

Submission to UN Human Rights B-Tech Project Call for inputs: Gender, Tech & the role of business

15 September 2023

Equality Now respectfully makes this submission in response to the UN Human Rights B-Tech Project Call for inputs: Gender, Tech & the role of business.¹

Founded in 1992, Equality Now is an international human rights organisation that works to protect and promote the rights of women and girls around the world in the areas of legal equality, harmful practices, sexual violence and sexual exploitation, including trafficking for the purposes of sexual exploitation, with a cross-cutting focus on adolescent girls. Equality Now combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit women and girls and works to ensure that governments enact and enforce laws and policies that uphold their rights. Recognising that addressing sexual exploitation, abuse and violence in the digital realm requires a global approach that promotes universal digital rights, Equality Now, together with Women Leading in AI, have formed the Alliance for Universal Digital Rights (AUDRI).² AUDRI is advocating for universal equality of safety, freedom, and dignity for all in our digital future.

We are writing to share specific issues and challenges, gaps and our recommendations on the role that States and technology companies should play to uphold and respect human rights, particularly the rights of women and girls. We respectfully respond to the B-Tech Teams' questions as follows:

What are the specific issues for which States should provide?

1. The state's duty to protect the human rights of women and girls is not limited to offline existence but also applies in the digital realm. This duty is derived from international human rights law and standards and is intended to ensure that individuals are protected from rights violations by both state and non-state actors, including businesses operating in the technology sector. The UN Human Rights Council in 2018 resolved that the human rights provided in existing human rights instruments should be promoted, protected, and

¹ Please see

<https://www.ohchr.org/sites/default/files/documents/issues/business/b-tech/CFI-gender-tech-the-role-of-business.pdf>

² Please see: <https://audri.org/>

EUROPE

PO Box 560, Dartford, DA1 9WP, UK
p. +44 20 4574 9095
ukinfo@equalitynow.org

AMERICAS

P.O. Box 7160
New York, NY 10008-7160, USA
p. +1 212-586-0906 | f. +1 212-586-1611
info@equalitynow.org

AFRICA

1st Floor, Bishops Garden Towers, Bishops Road
Mailing: PO Box 2018 - 00202, Nairobi, Kenya
p. +254 20-2719-832 | f.: +254 20-2719-868
equalitynownairobi@equalitynow.org

enjoyed in the digital realm.³ However, in reality, currently, our digital selves are not being afforded these human rights fully, and even to the same extent as our physical selves. Accordingly, States should provide protection for the following specific issues:

- 1.1. **Equal Treatment and Non-Discrimination:** Women and girls in all their diversity are most profoundly and consistently affected by the uneven regulation of our digital ecosystem and also have the least power and privilege. In recent years, existing inequalities have been exacerbated and amplified by the effects of the COVID-19 pandemic, and old and new forms of oppression and violence have emerged including in digital spaces. Under international law, everyone is entitled to equal protection from all forms of discrimination⁴, including, discrimination on the grounds of gender. States must ensure that human rights, as envisaged in international and national laws, are interpreted with a gendered and intersectional lens to ensure that they are enforced equally and fairly in the digital realm, so as to address any gendered digital discrimination and inequality.
- 1.2. **Violence and Harassment:** Digital technologies provide an opportunity for advancing gender equality and empowerment of women and girls. However, the scope and scale of Internet connectivity and affordable camera-ready technology, are also enabling online harm at unprecedented levels globally. Gender-based violence is taking new forms and being perpetrated and amplified online with impunity, and women are disproportionately affected. However, it does not occur in a vacuum — it is rooted in the same sex, gender, and intersecting inequalities and abuse of power that perpetuates women's and girls' subordination in our physical society. Artificial intelligence (AI) is amplifying and increasing stereotypes and biases that feed misogyny and is used to generate sexually exploitative content.⁵ The limited recognition and enforceability of protections from violence and harassment that is facilitated through digital technologies results in women and girls incurring serious harms to their careers, safety and social freedom, as well as to their dignity, bodily integrity, and autonomy. States have a duty to enact laws and regulations that protect all people from such forms of violence, and they must provide mechanisms for reporting, investigation, and prosecution of such incidents, as well as effective and accessible remedies.
- 1.3. **Privacy and Data Protection:** The right to privacy underpins the use and enjoyment of other human rights, but often privacy laws and regulations are not suited to protect women and girls from new forms of abuses which are rooted in the patriarchal structures that fuel gender-based violence. The right to privacy in the digital realm is also about safety. At its core, the right to privacy protects

³ UN Resolution. 2021. The promotion, protection and enjoyment of human rights on the Internet. <https://digitallibrary.un.org/record/3937534?ln=en>

⁴ Articles 1& 2 of the Universal Declaration of Human Rights

⁵ FBI. 2023. Malicious Actors Manipulating Photos and Videos to Create Explicit Content and Sextortion Schemes. <https://www.ic3.gov/Media/Y2023/PSA230605>

individuals from intrusion into their own or their family's personal life by third parties, creating an expectation of privacy. It is on the basis of that expectation of privacy that women and girls should be protected from sexual exploitation and abuse, such as having their personal and sexual information shared and distributed without their consent. States have a duty to enact laws and policies that ensures that sexual information is not shared without consent.

1.4. **Access to Digital Technologies and the Internet:**

Many women, particularly in marginalised communities, face barriers to accessing technological devices and the Internet. Access to the Internet and technological devices⁶ is in part a consequence of the economic and social inequalities resulting from gender disparities faced by women. Mobile phones are the primary way people in low- and middle-income countries (LMICs) access the Internet, accounting for 85% of broadband connections in 2021.⁷ But over 1.7 billion women do not own a mobile phone, and women globally are 14% less likely to have one than men, with the largest disparities in Sub-Saharan Africa and South Asia.

States have a responsibility to bridge this access gap by implementing policies that ensure equitable access to technology, digital literacy programs, and affordable Internet connectivity. This includes policies ensuring that interfaces, content, and applications are designed inclusively to ensure accessibility for all, including people with physical, sensory, or cognitive disabilities, people who are not literate, and people who speak minority languages. The principle of inclusive design and the use of assistive technologies must be promoted and supported to allow persons with disabilities to benefit fully and on equal terms. States should also enact policies prohibiting the arbitrary and deliberate slowing and/or cutting off of the internet on any grounds, including public order or national security grounds.

Freedom of Expression: Online activities are considered expression, and are protected under existing rights to free expression and association. However, the right to freedom of expression is frequently infringed upon — both by governments and the private sector — for purported national security reasons and/or through unevenly applied online content moderation policies and practices. Some forms of online expression are indeed harmful — harassment or stalking; the incitement of violence against others based on their race, or gender. But ill-defined and unchecked infringement of the right to free expression has created a culture of censorship in which political dissent can be suppressed, and

⁶ ITU. 2022. Universal and meaningful connectivity: The new imperative.
<https://www.itu.int/itu-d/reports/statistics/2022/05/29/gcr-chapter-1/>

⁷ GSAM. 2022. The Mobile Gender Gap Report 2022.
<https://www.gsma.com/r/wp-content/uploads/2022/06/The-Mobile-Gender-Gap-Report-2022.pdf>

the voices of victims and survivors can be silenced.⁸ These complexities mean that mechanisms must be put into place to ensure the intersectional, feminist-informed application of the right to free expression within the digital realm, and that any limitation of this right is necessary, proportionate, and justifiable. Without adequate protection, all women risk being excluded from fully and equally participating online.

- 1.5. **The Role of the Technology Sector:** States should clarify the role, responsibility, and accountability of digital platforms. This includes by enacting laws and policies that:
 - 1.5.1. require digital platforms to ensure that their community guidelines are anchored in international human rights law and standards, which will ensure the protection of marginalised and vulnerable groups on the platforms;
 - 1.5.2. require digital platforms to have effective and easily accessible reporting mechanisms on their platforms so that users who have been can report the violation and request takedown of the offending content, amongst other remedies;
 - 1.5.3. provide guidance on the technology sector's role in cross-jurisdictional collaboration with law enforcement agencies and between technology companies.

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?

2. Laws and policies have lagged behind technological developments and harms perpetuated thereon. Consequently, there are either no judicial remedies or very broad judicial remedies may be applied which are not currently fit for purpose. For instance, until recently, several countries such as Australia, Nigeria, Kenya and South Africa, made use of copyright, data protection or general cybersecurity/cybercrime laws to provide judicial relief from image-based sexual abuse — which is a harm that predominantly affects women — and, because these laws are not fit for purpose, the evidentiary burdens are often too onerous for victims.
3. Where there are judicial remedies, there are challenges of access to these remedies. Tech-facilitated human rights abuses require technological capabilities to conduct investigations or gather evidence, yet many State law enforcement agencies do not have these capabilities to conduct such investigations. States with specific task forces within

⁸ Equality Now. 2021. Submission to the Special Rapporteur on the promotion and protection of freedom of opinion and expression, to inform the thematic report on the right to freedom of opinion and expression and gender justice for the 76th session of the General Assembly.
https://www.ohchr.org/sites/default/files/2021-11/Equality-Now_2.pdf

law enforcement agencies operate in the major cities but not nationally, which hinders effectiveness and coordination. In Kenya, for example, the Anti-Human Trafficking & Child Protection Unit operates only in 3 out of its 47 counties.⁹

4. Tech-facilitated human rights abuses are multi-jurisdictional in nature, even if the victim and perpetrator are in the same jurisdiction, the evidence of harms may be stored on a server in a third-country. In some cases, law enforcement agencies may need to rely on mutual legal assistance agreements and other international law mechanisms which come with their own challenges including requiring there to be a bilateral agreement between states, requests taking months or years to be responded to or needing all states involved to be party to the same international convention. Notwithstanding, a lot of victims do not report the harm to law enforcement in the first place.¹⁰
5. The regulation of digital service providers and platforms, and the lack of consistency across jurisdictions regarding their responsibility and liability for harms on their platforms; requires balancing between the need for legal accountability and digital service providers and platforms' innovation and voluntary practices.¹¹
6. Reporting or requesting takedown of offending content on digital platforms is a key non-judicial remedy for many victims, especially those of sexual exploitation and abuse, yet it is extremely challenging to do. This is because most of the digital platforms' reporting and takedown procedures are not easily accessible, not user friendly, are unknown to many users or users face digital literacy impediments. This results in a lot of the content not being taken down in a timely manner. Further, it is very difficult to ensure content is taken down from multiple platforms.

And what are potential solutions to address and/or overcome such challenges?

7. We respectfully recommend the following solutions to addressing the aforementioned challenges:

⁹ Equality Now. 2022. Enhancing Policy Responses To Addressing Child Sexual Exploitation And Abuse (CSEA) In Kenya.
<https://www.equalitynow.org/resource/enhancing-policy-responses-to-addressing-child-sexual-exploitation-and-abuse-csea-in-kenya/>

¹⁰ Equality Now. 2021. Ending Online Sexual Exploitation and Abuse of Women and Girls: A Call for International Standards. At Page 38
<https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/11/13160619/Ending-OSEA-Report.pdf>

¹¹ Equality Now. 2021. Ending Online Sexual Exploitation and Abuse of Women and Girls: A Call for International Standards. At Page 59
<https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/11/13160619/Ending-OSEA-Report.pdf>

- 7.1. States should provide legal definitions and recognition of tech-facilitated human rights violations which will in turn allow for judicial and other remedies.
- 7.2. States should enact laws that mandate digital service providers and platforms to have easy-to-use takedown notice and reporting procedures. These procedures should enable victims, their representatives and families to provide the service providers and platforms with information that is adequate to identify the material or a portion thereof.
- 7.3. Specialised capacity-building of law enforcement agencies and other victim support services. Also there is a need to ensure the allocation of adequate funding to key institutions, including law enforcement agencies, the judiciary, child protection services, and women's rights departments, towards investigating and prosecution of cases, and specialised support to victims and survivors of online sexual exploitation, abuse and violence.

How can technology companies make a more positive and proactive contribution to providing remedies addressing technology-related harms from a gender perspective?

8. Technology companies have a responsibility in terms of the UNGP to avoid causing or contributing to adverse impacts on human rights which includes, inter alia, avoiding infringing women's rights and addressing adverse human rights impacts in the design and deployment of technologies with which they are involved. To discharge this responsibility, technology companies should contribute to achieving substantive gender equality and avoid exacerbating or reproducing existing discrimination against women throughout their operations. Proactive contributions could include:
 - 8.1. Ensuring that machine learning models are adequately trained to ensure that gender stereotypes and the objectification of women's bodies in any process are not perpetuated;
 - 8.2. Taking effective measures to ensure that women, girls, and other marginalised groups are not harassed, bullied or intimidated on their platforms and that they are able to use the platforms without fear of discrimination or threat of violence;
 - 8.3. Addressing human rights violations when they occur. Practically this would involve having easily accessible takedown notices and reporting procedures. This includes attending to requests within 72 hours — which could be considered a reasonable period within which to respond to user requests using both automated and human reviewers. Additionally, collaboration between digital platforms is key to ensuring reported content is removed across platforms, this could include having a joint database of reported content and lexicons allowing the content to be automatically removed across multiple platforms;
 - 8.4. In all circumstances and throughout their operations, respect the internationally recognized rights of women, including as provided in instruments such as the Convention on the Elimination of All Forms of Discrimination against Women,

International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child;

- 8.5. Awareness-raising and education campaigns so as to educate and empower users on their rights so they are better able to seek recourse when those rights have been violated;
- 8.6. Transparency and accountability in policies and practices regarding the moderation of harmful user-generated content and the extent to which policies and practices have been effective.