (Eds.), *Women's rights in the Middle East and North Africa: Progress amid resistance*. Washington, DC: Rowman & Littlefield Publishers.

10 Ibid.

11 AP. (2009, 15 December). Harassment across Arab world drives women inside. *USA Today*. usatoday30.usatoday.com/news/world/2009-12-15-sexual-harassment_N.htm

to dress modestly and cover all parts of their bodies except their face and hands, and if a woman has part of her hair showing, she could be subject to street harassment.¹² However, there have been cases when fully covered women wearing a *niqab*¹³ were also harassed. Because cases of harassment are not usually reported, there is a perceived sense of submission to and acceptance of street sexual harassment against women as a fact of life.¹⁴

An initiative inspired by the internet

However, something changed during the Arab Spring uprisings in 2011, when popular protests in Yemen, led by a few young women, harnessed the internet to organise and mobilise the public to support a campaign challenging long-held traditional norms that marginalised women and their rights.¹⁵ The campaign specifically called for ending societal tolerance of sexual harassment of women in the street by raising public awareness of the problem and suggesting ways to address it.¹⁶

Named “Safe Streets”, the campaign was initiated on 16 August 2011 by young Yemeni activist Ghaidaa Alabsi, who wanted to “break the silence” and called upon the community to wake up from this “phase of denial”.¹⁷ Having been subject to sexual harassment at the age of nine, Ghaidaa felt that the internet had something new to offer to confront this phenomenon head on. So she started the project with partial funding from Tactical Tech, an international non-governmental organisation concerned with advancing the use of information and digital technologies by activists worldwide.¹⁸

Starting in 2011 and ending in 2013, the campaign aimed at reducing the prevalence of sexual harassment, particularly in the Yemeni capital Sana’a.¹⁹ Ghaidaa believes that achieving this is not possible without new legislation penalising perpetrators and protecting women in public ar-

reas.²⁰ She has emphasised that special units may be required in certain areas in the city to ensure that the culprits are brought to account. Ghaidaa was motivated to start the campaign by her belief that society has to realise the “catastrophic effects” sexual harassment is having and the need to find lasting solutions.²¹ While the project had a focus on sexual harassment, it also captured other forms of sexual violence against women, which suggests a strong need for a broader look at gender dynamics, power and violence in Yemen.

As one of the Arab Spring countries, Yemen has seen a positive side to social media when it was used to help democratise the country, giving voices to citizens regardless of social, economic and ethnic considerations.²² In the case of the Safe Streets campaign, the internet was used in several ways, including starting a Facebook page²³ and Twitter account,²⁴ and setting up an Ushahidi-based interactive map²⁵ which anyone could use to report incidents of street harassment. As of 1 June 2015, 66 cases from several Yemeni cities had been reported on the website. While those 66 cases are merely a fraction of the actual number of cases of harassment that occur, the website can be seen as a proof of concept. As Ghaidaa pointed out, it offered a way to reach out to victims and to encourage them to talk about what happened to them in the streets.²⁶ She ultimately wrote a book entitled *Happening Along the Way* where she reflects on the reports that were submitted to the website and on other related subjects such as the cultural and religious understanding of sex and gender in the Yemeni context.²⁷

To illustrate the level of detail reflected in some of the reports, below is a quote taken directly from the website in a report exposing an act of harassment that happened in the capital city on 26 May 2013:

Just as the woman was entering a narrow lane, the youngster not only verbally harassed her with abusive sexual words, but he also quickly attacked like a raving monster and forcefully

12 Al-Sharifi, E. (2014, 18 November). Yemeni women face verbal harassment. *Yemen Times*. www.yementimes.com/en/1834/culture/4587/Yemeni-women-face-verbal-harassment.htm

13 A niqab is a head covering – often black in color – that some Muslim women wear to cover their face except for the eyes.

14 IANWGE. (2010). *Country Assessment on Violence against Women: Yemen*. New York: UN.

15 Al-Absi, G. (2012, 23 July). Street sexual harassment: breaking the silence in Yemen. *Open Democracy*. <https://www.opendemocracy.net/5050/ghaidaa-al-absi/street-sexual-harassment-breaking-silence-in-yemen>

16 Ibid.

17 Skype interview with Ghaidaa Al-Absi, 15 March 2015.

18 Email exchange with Ghaidaa Al-Absi, 8 April 2015.

19 Al-Absi, G. (2012, 3 December). Who is to blame? Street sexual harassment in Yemen. *Open Democracy*. <https://www.opendemocracy.net/5050/ghaidaa-al-absi/who-is-to-blame-street-sexual-harassment-in-yemen>

20 Email exchange with Ghaidaa Al-Absi, 8 April 2015.

21 Ibid.

22 For an in-depth analysis of how the internet contributed to democratising the country, please refer to my doctoral dissertation: Al-Saqaf, W. (2014). *Breaking digital firewalls: Analyzing Internet censorship and circumvention in the Arab world*. Örebro: Örebro University. www.diva-portal.org/smash/get/diva2:710477/FULLTEXT02.pdf. (p. 213)

23 <https://www.facebook.com/SafeStreets>

24 https://twitter.com/safe_streets

25 www.thesafestreets.org

26 Email exchange with Ghaidaa Al-Absi, 8 April 2015.

27 The book is also freely available online: go.thedh.org/SSB1

held her from behind after he had opened his trouser zipper and exposed his penis. He refused to let her go, but took advantage of the calm in that particular street, because there was no one around. The victim's screams continued until other women residing in the neighbourhood opened their windows and started screaming as well. The perpetrator ran in panic, but was chased by the victim and others, who ended up catching and beating him.²⁸

As the report shows, the term "sexual harassment" is in many instances a euphemism – the incident reported here looks like attempted rape. Over 92% of the reports were verified by multiple sources by talking to more than one eyewitness and sometimes the police.²⁹

Despite internet access only being around 15%,³⁰ Ghaidaa believes that the internet in Yemen was a powerful tool for the campaign because it introduced the issue for the first time in such a public and open manner. The Facebook page was useful to garner support from the public by requesting willing individuals to post a photo of themselves carrying a sign supporting the cause. This part of the campaign was successful, with many people participating in Yemen and from abroad.³¹ Social media was also used to generate feedback, allowing the campaign organisers to monitor and assess public reaction and the overall reception of such a pioneering effort. Ghaidaa received her share of threats and abuse in response to the campaign. She said that the Yemeni society considers the subject of sexual rights and sexuality as taboo issues that ought to be avoided altogether.³²

"When I raised the issue of sexual harassment in the street, I received comments indicating that I am an immoral person and trying to give Yemenis a bad reputation," she said, highlighting the risk she has taken by launching the campaign. Ghaidaa found out the hard way how difficult it is to change deeply engraved patriarchal norms and traditions that have been enforced over time. The risks may have also been the reason why she was the first to come up with this kind of campaign.³³

It could be argued that the internet has the potential to help end the state of denial when it comes to harassment in the street, because it can be used anonymously and prevent possible negative consequences when advocating for sexual rights.³⁴ The state of denial is often attributed to the belief that, as Muslims, such practices are not supposed to happen. According to Ghaidaa, there are even cases when a woman walking alongside other family members is harassed. Instead of confronting the harasser, the family members often choose to ignore the harassment.

Apart from mobilising support, raising awareness, and sourcing reports from victims and feedback from the community about the issue, the internet helped the campaign join a global movement with the same cause. The campaign was part of the "Meet Us on the Streets" global campaign, in which more than 70 organisations from 21 countries coordinated protests against this form of sexual harassment in their respective countries during the International Week Against Street Harassment from 18 to 24 March 2012.³⁵

Besides this, the Safe Streets campaign attempted to raise awareness through a short film with actors portraying the negative impact of street sexual harassment on society.³⁶ The fact that none of the Yemeni television stations played the clip made the internet the only means through which it could be watched. The video proved to be a success, with over 120,000 views on YouTube.³⁷

A blog for the campaign was also created to allow anyone to publish stories or essays on the topic.³⁸ Apart from real stories told by and on behalf of victims, the blog also includes fictional tales inspired by real incidents.

However, given the low level of internet access in Yemen, Ghaidaa thinks that offline tools are also necessary to reach those who do not have access to the global network, particularly in rural areas and small cities.³⁹ This is one reason why she ended up distributing hard copies of her book widely.

In its attempt to raise awareness of the need to address the ongoing problem of sexual harassment in the street, the Safe Streets campaign should not be considered a failure by any means. However, the campaign appears to have lost its momentum

28 www.thesafestreeets.org/reports/view/79

29 www.thesafestreeets.org/reports/

30 www.internetworldstats.com/me/ye.htm

31 <https://www.facebook.com/media/set/?set=a.189932984408695.41939.171971969538130&type=3>

32 Email exchange with Ghaidaa Al-Absi, 8 April 2015.

33 A campaign against sexual harassment of children named "Don't Touch Me" was also initiated in 2011 and used Facebook and YouTube for a while, but did not continue for long. See: <https://www.youtube.com/watch?v=ai462VGI5w>.

34 Shaikh, R. (2014, 15 September). How crucial is anonymity for sexual exploration and promoting sexual rights activism? *GenderIT*. www.genderit.org/es/node/4147

35 meetusonthestreet.org

36 goo.gl/JRZyl

37 <https://www.youtube.com/watch?v=pg-AllJV15og>

38 safestreeets.blogspot.com

39 Al-Absi, G. (2012, 23 July). Op. cit.

in recent years and needs to be jump-started again by publicising its services and maintaining a high level of public engagement. More than four years after the start of the campaign, the situation of sexual harassment of women does not seem to be resolved. And since its peak in 2012, the drive behind the campaign has declined considerably. At the same time, it is reasonable to say that much more than this kind of campaign is needed to change deep-rooted cultural paradigms.

As an organisation aiming at addressing internet-related issues, including gender and the internet, the Internet Society Yemen Chapter (ISOC-YE) has indicated its intention to help these kinds of initiatives use the internet productively to engage the public. ISOC-YE has recently started a special working group – formed and led by female members – to explicitly address women’s rights. One of its main objectives is to provide women with an opportunity to organise workshops and activities around issues they care about.

It is hoped that by collaborating with advocates such as Ghaidaa, ISOC-YE can leverage its resources and contacts to establish long-term projects that connect the virtual with the real, and hopefully have a strong impact on society in positive ways.

Conclusion

The internet had a positive role in the Safe Streets campaign that was initiated by a young Yemeni woman to address social and cultural problems that limit women’s sexual rights. The internet has helped expose the issue of sexual harassment in a way that was not possible before. One of the reasons for this is the ability to report incidents of harassment anonymously without fearing the consequences, which could otherwise be devastating to the victim and her family.

Speaking openly about sexual harassment is not easy in the Yemeni context because even families of women who fall victim to harassment often ignore it, as they believe the negative implications to the woman’s career and family’s reputation outweigh any compensation they could get. The fact that the project not only exposed acts of sexual harassment, but also identified signs of widespread violence against women, suggests a broader need in Yemeni society to address all forms of violence against women.

Along with the ability to report harassment, the internet allowed the campaign to harness social media for organising and mobilising, which were necessary to raise awareness about the issue. Sharing a video clip online was another demonstration

of how powerful the internet can be in triggering public discussion around sensitive issues.

It has become evident that the internet has the potential to bring issues that would otherwise remain off-limits out into the open. It starts by opening up a particular topic for discussion and encouraging others to be involved. Sometimes this approach works, as demonstrated in the Safe Streets campaign. But when it comes to other topics, such as those dealing with LGBT rights, this is simply not possible due to the strict social norms and the clear laws that prohibit dealing with those subjects.

What becomes apparent is that the internet in itself cannot change society, but can help show how society can change itself. To be able to trigger positive change, someone has to take the initiative and do something out of the ordinary. But in order for the movement to emerge, it has to be embraced by a “first follower”, who will then serve to encourage others to follow as well. In a popular TED Talk, speaker Derek Sivers explains that this is the way to create a movement. He says that the “first follower” has a crucial role because he or she shows everyone else how to follow, and in that way assumes a leadership role. As Sivers says: “Now it’s not about [a] leader anymore but it’s about ‘them’, plural.”⁴⁰

While the Safe Streets campaign had a strong champion in the person of Ghaidaa Al-Absi, it has not yet transformed into a movement, because the campaign remained a project led and managed by one person. The internet can be a tool to recruit more followers, but in order to sustain the campaign and have it achieve more lasting results, it needs to be supported by dedicated followers and by funding.

When the project’s funding ended in 2013, the campaign became less active. To change societies, more is needed. There is a need for long-term projects that deal with deep-rooted cultural problems with a mind on the next generation, on legislation and on sustained campaigns that do not depend on temporary funding.

It is important to note that while the Arab Spring helped show what is possible using the internet, it was not enough to sustain the movements that were part of the uprisings. The internet alone cannot change longstanding cultural and religious beliefs.

Yet the internet’s role in the Safe Streets campaign is undeniable – it brought a subject that is often ignored straight to the forefront of public attention. Therefore, one way to support such

⁴⁰ ted.com/talks/derek_sivers_how_to_start_a_movement

projects in Yemen is to advocate for increased internet access so that it can be used to reach and inspire more people to take action and follow in a champion's footsteps.

Action steps

What can be done at this stage is to focus on maintaining the presence of the Safe Streets campaign through sustained funding and support. A collaboration with ISOC-YE, which is involved in supporting internet-related projects, would be welcome. Despite limited funding, the Safe Streets project made strides in exposing sexual harassment on the street in new and innovative ways. If it had sustained funding, one could argue that it could have achieved a stronger and lasting effect.

Finally, we need to appreciate the challenges that such initiatives face and the risks their champions take. It is important for the state and other actors to give them institutional encouragement and support. This will boost a campaign's publicity and credibility and allow campaigners to engage with lawmakers, businesses and other major actors on the ground. Only by linking the virtual with the real can positive social change happen in Yemen and beyond.

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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