

**Recommendations in light of upcoming submission on “Gender Justice and the Right to Freedom of Opinion and Expression” -- by International Media Support (IMS)**

To: Ms. Irene Khan

UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

1. On 28 May 2021, International Media Support (IMS) was invited to an online informal consultation meeting of experts. Following the session, IMS was invited to provide written input and recommendations to the Special Rapporteur.
2. IMS is a global non-profit organisation, working in more than 30 countries across four continents to promote press freedom, good journalism, and safety for journalists. IMS is wholeheartedly grateful for the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan’s dialogue with civil society and her strong commitment to protecting and upholding gender equality. We look forward to the continuation of this dialogue, and stand ready to provide inputs on a feminist perspective on safety of journalists, gender equality in and through the media more broadly, and media freedom.
3. IMS contributed to the UN Special Rapporteur’s upcoming annual thematic report for the UN Human Rights Council at its 47th session in June 2021. IMS pledged to continue to combat disinformation through support for media and digital literacy initiatives, among other measures. A dedicated section on gendered disinformation was provided in the submission.
4. On 28 April 2021 the “Democracy Defender Award” ceremony was held, established in 2016 by the OSCE ambassadors of Canada, Denmark, Montenegro, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States of America. International Media Support (IMS) was invited to moderate a session on “Gendered Disinformation and What Can be Done to Counter it”, as part of the award on 28 April 2021. Following the session, IMS provided written input on gendered disinformation to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan.
5. In this document, we present our input and recommendations on the Right to Freedom of Opinion and Expression from a feminist perspective vis-à-vis the upcoming submissions. These recommendations are based on initial consultations with IMS’ gender advisors and other experience as showcased by IMS partners. The input is partly based on a desk review. The main purpose of the recommendations is to identify how the upcoming report can add value to the research and advocacy that civil society organizations are carrying out on this subject.
6. Our submission follows the questions included in the agenda for the online consultations on 28 May 2021.

**What issues and concepts should the report cover?**

7. IMS would like to suggest that feminism and intersectionality are not not treated as separate concepts, but that the overall concept of “intersectional feminism” is applied throughout the submission.
8. When it comes to the definition of gender justice, some definitions look at gender justice from a binary view (men/women). IMS would like to suggest that a broad definition is utilised, including all genders. See for example the following definition for Gender Justice, utilised by the Global Fund for Women; *“the systemic redistribution of power, opportunities, and access for people of all genders through the dismantling of harmful structures including patriarchy, and homophobia and transphobia. Similar to terms like racial justice and climate justice, it signifies an intersectional approach that centers the needs, experiences, and leadership of people most impacted by discrimination and oppression.”*<sup>1</sup> Whilst this is a broad definition, the section is about gender and gender identity, and sexual orientation isn't connected to that. So whilst we argue for this broader definition as suggested in the quote, IMS would suggest to put homophobia along with racism instead.
9. One of the points in the agenda for the meeting on 28 May 2021 refers to “Public morals and women’s sexual expression”, IMS would suggest the understanding of this point is made broader to include all genders and not only talk about women’s sexual expression.
10. IMS would like to emphasise that, whilst online gender-based violence (and its different forms, such as gendered disinformation) should be covered, it should not be made at the expense of points covering women’s agency and empowerment as this risks reproducing a discourse of women portrayed as victims and not of active agents in the society.
11. IMS would like to suggest that the concept of “Feminist journalism” is covered. It refers to critical, quality journalism that favours diversity and the defence of women’s rights and equality. Feminist journalism helps generate critical thought that can rectify gender inequalities and help us question a reality shaped by patriarchy. Feminist journalism is journalism told from a feminist perspective, but it also seeks those that are forgotten, involve the enjoyment of rights, and provide space to the most underserved communities. It requires willingness to engage with sources, and more enthusiasm to seek new perspectives on old themes. To a feminist journalist, the intersectionality of identities and how they pile up – ethnicity, sexual orientation, nationality, class, religion, nationality – matter. Intersectional feminist journalism often incorporates the participation of sources and audiences to enable them to be involved in the production and the dissemination of the news, even giving them some degrees of editorial control.
12. In light of the point above, the concept of ethical journalism could also be integrated.

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<sup>1</sup> <https://www.globalfundforwomen.org/gender-justice/>

**What barriers, challenges and threats do women face in exercising their freedom of opinion and expression? Are there any that deserve greater attention in this report?**

13. IMS would like to emphasise that the gendered barriers, challenges and threats when it comes to women's right to freedom of opinion and expression, are of global nature. Even in countries progressing on international gender equality indexes, such as Denmark, there is the so-called "glass ceiling" in media organisations, a delayed #MeToo movement, salary differences based on gender, gender imbalance in media portrayal, harmful gender stereotypes and sexism media content, gender-based violence (online and offline) and so on. The fact that a woman has a greater chance to reach the media if she is less qualified, as she is often portrayed as a victim or as an "emotional expert", is very alarming. If we talk about some figures from Denmark, in 1982, 86 percent of the sources in the TV News were men, in 2015 -- 38 years later -- 81 percent of all experts on TV are men. When it comes to women's presence in Print/Radio/Television the numbers are as follows; Women 23 percent and Men-77 percent -- Denmark has the same figures as Poland.
14. Globally, there is a lack of equality, both in newsroom and in content and limited feminist leadership.
15. There is a continued severe problem of safety of women journalists and those belonging to the LGBT community.
16. An intersectional understanding of the gendered issues is, in general, lacking in the global discourse.
17. Gendered disinformation as a form of gender-based violence is understudied and deserves more attention as it is a phenomenon that we currently know quite little about.
18. Hate speech, and the fact that sexist hate speech is not identified as hate speech, deserves greater attention. Sexist hate speech ultimately poses a democratic problem as it pushes women out from the public space.
19. A full recognition of the root causes to gender inequality is needed, hence an understanding of the underlying patriarchal structures is needed together with an understanding of the current global anti-gender discourse, with ultra-right, nationalistic and extremism forces pushing back against gender equality discourse.

**Where do you see key gaps in law, policy and practice?**

20. The regulation of hate speech varies from region to region but mostly concerns ethnic and religious minorities rather than sexism and sexual orientation and gender-identity. There is a gap in the fact that sexist hate speech is not recognised as hate speech in many contexts.
21. There is a current legal gap in whether online violence is treated the same way as offline violence.

**What are the controversies and dilemmas? How should they be addressed?**

- 22. A recurring dilemma is often where you draw a line between freedom of expression and the intent to protect vulnerable groups against hate speech and other harm.
- 23. As mentioned above, sexist hate speech is rarely recognised as hate speech.

**What changes must a) States, b) digital companies and c) other actors make?**

- 24. There are currently biases in AI systems and in general biases in algorithms and datasets. This impedes access to information for all genders and impedes political participation and other opportunities.
- 25. There is currently a gender digital gap that needs to be addressed, both in access to information and the gendered differences in digital literacy.
- 26. Media and information literacy (MIL) efforts need to have a gender perspective included. Media literacy can provide platforms for discussion and debate on gender and gender issues. Media literacy plays a significant role in determining whether gender issues will widely be considered important and legitimate social, political, and cultural matters of society. A gender perspective to MIL is largely overlooked.
- 27. There is a need to engage with boys and men and combat toxic masculinity norms, and address root causes through a feminist lens.
- 28. Overall an enabling environment needs to be created, and IMS would like to, again, emphasise the need to combat gendered disinformation as it ultimately poses a democratic problem and pushes women out of public space.
- 29. There is a need to work with law enforcement. In some contexts, online GBV is treated as violence taking place in real life, in others not.
- 30. Safety mechanisms should be integrated and improved on platforms.
- 31. A one actor approach is not efficient, nor desirable. Multi-stakeholder forums should be facilitated.
- 32. Third party fact-checking should take place on platforms, and the third party fact checkers should be trained from a gendered aspect.

**What should be the key messages and recommendations of the report?**

*Key messages*

- 33. IMS appreciates that a feminist lens will be applied to the submission and a key recommendation is that the intersectional feminist discourse is kept at core in the key messages and recommendations.

34. We would like to repeat the point that whilst violence against women and girls (VAWG) should be included, it should not be at the expense of best-practices, empowerment and women's agency as this can reproduce a discourse of victimisation.
35. There is a need to fully look at the local challenges and how they play out in various contexts. Whilst globally, patriarchal structures are the root cause to gender inequalities, it is important to remember that there are different understandings of gender and feminism in different contexts, which will influence solutions suggested and information submitted by various local actors.

*Key recommendations*

36. Recognise sexist hate speech as one of the forms of hate speech.
37. Incorporate intersectional feminist perspective into existing legal frameworks.
38. Prioritise gendered and sexualised disinformation as it is pushing women out of public space and is undermining democracy. In addition, any anti-disinformation response -- be it a media literacy campaign or fact checking -- should include a strong intersectional feminist perspective.
39. Further research and data gathering is needed, especially on i.e. gendered disinformation, even the most prominent researchers on the topic are saying that information is currently missing and that we need to fully understand this phenomenon before coming up with solutions.

**Clarifying concepts (gender justice, feminist perspective)**

40. IMS would ask for a broad definition of gender justice (see point above) where gender justice refers to the systemic redistribution of power, opportunities, and access for people of all genders through the dismantling of harmful structures including patriarchy, homophobia, and transphobia.
41. *Feminism can be defined simply as the belief in and strive for equal rights and opportunities for people of all genders.* In a broader sense, the concept of feminism embraces a set of political ideologies adopted by the women's movement to advance the cause of women's equality and to put an end to sexist oppression. Feminism embodies a framework to interpret a social reality of inequality that is manifested in norms, practices, and customs; it is a lens through which to understand power relations in society. In the past three decades, the concept of feminism has been considered insufficient because discriminations may vary depending on the accumulation of identities. Examples of identities that may overlap to deepen discrimination are ethnicity, race, language, religion, class, ability, age and sexual orientation and gender identity.

42. We appreciate that the submission takes into consideration intersectionality and would emphasise the need to look the contributions from an intersectional feminist perspective.

### **Companies**

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

43. As safety measures are closely linked to the issue of online gender-based violence (and gendered disinformation which is a form of online GBV), internet intermediaries must have incident reports that allow women to report multiple abusive posts in one report, promptly, and thus provide appropriate context and a more holistic view of the abuse they are experiencing. It is important that the incident reports allow multiple abusive posts to be reported in one go so that women do not have to relive the abuse.
44. Automated detection methods must be improved, and internet intermediaries should introduce "nudges" to discourage users from posting abusive content.
45. Online GBV (as well as gendered and sexualised disinformation) must be monitored, and its data gathered, so that we can understand its scope, prevalence and societal impact, and can use these findings in advocacy work. Transparency of internet intermediaries and sharing of data is key in this.
46. There is a need to realise that online gender based violence, and especially gendered and sexualised disinformation, is an extremely complex topic even the most prominent researchers are struggling to find solutions to.
47. Self-regulatory measures should be strengthened on the platforms -- the legal framework we currently have is not sufficient to solve the problem. I.e. Hate Speech alone is defined differently in different countries. Most judges would say "if it is not a physical attack then there is nothing to do". We must remember that tech companies operate according to national laws and if we talk about the case of Maria Ressa, just to exemplify, there is no legislation to refer to in the Philippines and the abuse she has been the target of is state-sponsored, with an anti-terror law on top of that, one could be arrested without court warrant.
48. There is a need for media development organisations and other relevant stakeholders to work with companies like Google and Facebook but at the same time be critical and understand their business motives.
49. Online GBV (and gendered and sexualised disinformation as part of this) does not only take place on major platforms -- perpetrators tend to move from major platforms to less moderated platforms. This is understudied and research has to be supported to fully understand this dynamic.
50. Third-party fact-checkers should be employed by Internet intermediaries to detect and address online GBV, including gendered and sexualised disinformation.

Furthermore, crowdsourcing and setting up datasets to identify disinformation must incorporate a gender perspective.

### **Balancing rights and interests**

#### **Is there scope to strengthen the human rights framework to protect women from harmful expression while preserving freedom of expression, including “the right to offend”?**

51. There is a hazy line between hate speech and the right to freedom of expression. This is where training of judges and lawyers comes in and writing of legislation that takes this into account. For example Kirsi-Marja Okkonen, Finnish Public Broadcaster Media Regulation Manager explains in an IPI interview featured in OSCE documentary, “A Dark Place” that journalists can be viewed as public figures under Finnish law and, in turn, subject to criticism as a part of their daily work. Finnish criminal law, however, puts a limit on criticism and how it is expressed. One cannot call a female journalist a whore as that is not criticism—it’s defamation. Prosecutors should accordingly understand that each case must be looked at individually and harassment should not be left without consequence—this is an important message for the police as well who are investigating cases of harassment.
  
52. States should build on the work underway by the EU, the UK, the UN, and the Council of Europe, and introduce or amend hate speech laws. For example, in its most comprehensive report into the issue, published in September 2020, the UN Plan of Action on Hate Speech defined it as “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor”. Factors of the Rabat Plan on Hate speech should also be considered: Six-part threshold test that authorities may use when balancing freedom of expression against prohibition of hate speech. The test to be applied to each individual speech act takes into account: (1) social and political context; (2) status of the speaker; (3) intent to incite the audience against a target group; (4) content and form of the speech; (5) extent of its dissemination; (6) likelihood of harm, including imminence

Acts of communication online that amount to an assault against an individual should be categorised as hate speech and attract a more serious penalty when the individual is targeted not only for their particular characteristics of race, religion, or ethnic origin, but also gender.

53. Following the UK Law Commission’s proposal, this would recognise that misogyny online or offline can amount to criminal hate speech, when it breaches the clearly defined threshold of assault under existing criminal law, thus denying the right to offend as an act of free speech. Currently, online abusers enjoy near total anonymity and impunity for actions that would amount to criminal offences offline. States should ensure their criminal justice system applies equally to acts that amount to hate

speech offences online as well as offline.

**What other measures could be used to curb online violence, harassment, misogynistic speech?**

- 54. Increase capability of law enforcement.
- 55. Support women leaders with tools to respond to online attacks and provide spaces to build alliances
- 56. Shine light on the issue through advocacy
- 57. Information is missing about the best solutions: Develop multi-stakeholder platforms
- 58. Education and awareness raising, including media and information literacy (MIL) initiatives, to educate boys and girls.

**The Special Rapporteur on Violence against Women published a substantive report in 2018 on online violence against women and girls (<https://undocs.org/en/A/HRC/38/47> (A/HRC/38/47)). How could this report build on that work?**

- 59. The core of the report that this report should build on is that “States should recognize online and ICT-facilitated violence against women as a human rights violation and a form of discrimination and gender-based violence” -- However, we do want to emphasise that we don’t think the report should have a solely focus on violence against women-- women’s public participation should be emphasised (to see women as active agents and not only as victims of violence).
- 60. We want to remind of the 2020 report “Combating violence against women journalists A/HRC/44/52” which i.e. recognize “doxing” against women journalists as a form of gender-based violence against women and address it through relevant legal and policy measures -- we suggest these points are built upon and expanded.

**Should the report cover the issue of encryption/anonymity?**

- 61. Encryption/anonymity is essential. It has been officially recognised numerous times that women and girls are more likely to be subjected to violations of their rights to expression, privacy, dignity, and safety online. Women and girls experience both disproportionate and qualitatively distinct threats to their privacy, security, dignity, and ability to participate fully online.
- 62. Encryption, anonymity, and digital security tools could be used to defend the safety of women and girls online which will reinforce numerous human rights. It could also be used to protect human rights defenders who are working on issues of gender-based violence and discrimination.
- 63. By using a mathematical process, encryption tech can make data unreadable by anyone who does not have the encryption key. What is remarkable about encryption



is that it protects the confidentiality and integrity of data stored on a device and that of data transmitted over a network. Anonymity tools, such as Tor, use encryption and routing techniques. This enables them to conceal an individual's location and behavior online from intermediaries.

64. Encryption and anonymity tools also allow women access to vital websites online. For example, sites relating to women's rights and reproductive health (in particular information about access to abortion and birth control) are often targets for government censorship. These tools allow women to withhold their location and identity from governments seeking to withhold such information. This could be detrimental to an individual's human rights and health.
65. This type of software has also been used to allow women to securely and anonymously report instances of sexual assault and violence. For example, SecureDrop is a tool developed to facilitate anonymous whistleblowing to journalists over the Tor network. However, developers are now investigating how it could be used for anonymous whistleblowing related to gender-based harassment and violence. This was emphasized in 2015 by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. David Kaye stressed that although these tools can be used by perpetrators of harassment, they are also vital to protecting human rights. They can be used to ensure the privacy of those who are vulnerable to technology-facilitated violence and should be encouraged rather than undermined.
66. The following year this sentiment was echoed by the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein. In a submission to the Special Rapporteur on Violence Against Women he stated that "*it is neither fanciful nor an exaggeration to say that, without encryption tools, lives may be endangered.*"

### **Gendering access to information**

#### **What is the added value of viewing the right to information from a feminist perspective?**

67. A feminist perspective will reveal the root causes and symptoms of gender disparities when it comes to the right to information.
68. AI systems can discriminate, surveil, and be weaponized against women, girls and individuals belonging to LGBT community.
69. Gender blind connectivity policies are woefully unaware of social, cultural, political and economic impediments that dictate women's use of technology. Online gender-based violence (GBV), lack of textual literacy, social monitoring of access and use of technology, gender pay gap, dearth of relevant content in local languages, gendered division of labor and time, all pose barriers to women's meaningful use of technology -- a feminist lense can help us understand this fully.

#### **What lessons should we draw from the pandemic, economic crises and recent political unrests about women's right to access information?**

70. We have learnt that gender sensitive news coverage should never become a side issue – but during a crisis, it is paramount to make it a priority. Otherwise, the media risk contributing to a deepening of the crisis and of reversing equality gains for women all over the world. We have seen that even though 75% of the global healthcare workforce are women, 72 percent of executive heads in global health are men. These statistics show that though women are vulnerable to the many hardships that the virus presents, it is largely men who are developing the policy responses, and for this reason, it is important to promote women’s perspectives.
71. Media pluralism is essential for everyone to make informed decisions and a cornerstone of a democracy. UNESCO’s gender sensitive indicators can help us keep track of the content and balance imbalances. Data is a precondition for balancing imbalances.

**Public morals and women’s sexual expression How can we address this challenge in the report? Is there scope to strengthen the legal framework?**

72. The headline should not only cover women’s sexual expression, but people of all genders.
73. When considering legal and policy reforms, it’s important to evaluate what laws and protections already exist and to what degree they are being fairly, justly, and equally enforced. In a guide on media laws and ethics that was specifically created to protect LGBT freedom of expression, the Southern African Litigation Centre (SALC) highlights existing international human rights law and domestic legal frameworks that protect the rights of all persons. Most countries already guarantee legal rights to equality, dignity, privacy, and freedom of expression and have enacted legislation concerning libel, defamation, slander, non-discrimination, and/or hate speech. Most national and international journalist societies and federations already address these and related topics in their ethics guidelines and conduct codes. Rather than lobbying governments and regulatory bodies to enact new hate speech protections for LGBT people, it is more expedient and effective -- especially in countries that criminalize some aspect of LGBT expression -- to use existing constitutional provisions, anti-discrimination laws, and regulatory measures to oppose SSOGIE (sex, sexual orientation, gender identity and expression)-based discrimination, hate speech, and restrictions of freedom of expression.

**What can be done to prevent broad restrictions on non-conforming gender expression, including with respect to laws, policies and practices on dress?**

74. From a media development perspective, we would focus efforts more heavily and perhaps exclusively on promoting media self-regulation in order to avoid falling foul of local laws, jeopardizing its ability to conduct programs, or compromising the safety of local partners. Governments that pretend people belonging to the LGBT community don't exist or actively criminalize and persecute their existence are unlikely to enact media regulations that effectively deter or prevent media outlets from producing dehumanizing or dangerous coverage of their lives. Government media regulation often stifles freedom of expression, making self-regulation the preferred model in any

case. Self-regulation should start with journalist education and sensitization training (cloaked generically as “gender” and “public health” initiatives where necessary for stakeholder safety) that produce regionally appropriate reporting resolutions and codes of conduct, as discussed below.

75. There is a need to connect media with faith networks, activist circles, feminist movement and LGBT communities and to work with editorial guidelines, train media and improve media self-regulation in order to improve reporting to be inclusive and accurate when reporting on LGBT issues.

**What recommendations to States and companies should the report include on this issue?**

76. Educational and awareness raising campaigns -- however, it is important to make a full safety assessment as this suggestion might cause backlash in some states where LGBT rights are challenged.

**What do you see as emerging issues at the nexus between freedom of expression and sexual and reproductive health and rights?**

77. Across the globe, there is a serious backlash against women’s rights. Nationalistic trends, supported by religious and other conservative actors, have given rise to right-wing populist groups and extremism across the globe. We have seen that the national strategies against gender equality often includes a lack of implementation of existing strategies, plans, guidelines, and procedures (the halt of anti-conceptive programs in public health programs, for instance or questions related to abortion), the manipulation of anti-gender ideologies, promoted through campaigns of disinformation, oftentimes replicated in media coverage, reinforced by governmental voices, puts women and others at considerable physical and psychological risk.
78. One of the clearest examples in light of the above is the “anti-propaganda laws” in Russia, effectively shutting down almost all sexuality education related to "non-traditional" sexuality in both media and education, which is of course a huge problem for sexual and reproductive health and rights (SRHR). Other countries have legislation against what is referred to as “immoral” media content, which is used against sexual rights.
79. There is a tension of freedom of expression and sexual and reproductive health and rights (SRHR) -- on facebook and other platforms.
80. There is an importance of collaborating and engaging with the media to support ending Female genital mutilation/cutting (FGM/C). FGM/C is a violation of sexual and reproductive health and rights. There is an urgent need to reframe FGM/C in the media to highlight and share stories of communities ending FGM/C, and sharing other solutions. Engaging with the media enables us to inform attitudes and stereotypes around FGM/C.

**Public space**

**How can the report advance a feminist and more holistic understanding of freedom of expression in the public space?**

- 81. By fully look at local challenges in various contexts and how the different grounds of discrimination intersects in the particular setting. Remember that there are different understandings of gender and feminism (in the different contexts) which will influence any solutions suggested.
- 82. In light of the point above, keep in mind that there are different types of feminism -- western feminism doesn't necessarily resonate well in some contexts in the global south. Feminism and intersectionality should not be seen as separate -- we should talk about intersectional feminism.

**What new challenges and opportunities does digital space as public space afford to women to protest and resist?**

- 83. An opportunity is the increased realisation of localisation agenda -- local people can raise their own voices, from places rarely visible in the media. Media can have a transformative role in for example amplifying voices from women from minority communities and conflict-affected areas.
- 84. Social media can be seen as one of the appropriate tools for sharing stories, fighting against street harassment, and promoting the discussion on feminist ideals.
- 85. The main challenges relate to safety issues (see points above covering this).

**What changes should States, digital companies and non-state actors make to address constraints on women's political expression and access to public space?**

- 86. See points above (especially point 24 through 32), relating to gendered digital gap, education and awareness (including MIL), engaging with men and masculinities, looking at patriarchal structures, creating an enabling environment, working with law enforcement, improving safety mechanisms on platforms and the facilitation of multistakeholder foras.