

Gender, Tech & the role of business:

APC, Derechos Digitales and Global Partners Digital submission to the UN Human Rights B-tech Project call for inputs

February 15th, 2024

Introduction

APC, Derechos Digitales and Global Partners Digital welcome the opportunity to present this submission in response to the call for inputs issued by OHCHR—B-Tech Project on Gender, Tech & the role of business.

Building on APC's October 2023 contribution, the paper focuses on **censorship** and **surveillance** as critical issues. It emphasises on the differentiated impacts of surveillance on women and people of diverse genders and sexualities. The submission also explores the complex link between cybercrime and digital over-regulation. This paper adopts a feminist perspective to examine the intersection between digital rights and gender/sexuality, and highlights the harms suffered by people who challenge oppression, such as those working for Palestinian liberation.

In today's increasingly digital world, ensuring equal access and protecting the rights of women and LGBTQIA+¹ people online is critical. Due to existing inequalities, certain groups, particularly women and people of diverse genders and sexualities, face unique challenges and vulnerabilities. This paper aims to identify gaps in addressing negative human rights impacts related to digital technologies through an intersectional gender perspective to contribute to a more inclusive and equitable digital landscape where everyone can enjoy their human rights.

1. The State duty to protect

• How does the state's duty to protect the human rights of women apply in the technology sector?

First, States have a heightened duty to protect the rights of women and LGBTQIA+ persons, who are often disproportionately targeted online. To do so, they must take measures, including harmonising legislation with international human rights law, to address online and

¹ In the submission presented by APC in October 2023 the term adopted for people of diverse genders and sexualities was LGBTQI+ and we failed to mention the asexual community, which we have included in this submission.

offline gender-based violence, which affects them in multiple and interconnected ways, as their online lives are not separate from other aspects of their lives. Violence in one area can also harm them in other areas.² Technology-facilitated gender-based violence (TFGBV) has multiple forms and implications and poses new challenges for gender justice actors.³

APC (2024) recently presented the results of civil society initiatives that record differential human rights impacts on women and people of diverse genders and sexualities, exposing how States are failing to protect their rights or directly violating them:

- The [Supporting a Safer Internet](#) project reveals that online harm had more severe outcomes for LGBTQIA+ people in the Global South than for straight and cisgender people. Transgender and gender-diverse people reported the most incidents. LGBTQIA+ people also suffered more mental health issues (35.8%) compared to heterosexual people.⁴
- [The Left Out Project Report](#) documented the growing hostility towards transgender, nonbinary, and gender-diverse (TNBGD) people online and offline. The report interviewed participants from Botswana, Rwanda, South Africa, and Uganda, who described their experiences of online abuse, transphobia, and potential government surveillance. The report also discovered that online platforms failed to address the violence against TNBGD people adequately, and that some participants were unaware of how to report offensive content. The report stated that TNBGD people felt exposed and powerless in the face of constant discrimination.
- In Türkiye, research conducted by Kaos GL showed that digital violence against the LGBTQIA+ community starts with insults and escalates to threats to physical safety and harassment, affecting nine out of ten people.⁵

Another report by APC and Derechos Digitales shows how cybercrime laws are being used to silence and persecute women and LGBTQIA+ people in eleven countries: Cuba, Egypt, Jordan, Libya, Nicaragua, Russia, Saudi Arabia, Uganda and Venezuela. These laws do not protect the online expression of these groups but rather expose them to more danger – especially in contexts where certain gender expressions are culturally and/or legally forbidden.⁶

Following Gender Guidance in UNGPs 1 and 3, States must incorporate a gender perspective when drafting and revising laws and public policies. This requires actively considering how new technologies or regulations may affect women and people of diverse

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

³ APC (2024). *Submission on protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly*. p.7.

⁴ Suzie Dunn, Tracy Vaillancourt and Heather Brittain. *Supporting Safer Digital Spaces Highlights*. https://www.cigionline.org/static/documents/OGBV_Highlights_web.pdf

⁵ KAOS GL Association [“All of a Sudden... Research on digital violence against LGBTQI+ communities in Türkiye”](#)

⁶ APC & Derechos Digitales (2023). *When protection becomes an excuse for criminalisation: Gender considerations on cybercrime frameworks*. https://www.derechosdigitales.org/wp-content/uploads/gender_considerations_on_cybercrime.pdf

genders and sexualities differently. To achieve this, States should use an intersectional approach and examine the differentiated impacts by which they may experience discrimination, including how the effects of different forms of discrimination overlap.

Censorship

The Internet can enable collective action and political change, but governments can hinder this by controlling digital communication. Digital rights, which are at the intersection of a multitude of rights, including the rights to privacy, freedom of expression (FoE) and freedom of assembly and association (FoAA), are fundamental and universal rights that should be enjoyed without discrimination by all women, girls and people of diverse genders and sexualities. Nonetheless, this freedom of expression is limited when content on gender and sexuality faces moralistic, political and religious discourses, which lead to censorship, limitation of rights and over-regulation, with severe implications for women and people of diverse genders and sexualities.

Censorship used in a moralistic way can also have implications on other women and LGBTQIA+ people's rights. As can be seen in the following cases:

- In 2016, Pakistan banned [more than 400,000 keywords](#) and URLs with the help of a 16-year-old boy. This ban affected many websites that provided research and health-related information. For example, the word 'breast' was among the prohibited keywords. As a result, any content or research on breast cancer was blocked.
- In India, the IT Act of 2000 criminalises the electronic publication or transmission of obscene material. However, section 67 of the Act is often used to charge people with other offences under the Indian Penal Code, such as political dissent, criminal intimidation, and breach of peace, unrelated to obscenity.⁷
- Blocking of abortion rights websites: the [womenonwaves.org](#) site (carried out in Brazil, Iran and Turkey); and of the [womenonweb.org](#) site (in South Korea, Saudi Arabia and Turkey)⁸.

Furthermore, the lack of State protection from violence against women and LGBTQIA+ people can lead to self-censorship and a chilling effect on expression. Therefore, it is necessary to reaffirm the right to express oneself freely without fear of reprisals and violence online. This is the case of [Luciana Peker, an Argentinian journalist who had to abandon the country due to the violence received online](#): "Feminist journalists are on the digital frontline, we are very exposed in public and we have suffered threats and persecution. The state, the market or any other sector do not protect us. There is also pressure and censorship. There is violence for everything you write, for everything you say, and I have been thinking a lot about what I say because of the escalation of violence that comes as a response".

⁷ Bhandari, Vrinda & Kovacs, Anja. (2021) *What's Sex Got to Do with It? Mapping the Impact of Questions of Gender and Sexuality on the Evolution of the Digital Rights Landscape in India*. In APC, 2024. Op. cit.

⁸ <https://ooni.org/post/2019-blocking-abortion-rights-websites-women-on-waves-web/>

In many countries, governments decide who can access the Internet and favour some groups over others.⁹ In 2019, governments in 33 countries used 213 internet shutdowns to restrict user access to information. Such arbitrary limitations on access often violate the rights of groups facing discrimination, especially in regions where they constitute a significant part of the population. These shutdowns are usually aimed at silencing voices that oppose the authorities.¹⁰ States should refrain from using internet shutdowns, which mainly affect vulnerable groups and are often used to silence the voices of structurally oppressed people.

Surveillance

Surveillance does not only affect individuals but also shapes social and political structures. Politicians often exploit LGBTQIA+ rights for their agendas, while reinforcing existing inequalities and norms in the digital realm. New and emerging technologies enable more pervasive and intrusive forms of surveillance, which pose severe threats to queer people's privacy, expression, safety, and identity. LGBTQIA+ people may face discrimination, violence, censorship, exposure, dead-naming and outing as a result of surveillance.

Some countries use AI systems to predict or prevent potential crimes. However, there is evidence that these AI systems are ineffective and biased, and that they justify discrimination and violence against gender and sexual minorities.¹¹

National security agencies often demand personal data from tech companies, such as internet service providers and exchange points, for digital surveillance. Some groups, especially those facing discrimination, are more exposed to the risks of mass data surveillance.¹²

In line with the [Esperanza Protocol](#), States should refrain from using technology with surveillance capabilities that do not respect the principles of necessity and proportionality.

- **What are the specific issues for which States should provide appropriate guidance to businesses by recognizing the challenges that may be faced by women?**

States must ensure that all technology initiatives adopt an intersectional gender approach as a critical priority and assess potential and actual risks at every stage of the technology development cycle, from design to evaluation. To effectively address gender concerns, they should also take into account other relevant factors, such as race, class, caste, ethnicity,

⁹ <https://www.science.org/doi/full/10.1126/science.aaf5062>

¹⁰ The Danish Institute for Human Rights (DIHR) and Global Partners Digital (GPD) (2020). *THE TECH SECTOR AND NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS. A thematic supplement to the "National Action Plans on Business and Human Rights Toolkit 2017 edition"*
https://globalnaps.org/wp-content/uploads/2020/09/tech-sector-and-national-action-plans_final.pdf

¹¹ APC, 2024. Op. cit. and Valderrama, Matías (2021). *Chile. The Child Alert System and predicting the risk of violations of children's rights.*
https://www.derechosdigitales.org/wp-content/uploads/02_Informe-Chile-EN_180222.pdf

¹² DIHR & GPD, 2020. Op. cit.

sexual orientation, religion, (dis)ability, that may contribute to discrimination and inequality.¹³ Intersectionality analysis should also guide and shape the inclusive stakeholder engagement of companies when designing their products, policies and practices.

States should make significant efforts and provide incentives to support small and medium-sized enterprises. They should focus on how to incorporate an intersectional gender perspective when requiring companies to conduct gender impact assessments without collecting data on women and LGBTQIA+ people that could be used for discriminatory purposes. Similarly, when requiring companies to be transparent about their data collection and algorithmic decision-making processes, States should guide companies to avoid revealing personal information about women and LGBTQIA+ folks that could put them at risk.

They should also guide them in meaningful consultations with women's organisations, LGBTQIA+ activists and human rights defenders.

In particular, home States of technology companies should guide them on complying with international human rights law concerning the right to privacy, data protection and FoE of women and people of diverse genders and sexualities, including when the host state requests information.

• What specific actions can States which have recognized the need for enhanced digital policy and improved access to ICTs take to advance digital rights for women and girls?

For many years, States and the private sector have seen internet access and development of digital skills for women and girls as the main solution to the gender digital divide. Such an understanding of access is necessary, but it is not enough.¹⁴ It is imperative to recognise and address the historically unequal power relations between genders, which have deepened the access gap and also make it difficult to eradicate. Structurally marginalised communities are the ones that are most affected by the lack of access and meaningful connectivity. If women and people of diverse sexualities, from all contexts, backgrounds and locations, have access to the internet but are not included in the use, design, management and governance of digital technologies, meaningful access to the internet will not be achieved.¹⁵

Moreover, women and people of diverse genders and sexualities who experience violence through the Internet may opt to limit their online activities. States must invest in programs that equip women with the skills and knowledge to safely and critically engage with technology, reducing vulnerability to online harassment and discrimination.

Encouraging and supporting women's participation in science, technology, engineering, and mathematics (STEM) fields is crucial to ensure diverse perspectives and mitigate gender

¹³ APC (2024). *Gender, tech and the role of business: APC submission to the UN Human Rights. B-Tech Project call for inputs*

¹⁴ GenderIT.org (2023). *Feminist principles of the Internet: advocacy brief on access.*
<https://genderit.org/index.php/FPI-paper-on-access>

¹⁵ Ibidem.

bias in the development and implementation of technologies that could lead to censorship or surveillance.

Surveillance

Gender impact assessments should be required for existing and new technologies and processes as it helps to identify potential gender biases and discrimination in data collection, surveillance practices, and algorithmic decision-making.

States should:

- Require transparency in data collection and algorithmic decision-making, avoiding gender bias.
- When adopting national laws or policies, engage in a meaningful consultation throughout the policymaking process with relevant stakeholders, such as women's organisations, LGBTQIA+ people and human rights defenders, to ensure their concerns and experiences are reflected in laws and policies.
- Ensure that the use of surveillance technologies aligns with international human rights law and standards guaranteeing transparency and notification, which should safeguard the right to privacy and protection from discrimination.
- Avoid requesting or using highly sensitive data from tech companies, especially data that disproportionately impacts women, LGBTQIA+ individuals, and human rights defenders.
- Develop mechanisms to hold tech companies accountable for violating women's human rights through their technologies or practices. This includes effective enforcement of relevant international standards.

2. Companies' responsibility to respect

• How does technology companies' responsibility towards women and girls apply regarding impacts stemming from, or being linked to, digital technologies?

In many countries, local regulations to prevent TF GBV do not explicitly address digital violence, but this does not limit the responsibility of companies to respect the human rights of women and people of diverse genders and sexualities and to address the impacts they create or contribute to through their platforms.

Based on UNGP 12, technology companies are responsible for preventing and addressing digital GBV, regardless of local laws, including taking proactive steps such as preventing harmful content, being transparent, and cooperating with legal processes seeking evidence of human rights violations. This responsibility extends to the impact of their platforms on these groups. Women and LGBTQIA+ people often face heightened vulnerability online.

UNGP 18 requires companies to tailor their strategies to address risks such as harassment, doxing and censorship.

Moreover, in line with UNGP 23, corporate accountability must exist in all contexts and we have seen, with deep concern, that this has not been the case, specifically regarding the conflict in Palestine. A new report by [Human Rights Watch](#) reveals that Meta and other big tech platforms have been systematically censoring, shadowbanning and removing content that exposes the situation of Gazans since 7 October 2023. [Different organisations](#) have complained about the spread of disinformation that dehumanises Palestinian victims and proposes a single narrative, with over-moderation of Palestinian content. [Access Now](#) has described these platforms as 'rich repositories of evidence' of potential war crimes and atrocities being shared online. Companies should avoid this form of censorship, safeguard evidence of war crimes and cooperate with international criminal justice mechanisms.¹⁶

For example, in the case of South Africa v. Israel before the International Court of Justice, the initial petition in the case makes multiple references to evidence on different digital platforms.¹⁷

• How can a gender lens be integrated into human rights due diligence? Where do companies need to place specific emphasis on gender aspects in their risk assessment processes?

No country has achieved gender equality. Therefore, the need remains for companies to include gender analysis conducted regularly throughout their human rights due diligence process.¹⁸

Companies have a responsibility to avoid violating human rights, and actively address and prevent any negative impacts their actions may have on human rights. It requires a comprehensive assessment of all company operations areas, including supply chains, to identify potential risks. Gender mainstreaming is a strategy that goes beyond considering gender as a separate issue and aims to incorporate the concerns and experiences of women and people of diverse genders and sexualities into policies and programs. It emphasises the integration of gender perspectives throughout the entire process, from design to

¹⁶ For instance, in the case of South Africa v. Israel before the International Court of Justice, the initial petition in the case makes multiple references to evidence on different digital platforms. South Africa, Government of the. (2024). *Application instituting proceedings against Israel*. Court of Justice. <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>

¹⁷ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>

¹⁸ UNESCO (2023). *Guidelines for the Governance of Digital Platforms. Safeguarding freedom of expression and access to information through a multistakeholder approach*. https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000387339&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_f33c111c-a8ba-4e7a-8243-c50c4ab13b64%3F_%3D387339eng.pdf&updateUrl=updateUrl7140&ark=/ark:/48223/pf0000387339/PDF/387339eng.pdf.multi&fullScreen=true&locale=es#UNESCO_internet4trust_guidelines_v5.indd%3A.34097%3A216

implementation and evaluation.¹⁹ The previous APC submission demonstrates what is required to integrate a gender specific in more detail.²⁰

Combining human rights due diligence with a gender and diversity approach means mainstreaming differential needs and providing gender-sensitive interventions, prioritising structurally segregated individuals and social groups in all processes. The gender and diversity perspective implies a paradigm shift in corporate governance. It is the conscious adoption of a comprehensive approach that considers and makes visible the asymmetrical power relations established based on the gender dimension, including the variables of sexual orientation, gender identity and expression, sexual characteristics and their intersectionalities. It also considers the differentiated effects they produce to implement positive actions that promote de facto equality.²¹

Regarding **surveillance**, companies should:

- Assess how surveillance technologies and practices disproportionately affect women and LGBTQIA+ individuals, considering factors like privacy violations, increased vulnerability to stalking or harassment, and effects on FoE.
- Analyse biases in data collection and algorithms used in surveillance systems that might discriminate against women based on gender stereotypes or online activities.
- Ensure transparency and notification in surveillance technologies and establish independent oversight mechanisms with diverse representation, including women, to prevent discriminatory practices.
- Challenge any government requests to disclose information or to restrict internet access that violate domestic law or international human rights standards. Establish clear procedures and criteria based on human rights principles for dealing with such requests and include them in their agreements with governments.²²

Regarding **censorship**, companies should:

- Recognize that censorship often disproportionately targets content by and about women, including expression on LGBTQIA+ issues, sexual and reproductive health, and dissent against patriarchal norms.

¹⁹ ADC (2020). *¿Cómo implementar la debida diligencia en derechos humanos en el desarrollo de la tecnología. El impacto en la privacidad.*

<https://adc.org.ar/wp-content/uploads/2020/10/Guia-Debida-Diligencia-DDHH-Analisis-de-Impacto-en-Privacidad.pdf> p.18

²⁰ APC, 2024

²¹ ADC (2021). *El enfoque de género y diversidad en la debida diligencia en DD.HH. Factor clave para el desarrollo de tecnología.* P.16

<https://adc.org.ar/informes/el-enfoque-de-genero-y-diversidad-en-la-debida-diligencia-en-dd-hh/>

²² Directorate-General for Enterprise and Industry (European Commission), Institute for Human Rights and Business (IHRB), Shift (2014). *ICT sector guide on implementing the UN guiding principles on business and human rights.* p.45

<https://op.europa.eu/en/publication-detail/-/publication/ab151420-d60a-40a7-b264-adce304e138b>

- Monitor and address online censorship used to silence victims of gender-based violence or restrict access to essential resources and support services.
- Ensure policies and practices respect the right to freedom of expression for all genders, recognizing that women often face unique challenges in expressing themselves online. Content moderation should be reliable and effective. This includes pursuing accuracy and non-discrimination in detection methods.²³ Also account for prevention measures for avoiding that claim systems are weaponized to further marginalise women and LGBTQIA+ people.

• **How do civil society, academia, and collective action initiatives seek to advance respect for women’s human rights by technology companies?**

Civil society organisations produce independent information to hold companies accountable for violating the rights of women and LGBTQIA+ people, as shown here. We also monitor and follow up on projects and platforms that censor and surveil women and gender diverse people.

Also, civil society organisations advocate for the respect of human rights in the development of regulation and public policies at local and international level. For example, in the negotiations of the Convention on Cybercrime to prevent over-regulation from impacting the rights of women and LGBTQIA+ people. Companies can partner with civil society to support their claims.

Civil society organisations could:

- Develop guidelines for small and medium local companies on implementing due diligence on women's and LGBTQIA+ people's human rights that include recommendations for an action plan.
- Provide valuable inputs and feedback for an intersectional approach for inclusive and meaningful stakeholder engagement during the designing of their products, policies and practices.
- Elaborate matrices for risk analysis related to surveillance and censorship, making specific recommendations from an intersectional approach on the needs of women and LGBTQIA+ people.
- Conduct third-party audits on differentiated impacts on women's and LGBTQIA+ rights related to surveillance and censorship activities.²⁴

• **Which are examples of measures adopted by tech companies, including in partnership with civil society, to mitigate risks of abuses of women and girls?**

²³ UNESCO, 2023. Op. cit. para. 87; 94; 100.

²⁴ OHCHR (2010). *Why are ICTs important for Civil Society Organizations?*
<https://www.un.org/esa/socdev/ngo/docs/2010/directory/ictcso.pdf>

A coalition of tech companies, including Google, Apple, Facebook, Dropbox, Twitter, and LinkedIn, has been advocating for the reform of government surveillance and information access laws and practices worldwide. The Reform Government Surveillance Coalition aims to protect the privacy and security of its users from excessive government data collection requests.²⁵

• What measures can tech companies take to increase access to digital technology for women and girls, including the internet, smartphones, and social media, and to close the digital divide?

According to APC's submission, to avoid rights violations related to censorship and surveillance, companies should:

- Adopt proactive measures to protect all users from online harassment that can lead to self-censorship of women and LGBTQIA+ people.
- Content moderation should not discriminate against or sexualize women and LGBTQIA+ people.
- In their business models, they should avoid exploiting gender-based personal data that significantly impacts women, particularly methods that contribute to or enable surveillance.
- Retain only the strictly necessary data ensuring the scope of this data collection is limited and, in the event of a government request, analyse the impact according to international human rights standards and use their influence to promote government best practices.

3. Access to Remedy

• What are the gender-related challenges to the ability of State-based judicial and non-judicial grievance mechanisms to provide for accountability and remedy in case of human rights abuses relating to technology companies? And what are potential solutions to address and/or overcome such challenges?

In addition to the obstacles mentioned in the APC submission, other systemic legal obstacles are:

- Gender bias by judges and the police which can lead to revictimization and minimization of complaints of cases of online harassment that lead to self-censorship.

²⁵ DIHR & GPD, 2020. Op. cit.

- Victims may not report because of possible backlash or further abuse. Fear of censorship or surveillance can lead to self-censorship, inhibiting women and people of diverse genders and sexualities from expressing and participating online.
- **How can technology companies make a more positive and proactive contribution to providing remedy addressing technology-related harms, from a gender perspective?**

In line with gender guidance for UNGP 22 and the UNESCO Guidelines, business could:

- Build reporting systems that are sensitive to gender-based harassment and violence online. Regularly audit and update automated content moderation to ensure fairness and inclusivity.²⁶ Train moderators to identify and address these issues effectively, respecting victim confidentiality and avoiding retraumatization.
- Provide public information about their gender impact assessments.²⁷
- Increase the participation of women from diverse backgrounds in leadership positions, product development, and content moderation teams. This diverse input can help identify and address potential biases in algorithms and policies.
- Develop resources and assistance for women and LGBTIQIA+ individuals who have been censored or surveilled online, including legal aid, counselling, and digital security training. Companies can tailor remedies to their specific needs and experiences of women and LGBTIQIA+ people, acknowledging and addressing how censorship and surveillance disproportionately impact them. This could include partnering with gender rights organisations who have expertise in these areas.

²⁶ UNESCO, 2023. Op. cit. para. 103.

²⁷ UNESCO, 2023. Op. cit. para. 115 m.