

# CONNECTIVITY: THE GLOBAL GENDER DIGITAL DIVIDE AND ITS IMPLICATIONS FOR WOMEN’S HUMAN RIGHTS AND EQUALITY

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**ABSTRACT**

*Information and communication technologies (“ICTs”) have transformed our lives in the ways that we obtain information, the manner in which we interact with one another, the items that we purchase, the services that we provide or receive, the music we hear, the games we play, and the films we watch. But a segment of the population across the globe does not yet have meaningful and substantial access to ICTs: women and girls. This tech inequality is characterized as the global gender digital divide.*

*Enhanced access and use of ICTs can promote women’s empowerment through various means, including: 1) economic growth; 2) heightened exposure to information, knowledge, and education; 3) political participation, mobilization, and social inclusion; and 4) enriched expression of women’s voices and agency. Barriers exist as well such as affordability, sociocultural norms, policies and practices, capacity, education, and safety. Focusing on the last, online violence against women is a major downside of improved access to ICTs. Different forms of violence are committed, facilitated or aggravated by ICTs, including cyberthreats of violence, harassment, and flagrant and demeaning breaches of privacy. While recognizing that States need to combat these forms of gender-based cyberspace violence against women and girls, experts note that the possible infringement of free expression by government regulation complicates the issue.*

*Since a larger percentage of women than men are deprived of opportunities for meaningful and substantial ICT usage, this contributes to the further subordination of women’s equality and implicates fundamental human rights. These include freedom of expression, association, and assembly, which exacerbates existing real-world gender discrimination. Effective solutions are more likely to emerge if stakeholders make a firm commitment to address this digital gender inequality in a collaborative manner.*

**I. INTRODUCTION**

Information and Communication Technologies (“ICTs”) are critical to the way that life activities of all kinds are pursued in the twenty-first century. Access to ICTs has been acknowledged as a “powerful force for human flourishing.”<sup>1</sup> Technology has inundated societies to such an extent that “the

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ability to leverage digital technology is increasingly indispensable to an individual's well-being, on the same plane of necessity as numeracy and literacy."<sup>2</sup> But there is a global digital divide—and it has a disparate impact on women and girls.<sup>3</sup>

Worldwide, as of December 2018, it is estimated that more than 4.1 billion people are Internet users.<sup>4</sup> It appears there may be 250 million fewer women online than men.<sup>5</sup> Internationally, Internet penetration rates were 12% lower for women in 2017, which slipped from a differential of 11% male users versus female users in 2013.<sup>6</sup> A survey conducted on behalf of the BBC, in 2017, noted the existence of a 78% male to 71% female differential in personal Internet usage, even in countries such as France, Germany, Spain, and the USA.<sup>7</sup>

Available data suggest “major differences between men and women in the volume, frequency, and quality of ICT access.”<sup>8</sup> The digital gender split is highest in the Global South, where one out of five men but only one out of seven women use the Internet.<sup>9</sup> For example, throughout the African continent, 25% fewer women than men are Internet users.<sup>10</sup> Overall, women

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1. Intel Corp. & Dalberg Global Investors, *Women and the Web*, INTEL REP. 1, 16 (2012) <https://www.intel.com/content/dam/www/public/us/en/documents/pdf/women-and-the-web.pdf> [hereinafter *Women and the Web*].

2. Han Ei Chew, Rebecca Kraut, & Mark West, *I'd Blush if I Could: Closing Gender Divides in Digital Skills Through Education*, EQUALS 1, 10 (2019).

3. See HUMAN RIGHTS AND THE INTERNET (Steven Hick, Edward F. Halpin, & Eric Hoskins eds., 2000) The digital divide can exist across racial, economic, political, gender language, and geographic lines. See generally, *id.*; see also U. N. University, *Taking Stock: Data and Evidence on Gender Equality in Digital Access, Skills, and Leadership*, at 113 (Araba Sey & Nancy Hafkin, eds., 2019), <https://www.itu.int/en/action/gender-equality/Documents/EQUALS%20Research%20Report%202019.pdf> [hereinafter U.N. University, *Taking Stock*]. António Guterres, Secretary-General of the United Nations (UN) recently stated: “We know there is a gender digital divide...” in the foreword to the recently-issued report. See *id.* at 9.

4. *Internet Stats and Facts for 2019*, HOSTING FACTS (Dec. 17, 2018) <https://hostingfacts.com/Internet-facts-stats/>.

5. G.A. Res. 72/200, Information and Communications Technologies or Sustainable Development, ¶ 13 (Jan. 17, 2018).

6. *Taking Stock*, *supra* note 3, at 221.

7. Globescan, *Fake Internet Content a High Concern, but Appetite for Regulation Weakens* (Sept. 21, 2017) <https://globescan.com/tag/bbc-world-service-survey/>.

8. *Taking Stock*, *supra* note 3, at 221.

9. *Id.*

10. *Id.*

are 21% less likely than men to own a mobile telephone, which is the predominant way to get online in the least developed countries.<sup>11</sup>

Due in part to increased ICT penetration, greater emphasis has been placed recently on *digital inequality*, which is viewed as “a more nuanced term that describes how technology users vary in how gainfully they employ the technology in their daily lives.”<sup>12</sup> One progressive, economically-focused critique contends that separating people into technological haves and have-nots maintains a focus “on *stuff*, on consumer objects, which fits well in the context of global capitalism.”<sup>13</sup> Some academic commentators also contend that a more in-depth understanding of digital inequality mandates placement of Internet access in a broader theoretical context, extrapolating from the notion of a categorical divide.<sup>14</sup> Online inequality, which reflects real-world racial and economic disparities, applies to gender distinctions as well—but women have not yet surmounted the most basic obstacle: access.<sup>15</sup>

Although gender gaps typically translate to gender *inequality*, the notion of a global gender digital *divide*, especially when viewed in its broadest sense, seems to be an accurate descriptor of the current state of women’s relationship to ICTs. A more expansive concept of a digital divide comprises three facets: 1) access to ICTs; 2) patterns of skills and usage; and 3) proficiency in achieving results.<sup>16</sup> Including all three aspects of this divide seems to capture the underlying essence of the principle of digital inequality as well.

To be sure, there are hurdles to ICT access that affect both men and women including “technical infrastructure, connection costs, computer literacy and language skills.”<sup>17</sup> Lack of meaningful and substantial access to

11. Cherie Blair Foundation & GSMA Dev. Fund, *Women and Mobile: A Global Opportunity*, 1, 6 (Feb. 16, 2010), [https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/01/GSMA\\_Women\\_and\\_Mobile-A\\_Global\\_Opportunity.pdf](https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/01/GSMA_Women_and_Mobile-A_Global_Opportunity.pdf) Indications are that women typically use less data, fewer apps, and text others less frequently than do men. *See id.*

12. The Greenlining Institute, *Digital Inequality: Information Poverty in the Information Age*, 1, 3 (Sept. 2009), <http://greenlining.org/wp-content/uploads/2013/02/digitalinequality.pdf>; *see also* Laura Robinson et al., *Digital inequalities and Why They Matter*, 18 INFO. & SOC’Y 569, 569 (2015).

13. VIRGINIA EUBANKS, *DIGITAL DEAD END: FIGHTING FOR SOCIAL JUSTICE IN THE INFORMATION AGE* 36 (2012).

14. Paul DiMaggio et al., *From Unequal Access to Differentiated Use: A Literature Review and Agenda for Research on Digital Equality*, 1, 1 (Jan. 2004), <http://www.eszter.com/research/pubs/dimaggio-et-al-digitalinequality.pdf>; *see also* Francesco Amoretti & Clementina Casula, *From Digital Divides to Digital Inequalities*, 1114 (2009), [https://www.academia.edu/7733033/From\\_Digital\\_Divides\\_to\\_Digital\\_Inequalities](https://www.academia.edu/7733033/From_Digital_Divides_to_Digital_Inequalities).

15. Robinson et al., *supra* note 12, at 572–73.

16. *See* Alexander J. A. M. van Deursen & Ellen J. Helsper, *The Third-Level Digital Divide: Who Benefits Most from Being Online?* 10 COMM. AND INFO. TECHN. ANN.: DIGITAL DISTINCTIONS AND INEQ. STUD. IN MEDIA AND COMM., 29, 29–32 (2015) Due to increased penetration of ICTs, attention is now shifting somewhat away from access concerns and emphasizing instead the differences in skills and usage, the second level of the divide. *Id.*; *see generally* Han Ei Chew et al., *supra* note 2.

17. Qudsia Kiran, *Gender Digital Divide; Does it Exist?* DIGITAL (IN)EQUALITY (Mar. 12, 2018), <http://wpmu.mah.se/nmict181group1/gender-digital-divide/>.

ICTs by anyone implicates a deprivation of fundamental human rights, including the freedom of expression, freedom of association, freedom of assembly, and the right to privacy.<sup>18</sup> However, women's access to ICTs is restricted in unique ways because "[e]xisting gender inequality transposes offline divides into the digital space which causes and aggravates the gender digital divide."<sup>19</sup> Since the availability of ICTs facilitates economic empowerment, education, political participation, and social connection, denial of access or reduced access by women has a direct impact on overall gender equality concerns.

This article is composed of five main parts. Part I scrutinizes the benefits of women's meaningful and substantial access to ICTs. In Part II, the barriers to women's involvement with ICTs are briefly examined. The intractable problem of cyberviolence against women and girls ("CyberVAWG") is discussed in Part III. The broader human rights implications of the global gender digital divide are explored in Part IV. In the final section, Part V, two different possibilities are discussed to continue the advancement of women's equality and to promote women's empowerment in digital spaces.

## II. BENEFITS OF WOMEN'S MEANINGFUL AND SUBSTANTIAL ACCESS TO ICTs

The starting point for a discussion on the so-called divide assumes, at least to some degree, that technological advances and innovation are desirable and "distribution of the products of that innovation becomes a major social justice goal."<sup>20</sup> Given its importance to all components of modern life, online access has become coextensive with complete personhood and a source of empowerment.

### A. *Economic and Educational Empowerment*

In the economic area, ICTs improve access to a range of financial services and credit options, provide innovative opportunities for entrepreneurs, facilitate job-seeking, or allow for development of flexible work arrangements from home.<sup>21</sup> In a growing number of countries in the Global South, mobile phones are the exclusive way to conduct financial

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18. See Namita Aavriti & Anri van der Spuy, *Mapping Research in Gender and Digital Technology*, ASSOC. FOR PROGRESSIVE COMM. 1, 56–58 (Jan. 2018), [https://www.apc.org/sites/default/files/IDRC\\_Mapping\\_0323\\_0.pdf](https://www.apc.org/sites/default/files/IDRC_Mapping_0323_0.pdf). The term "meaningful and substantial access" has been chosen to reflect the broader landscape of the freedom and autonomy to use mobile phones or to go online unimpeded.

19. Kiran, *supra* note 17.

20. Eubanks, *supra* note 13.

21. World Wide Web Found., *Women's Rights Online Translating Access into Empowerment* 1, 36 (Oct. 2015) <http://webfoundation.org/docs/2015/10/womens-rights-online21102015.pdf>; see also *Women and the Web*, *supra* note 1, at 32 (where an older woman from West Bengal lauds on-line banking and other financial e-services because "[o]ften the services are not available off-line, or cost more.") [hereinafter World Wide Web Found., *Women's Rights Online*].

transactions and access banking services.<sup>22</sup> One dramatic example of the benefit of mobile phone usage occurred in rural India after the larger currency denominations such as 500 and 1000 rupee notes were demonetized nationwide.<sup>23</sup> A family that was left without the ability to remove sufficient cash from its bank account due to newly imposed restrictions on ATM withdrawals was unable to obtain the required upfront payment for a daughter's emergency C-section.<sup>24</sup> A village woman, who had just learned how to use the Internet a few months earlier, located an app, Paytm, which permitted a direct transfer from the family's previously inaccessible bank account to the doctor's.<sup>25</sup>

A study of women fishmongers in Senegal revealed that mobile phone usage had improved their work lives by reducing travel time, making contacts more readily available, and cementing client loyalties.<sup>26</sup> One interviewee extolled the advantages of having this device and concluded by remarking "if the mobile phone did not exist, we would certainly have needed to invent it . . . ."<sup>27</sup>

In Costa Rica, a university business student won an award for developing an online marketplace where women artisans could sell their goods via the Internet.<sup>28</sup> Its creator explained that e-commerce provides women with the flexibility, time, and opportunity to better balance work and duties in the home.<sup>29</sup> The next step for this project is the development of online courses in business for its users.<sup>30</sup> Similarly, in Burkina Faso, orders for shea butter skincare products made by the Songtaaba (Solidarity in Moré) Women's Association increased by 70% within two years after ICTs were introduced.<sup>31</sup>

Attributing the value of the Internet in helping her to learn skills to make money in the informal economy, one young female user in rural India noted:

I do not go to the beauty parlor for threading or for new hairstyles. Rather I watch the Internet and do them by myself. I even do threading for my friends and make mehendi designs during marriages and this is

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22. See generally M. Kim et al., *Mobile Financial Services, Financial Inclusion, and Development: A Systemic Review of Academic Literature*, EJ. INFO. SYS. DEV. COUNTRIES 1, 1 (2018).

23. Ipsita Agarwal, *The Intrepid Teachers Bringing Internet Access to Women in Rural India*, SMITHSONIAN.COM, (Sept. 18, 2017), <https://www.smithsonianmag.com/innovation/intrepid-teachers-bringing-internet-access-to-women-in-rural-india-180964894/>.

24. *Id.*

25. *Id.*

26. AFRICAN WOMEN & ICTS: INVESTIGATING TECHNOLOGY, GENDER AND EMPOWERMENT, 114 (Ineke Buskens & Anne Webb eds., 2009).

27. *Id.* at 114.

28. Darlena Cunha, *Jazmin Fallas Kerr: Creating Opportunities for Women in Costa Rica*, INTERNET SOC'Y (Apr. 26, 2018), <https://www.internetsociety.org/blog/2018/04/jazmin-fallas-kerr-empowering-women-to-create-opportunities-for-their-families/>.

29. *Id.*

30. *Id.*

31. Sophie Treinen & Alice Van der Elstraeten, *Gender and ICTs: Mainstreaming Gender in the Use of Information and Communication Technologies (ICTs) for Agriculture and Rural Development*, 1, 40 (2018), <http://www.fao.org/3/I8670EN/i8670en.pdf>.

how I earn my pocket money and my expenses. I also use Internet for preparing different food items.<sup>32</sup>

These experiences demonstrate that women's online educational gains can occur in both informal settings as well as in established teaching and learning environments. Formal educational opportunities through ICTs are beneficial for their affordability and inclusiveness.<sup>33</sup> An increasing number of online courses are offered through institutions of higher education in the U.S. where more than 30% of students enroll in at least one online course.<sup>34</sup> At the end of 2017, offerings of 600 free online courses became available from 200 different universities, including some of the most elite U.S. based institutions.<sup>35</sup>

In response to a survey, a female user from Veracruz, Mexico commented, "[t]he Internet is like having a library in your own home."<sup>36</sup> Unlike a brick and mortar location with fixed hours, women can take advantage of the Internet's cyber archive and procure various types of information on their own schedules without public visibility. According to a 2015 assessment of women's Internet behavior, "[h]ealth is the most popular topic for online information-seeking," including material on reproductive health concerns.<sup>37</sup> One group of academic authors notes that digital technology, which allows users to circumvent traditional gatekeepers of medical information, benefits young people in particular.<sup>38</sup>

Phumzile Mlambo-Ngcuka, UN Under-Secretary-General and Executive Director, UN Women, explains that "ICTs can also help to bridge the skills gap by extending the reach of education and literacy to a population that was previously excluded due to a lack of infrastructure or political instability."<sup>39</sup> In 2013, UN Women inaugurated *We Learn—A Virtual Skills School* with a focus on providing a new learning path for women and girls who left school prematurely.<sup>40</sup> The objective is to expedite their re-integration into the formal school environment with a longer-term goal of facilitating

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32. Neelakshi Dutta & Meenakshi Dutta, *A Platform for Women Empowerment by ICT: A special reference to Internet Saathi Scheme by Google and Tata Trust* 237, 245 (2017), <http://dlkksou.inflibnet.ac.in/bitstream/123456789/314/1/p18.pdf>.

33. World Wide Web Found., *supra* note 21, at 29.

34. Julia E. Seaman et al., *Grade Increase: Tracking Distance Education in the United States* 1, 11 (2018), <http://onlinelearningsurvey.com/reports/gradeincrease.pdf>.

35. Dhawai Shah, *200 Universities Just Launched 600 Free Online Courses. Here's the Full List.*, (Nov. 5, 2017), <https://qz.com/1120344/200-universities-just-launched-600-free-online-courses-heres-the-full-list/>.

36. *Women and the Web*, *supra* note 1, at 30.

37. World Wide Web Found., *supra* note 21, at 29.

38. Linda Waldman et al., 'We Have the Internet in our Hands': *Bangladeshi College Students' Use of ICTs for Health Information*, 14 *GLOBALIZATION AND HEALTH* 1, 3 (2018).

39. Phumzile Mlambo-Ngcuka, *Reshaping the future: Women, Girls, ICTs and the SDGs*, in *FAST-FORWARD PROGRESS: LEVERAGING TECH TO ACHIEVE THE GLOBAL GOALS* 1, 41 (Phillippa Biggs ed., 2018).

40. U.N. Women, *Virtual Skills School Information Sheet* (2015), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/virtual-skills-school.pdf?la=en&vs=449>.

their movement into “emerging and non-traditional sectors” as either job seekers or job creators.<sup>41</sup>

The various economic, educational, and social advantages to women through the use of ICTs have been identified through empirical studies that include both statistical data and anecdotal reports from survey respondents.<sup>42</sup> For example, in 2010, GMSA Development Fund partnered with the Cherie Blair Foundation in the U.K. to conduct an expansive survey about mobile phone usage in low and middle income countries.<sup>43</sup> GMSA describes itself as representing “the interests of mobile operators worldwide, uniting more than 750 operators with almost 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organizations in adjacent industry sectors.”<sup>44</sup>

The GMSA final report revealed that “93% of all women surveyed felt safer and more connected with mobile phone access;<sup>45</sup> 85% of female respondents indicated that their mobile phone allowed them to feel more independent;<sup>46</sup> 55% of women business owners related earning additional income due to owning a mobile phone;<sup>47</sup> and 40% of all interviewed women reported that mobile phones have increased their income and professional opportunities.”<sup>48</sup>

Two years later, an Intel Corporation-sponsored report titled *Women and the Web* was released.<sup>49</sup> Dr. Michelle Bachelet, then Under-Secretary-General and Executive Director, UN Women, made a compelling introductory statement in the report about the benefits of closing the online gender gap:

Internet access enhances women’s economic empowerment, political participation and social inclusion through initiatives that support increased productivity and income generation, mobilization and accountability, as well as improved livelihoods, and expansion of services. Multiple pathways to empowerment exist, including the development of social movements, expression of voice and agency, and exposure to information, knowledge and new ideas—all of which are central to creating gender-responsive, adaptive, and innovative societies.<sup>50</sup>

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41. *Id.*

42. *Taking Stock*, *supra* note 3, at 33. More recent commentary on access suggests that mere access is insufficient to close the gender gap; rather, meaningful and substantial access is the key. This includes “digital competencies and applications that have the power to transform individuals’ activities, opportunities, and outcomes.” *Id.*

43. Cherie Blair Found. & GSMA Dev. Fund, *supra* note 11.

44. GSM Association, *About Us*, <https://www.gsma.com/aboutus/>.

45. Cherie Blair Found. & GSMA Dev. Fund, *supra* note 11, at 21–22.

46. *Id.* at 22.

47. *Id.* at 23.

48. *Id.* at 22.

49. *Women and the Web*, *supra* note 1.

50. *Id.* at 5; *see also* U.N. Human Rights Office of the High Commissioner, *About Us* <https://www.ohchr.org/EN/AboutUs/Pages/HighCommissioner.aspx> (last visited Nov. 21,

*Women and the Web* examined the gender digital divide and determined there was a substantial disparity in levels of Internet access by women in the following countries: Egypt (32%); Mexico (34%); India (8%); and Uganda (9%).<sup>51</sup> Overall, more than  $\frac{3}{4}$  of survey respondents in the four countries reported that a primary incentive to get online was furtherance of their education.<sup>52</sup> In addition, many users noted use of the Internet to expand career networks.<sup>53</sup> Further, internet access for many women in the developing world was cited as “a gateway to benefits clustered around empowerment.”<sup>54</sup>

Narrative accounts and photos of individual users are interspersed throughout the Intel report, which puts a human face on the data provided.<sup>55</sup> For example, Cristina Avila-Zessati, a Mexican journalist from Zacatecas, recounts her first exposure to the Internet at a café in Madrid where she was studying.<sup>56</sup> Unlike most of her hometown contemporaries, the Internet became an integral part of Cristina’s life.<sup>57</sup> Two Egyptian female entrepreneurs, Yasmine El-Mehairy and Zeinab Samir, created the website SuperMama to provide advice on pregnancy, motherhood, and a myriad of other topics.<sup>58</sup> It has since expanded to include discussion board postings.<sup>59</sup>

When she was sixteen-years-old, Ravina Gurung from Delhi attended a Feminist Approach to Technology training center where she learned about computers and the Internet.<sup>60</sup> She attributed her newly found self-confidence to her ability to use technology effectively and access information on her own.<sup>61</sup> In Uganda, Ruth Katiiti regularly used the Internet on her mobile phone for multiple purposes such as helping her children with homework, social networking, and obtaining information for her family.<sup>62</sup> She explained that “[t]he Internet has changed my life.”<sup>63</sup>

### B. *Political Participation and Mobilization*

One of the most highly touted advantages of ICTs is the opportunity to mobilize with others across time and across borders. Social networking via the Internet has been identified as providing the opportunity for women to be

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2019). Dr. Bachelet is the current U.N. High Commissioner for Human Rights, which should augur well for continued attention to the issue of improving women’s access to ICTs. *Id.*

<sup>51</sup> *Women and the Web*, *supra* note 1, at 19, 23.

52. *Id.* at 32.

53. *Id.*

54. *Id.* at 36. The authors indicate that “[f]or the purposes of this study, we define ‘empowerment’ as feeling and exerting control over one’s life and identifying and taking advantage of opportunities for self-improvement.” *Id.*

55. *See generally Women and the Web*, *supra* note 1.

56. *Id.* at 56.

57. *Id.*

58. *Id.* at 84.

59. *Id.*

60. *Id.* at 39.

61. *Women and the Web*, *supra* note 1, at 39.

62. *Id.* at 80.

63. *Id.*

externally validated outside their own communities, which allowed them to find the strength to become change agents within their own communities.<sup>64</sup> Similarly, so-called hashtag activism has propelled women into the streets, and also allowed them to participate in protests, boycotts and speak-outs online.<sup>65</sup> From such actions as protesting the withdrawal of funding for the U.S.-based organization Planned Parenthood (#StandwithPP), to a prayer vigil in Madrid that raised awareness about—and provided support to—girls kidnapped by Boko Haram in Nigeria (#BringBackOurGirls), feminists leveraged the advantage of social media's potential to bring women together.<sup>66</sup>

Four Egyptian women, in 2010, launched HarassMap, an anonymous online and SMS-based reporting and mapping technology, to call out sexual harassment and to support an offline community anti-harassment mobilization effort.<sup>67</sup> In Iceland, young feminists, as part of the 2015 women's suffrage centennial celebration, rallied around the cause of gender discrimination and the sexualization of women's bodies by joining an international online campaign to #freethenipple.<sup>68</sup> In 2016, women in Mexico demonstrated against sexual violence, spurred by the personal testimonials of others under #NoEsNo and #MiPrimerAcoso.<sup>69</sup>

Beginning in 2017, an annual Women's March (#WomensMarch), facilitated by social media, has galvanized people to gather on every continent to support women's rights and to push back against the anticipated—and then the actual—sex discriminatory policies of the Trump Administration.<sup>70</sup> Post-Women's March, Black feminist activist Rachel Cargle began using Instagram creatively to engage others in an ongoing discussion about race and feminism by initially calling out liberal white feminists who were ostensibly

64. *Id.* at 40 (citing a quote from Jensine Larsen, the founder of World Pulse).

65. Nisha Chittal, *How Social Media is Changing the Feminist Movement*, MSNBC (last updated Apr. 6, 2015, 11:09 AM), <http://www.msnbc.com/msnbc/how-social-media-changing-the-feminist-movement>.

66. *Id.*

67. HarassMap, *Who We Are*, <https://harassmap.org/who-we-are/our-story> (last visited Nov. 21, 2019).

68. Annadís G Rúdólfssdóttir and Ásta Jóhannsdóttir, *Fuck Patriarchy! An Analysis of Digital Mainstream Media Discussion of the #freethenipple Activities in Iceland in March 2015*, 28 FEMINISM AND PSYCHOL. 133, 134 (2018).

69. See generally Jac sm Kee, *Imagine a Feminist Internet*, 60 DEV. 83, 86–87 (2018) (citing to Nidhi Prakash & Rafa Fernandez de Castro, *Mexican Women Turn Hashtag Protest into Movement Against Violence and Sexual Harassment*, Splinter News (Apr. 25, 2016, 5:25PM), <https://splinternews.com/mexican-women-turn-hashtag-protest-into-movement-against-1793856464>).

70. Anemona Hartocollis & Yamiche Alcindor, *Women's March Highlights as Huge Crowds Protest Trump: 'We're Not Going Away.'* N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/us/womens-march.html>. Some participants joined the Women's March events specifically to highlight Trump's misogyny and harassment of women prior to his assumption of the Office of President. See *id.*; see also Tanner Curtis et al., *Pictures From the 2017 Women's Marches on Every Continent*, N.Y. TIMES (Jan. 23, 2018), <https://www.nytimes.com/interactive/2017/01/21/world/womens-march-pictures.html>.

the allies of women of color.<sup>71</sup> More recently, in 2019, prompted initially by a Twitter comment, Nigerian women rallied at a busy Lagos marketplace and called out “gropers and cat callers,” which resulted in the circulation of an online petition that quickly garnered over 20,000 signatures calling for better enforcement of harassment laws.<sup>72</sup>

In their 2019 book titled *Digital Feminist Activism*, three scholars—two from the U.K. and one from Canada—examine the ways in which feminists are using digital media globally to document their experiences of sexism, misogyny, harassment, and rape culture for purposes of networking, organizing, and reform.<sup>73</sup> Characterized by one academic commentator as a “timely feminist call-to-digital-arms,”<sup>74</sup> the authors conducted interviews with 82 individuals from “diverse international contexts” and reviewed 800 items of digitally based content.<sup>75</sup>

Featuring six case studies that explored social movements across online platforms such as blogs, websites, Facebook, Twitter, and Tumblr, the research disclosed that feminists utilized digital technology in a variety of ways that were multi-layered, neither readily predictable nor static, changing across platforms and over space and time.<sup>76</sup> Although barriers to usage surfaced as well, many activists “developed complex strategies to cope with the various pressures and challenges they encounter.”<sup>77</sup> The authors also discovered that participants in digital campaigns shared feelings of “deep attachment” and “affective bindings.”<sup>78</sup> Ashley Tsai, a student involved with the *Who Needs Feminism?* campaign that began as a class project at Duke University in 2012 and quickly spread to other locales such as India and New Zealand, recounted her experience: “It was truly amazing . . . We really came together and figured out what it was we felt was missing, and work to change that together.”<sup>79</sup> She also acknowledged that the work “does get tiring and . . . it’s definitely emotionally taxing, and you have to take care of yourself.”<sup>80</sup>

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71. Rachel Elizabeth Cargle, *When Feminism is White Supremacy in Heels*, HARPER’S BAZAAR: OPINION (Aug. 16, 2018, 4:20 PM), <https://www.harpersbazaar.com/culture/politics/a22717725/what-is-toxic-white-feminism/>.

72. Linus Unah, ‘Normalised but Not Normal’: Nigerian Women Call Out Groppers and Catcallers, THE GUARDIAN (Feb. 4, 2019, 2:00 EST), <https://www.theguardian.com/global-development/2019/feb/04/normalised-but-not-normal-nigerian-women-call-out-groppers-and-catcallers-market-march-movement-yaba-market-lagos>.

73. KAITLYN MENDES ET AL., DIGITAL FEMINIST ACTIVISM: GIRLS AND WOMEN FIGHT BACK AGAINST RAPE CULTURE 3 (Andrew Chadwick ed., 2019).

74. Tanya Horbeck, *Editorial Review* of KAITLYN MENDES ET AL., DIGITAL FEMINIST ACTIVISM: GIRLS AND WOMEN FIGHT BACK AGAINST RAPE CULTURE (Andrew Chadwick ed., 2019).

75. MENDES ET AL., *supra* note 73, at 3.

76. *Id.* at 5.

77. *Id.*

78. *Id.* at 85.

79. *Id.*

80. *Id.* at 86.

Produced by the Public Religion Research Institute and MTV, in 2018, the report *Diversity, Division, Discrimination: The State of Young America*, was based on information collected from more than 2,000 young people in the U.S. regarding their views on, among other topics, public protests and social and political engagement.<sup>81</sup> Somewhat surprisingly, a majority of all the participants had negative perceptions about recent public protests and marches, describing them as “pointless,” “divisive,” “counterproductive,” or “violent.”<sup>82</sup> Significantly, more young women (44%) than young men (27%) viewed demonstrations and protests in a favorable light.<sup>83</sup> The youthful respondents indicated a greater willingness to be involved in online activism: more than 40% had signed an online petition, posted on social media about an issue, or liked or followed a campaign or organization online.<sup>84</sup>

The report concluded that “young women are more politically and socially engaged than young men” because nearly half of young women indicated signing an online petition or liking or following a campaign compared to 39% of young men.<sup>85</sup> The frequency of involvement in these more passive forms of political and social activism serves to underscore the magnitude of digital technology in lives of young Americans. If the online interest of young women translates into real world activity, it also could mean greater political influence by women at the ballot box and as candidates for public office.

### C. *Development of Voice and Agency*

Closely related to online activism, connecting with others electronically has the capability for women to develop their own voice and agency, and presents an opportunity for broader social inclusion.<sup>86</sup> More than a contemporary version of the 1950s neighborhood coffee klatch, forms of social media allow for exchange of ideas, provision of support, and dispensing of advice among a group of persons within one’s immediate circle and far beyond.

Extrapolating from the concept of *subaltern counterpublics*, a term coined by Professor Nancy Fraser in 1990, the online environment creates a separate sphere for dialogue and connection among historically subordinated groups that lack ready access to the public sphere.<sup>87</sup> As other commentators

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81. See ROBERT P. JONES ET AL., *DIVERSITY, DIVISION, DISCRIMINATION: THE STATE OF YOUNG AMERICA* (Pub. Religion Research Inst. 2018).

82. *Id.* at 17. The report cautions that these results are “highly stratified by race and ethnicity” with a greater number of young people of color responding positively. See *id.*

83. *Id.* at 18.

84. *Id.* at 19.

85. *Id.*

86. Jo Tacchi, *Digital Engagement: Voice and Participation in Development*, *DIG. ANTHROPOLOGY*, 2012, at 1, 3.

87. Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*, 25/26 *SOC. TEXT*, 56, 67 (1990) (“I propose to call these

have noted, the cyberworld allows “duplication of small-scale free spaces removed from the direct control of dominant groups, are voluntarily participated in, and generate the cultural challenge that precedes or accompanies political mobilization.”<sup>88</sup>

For example, the U.K.-based “The Every Day Sexism Project,” initiated in 2012, was designed to collect and post anonymously authored stories of sexism encountered by women.<sup>89</sup> Its mission quickly spread across Europe, garnering support in France under #assez hashtag in France and #gridala in Italy.<sup>90</sup> In 2013, a similar movement began in Germany as a response to misogynistic comments made by politicians running for office at the national level.<sup>91</sup> Within days of its inception, there were more than 57,000 posts detailing women’s experiences with sexism in Germany.<sup>92</sup> Emer O’Toole, a founding member of “The Everyday Sexism Project,” commented on her experience by saying, “I feel like it has changed the world and I feel like I’m part of something that has changed the world. And I don’t care if that’s hyperbole, that’s what it feels like to me and that’s what it looks like to me.”<sup>93</sup>

Increasing women’s participation in public life in countries across the globe can be facilitated through digital technology. For example, a virtual forum under the auspices of iKNOW Politics is designed to encourage women to exchange their thoughts and views on women’s experiences as members of political parties, as legislative representatives, and as leaders in civil society.<sup>94</sup> The forum operates in several languages and provides “opportunities for sharing experiences and good practices between women in politics, activists, practitioners, academics, and policymakers engaged in promoting women’s political participation.”<sup>95</sup>

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*subaltern counterpublics* in order to signal that they are parallel discursive arenas where members of subordinated social groups invent and circulate counterdiscourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs.”). There were references to “real world” *subaltern counterpublics* such as bookstores, conferences, journals, and festivals where U.S. feminists in the late 20th Century gathered to discuss concepts such as sexism, sexual harassment, and acquaintance rape. *See id.*

88. James M. Jasper & Francesca Polletta, *The Cultural Context of Social Movements* in *The Wiley Blackwell Companion to Social Movements* 63, 63 (2018).

89. Laura Bates, *The Everyday Sexism Project: a year of shouting back*, THE GUARDIAN: THE WOMEN’S BLOG (Apr. 16, 2013, 3:00 EDT), <https://www.theguardian.com/lifeandstyle/the-womens-blog-with-jane-martinson/2013/apr/16/everyday-sexism-project-shouting-back>; *see also* EVERYDAY SEXISM PROJECT, <http://everydaysexism.com/> (last visited Nov. 4, 2019).

90. Deanna Zandt, *Germany’s Problem with Women*, FORBES (Feb. 1, 2013, 1:45 PM), <https://www.forbes.com/sites/deannazandt/2013/02/01/germanys-problem-with-women/#10f6c6803f42>.

91. *See generally* Hester Baer, *Redoing Feminism: Digital Activism, Body Politics, and Neoliberalism*, 16 FEMINIST MEDIA STUDIES 17, 17 (2016).

92. *Id.* at 28.

93. Mendes, *supra* note 73, at 85.

94. *See Who are We*, I KNOW POLITICS, <https://www.iknowpolitics.org/en/who-we-are> (last visited Nov. 4, 2019).

95. *E-Discussions*, I KNOW POLITICS, <https://www.iknowpolitics.org/en/discuss/e-discussions> (last visited Nov. 4, 2019).

A recent e-discussion, *The Role of Political Parties in Promoting Women in Politics*, on the iKNOW Politics online forum garnered multiple English-language comments.<sup>96</sup> Opinions were offered by women in Indonesia, the U.S., Israel, and from African countries including Nigeria, Kenya, Ghana, and Sudan.<sup>97</sup> The general theme that emerged was the pervasive undervaluing, marginalization, and subordination of women by political parties and their leadership.<sup>98</sup> Nearly all who posted messages seemed to agree, in one way or another, with the contention of a respondent from Nigeria that “discrimination keeps women at the bottom level of the party hierarchy and outside of the circles where decisions are being made on candidate nomination/selection.”<sup>99</sup> The commonality of the challenges expressed by all participants can give rise to greater online solidarity that transcends borders and political subdivisions.

The numerous gains for women that emerge from meaningful and substantial Internet access continue to grow. Especially for women in less-developed countries, digital technology and the Internet can be a door “to a host of tangible benefits, such as job and education opportunities, and to less tangible opportunities, such as confidence, self-esteem and empowerment.”<sup>100</sup>

### III. BARRIERS TO WOMEN’S ACCESS TO ICTS

The reasons for the inability of women to engage with new technologies are multi-faceted. Awareness is frequently cited because it seems that some women “simply do not know what the Internet is.”<sup>101</sup> Affordability, illiteracy, and lack of facility with the technology are also viewed as preventive obstacles to online access.<sup>102</sup> Cultural norms are named as well: one in five women in India and Egypt indicated that the Internet was not appropriate for them because it was not useful to their lives and because there was the potential for disapproval by family members.<sup>103</sup>

While underscoring the benefits of increasing Internet access, *Women and the Web* also warns of the risk of marginalization for women who fall behind.<sup>104</sup> The recommendations promulgated in the report to increase the availability of ICTs for women are geared toward stakeholders in industry, the development community, and policymakers.<sup>105</sup> The ultimate goal in the

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96. *The Role of Political Parties in Promoting Women in Politics*, I KNOW POLITICS, <https://www.iknowpolitics.org/en/discuss/e-discussions/role-political-parties-promoting-women-politics> (last updated Sept. 19, 2019).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Women and the Web*, *supra* note 1, at 29.

101. *Id.* at 47.

102. *Id.* at 12.

103. *Id.*

104. *Id.* at 34.

105. *Id.* at 14–15.

report's creation was the enhancement of general awareness across the globe that "the Internet serves as a gateway to benefits clustered around empowerment," especially for women in the developing world.<sup>106</sup>

The U.N. Human Rights Council issued a report in 2017, which acknowledged that gender discrepancies "are exacerbated by offline inequalities" and also referred to intersectionality factors that compound the discrimination.<sup>107</sup> The U.N. Human Rights Council report lists the obstacles that women likely encounter in the access to—and the use of—ICTs including: "(a) availability; (b) affordability; (c) sociocultural barriers; (d) legislation, policies or practices; (e) education, capacity and skills development; (f) privacy, security, trust and safety risks; (g) relevant content, applications and services; and (h) ICT development, policy and governance."<sup>108</sup>

These specific ICT impediments for women were initially identified as a result of surveys conducted by the Internet Government Forum ("IGF") and then recounted in its 2016 best practice report *Overcoming Barriers to Enable Women's Meaningful Internet Access*.<sup>109</sup> In 2018, a study conducted for the European Parliament revealed that many of the same ICT obstructions exist for women, even in developed countries.<sup>110</sup>

Despite the extent of the ICT gender gap, most of the barriers to narrowing this divide can be handled through wise policy choices.<sup>111</sup> The identification and calibration of the unique encumbrances to meaningful and substantial access and use of ICTs by women must inform public and private sector decisions about specific ways to remedy this gender gap.<sup>112</sup> To date, policymakers around the world have neglected to address the problem effectively.<sup>113</sup> This may be the result of both the lack of political will and business dis-incentivization.

106. *Women and the Web*, *supra* note 1, at 36.

107. U.N. Human Rights Council, *Promotion, protection, and enjoying of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective*, ¶ 10, U.N. Doc A/HRC/35/9 (May 5, 2017) [hereinafter *HRC Promotion, protection, and enjoying of human rights on the Internet*]; see also Nicole S. Goedhart et al., "Just Having a Computer Doesn't Make Sense": *The Digital Divide from the Perspective of Mothers with a Low Socio-economic Position*, 21 SAGE JOURNALS 2347, 2347 (2019) (examining "the reinforcing factors related to poverty, motherhood, the complexity of ICT and being first-generation immigrant " that affect access in the Netherlands).

108. U.N. Human Rights Council, *supra* note 107, at ¶ 11.

109. *IGF Best Practice Forum on Gender: Overcoming Barriers to Enable Women's Meaningful Internet Access*, INTERNET GOVERNANCE FORUM (2016), [https://intgovforum.org/multilingual/filedepot\\_download/5004/1318](https://intgovforum.org/multilingual/filedepot_download/5004/1318).

110. Dr. Konstantina DAVAKI, *The Underlying Causes of the Digital Gender Gap and Possible Solutions for Enhanced Digital Inclusion of Women and Girls*, POL'Y DEP'T FOR CITIZEN'S RTS AND CONST. AFF., 34–38, (Mar. 2018), [https://cdn.atria.nl/epublications/IAV\\_B00114130.pdf](https://cdn.atria.nl/epublications/IAV_B00114130.pdf).

111. World Wide Web Found., *supra* note 21, at 5.

112. *Id.* at 9.

113. *Id.* at 5.

Gender discriminatory sociocultural norms may be the most deeply entrenched barrier.<sup>114</sup> More than 70% of respondents to the IGF survey mentioned that the impact of cultural norms is an impediment to women's accessing and benefitting from the Internet.<sup>115</sup> However, the most vexing problem is the question of how to deal with cyberviolence, especially when levelled against women and girls. Indeed, the issues of culture, discrimination, and violence against women are intertwined in many ways. Addressing cyberviolence potentially pits liberty and freedom of expression against women's equality and infringement of their basic rights, which further complicates the landscape.

#### IV. THE SPECIAL PROBLEM OF CYBERVIOLENCE AGAINST WOMEN & GIRLS

Although increased ICT access has identifiable benefits for women and girls, there is a "dark side" as well: the heightened probability that females who use ICTs will be subjected to some form of violence. A study of cyberviolence against women and girls ("CyberVAWG") in seven countries revealed the inadequacy of domestic policy approaches and remedies available to survivors of technology-related violence.<sup>116</sup> Identified problems ran the gamut from Bosnia-Herzegovina, where all telephone numbers and addresses are made public, to the issues faced by women in the Philippines who attempt to ferret out anonymous online harassers.<sup>117</sup> The report documented e-mail threats directed toward women by members of paramilitary groups in Colombia as well as sexual cyberviolence attacks by perpetrators in the Democratic Republic of Congo "who, for the most part, were in better control of the technology than the victims."<sup>118</sup>

Although many other barriers to access are slowly being eroded, the issue of cyberviolence and abuse has been characterized by some commentators as "the greatest challenge the Internet faces today," due in large part to its systemic gendered component and its unrelenting nature.<sup>119</sup>

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114. See discussion *infra* notes 340–50 and accompanying text.

115. IGF Best Practice Forum on Gender: *Overcoming Barriers to Enable Women's Meaningful Internet Access*, *supra* note 109, at 105–106.

116. Women's Legal and Human Rights Bureau, Inc., *From Impunity to Justice: Domestic Legal Remedies for Cases of Technology-Related Violence Against Women*, GENDERIT.ORG (Mar. 3, 2015), [https://www.genderit.org/sites/default/files/impunity\\_womens\\_legal\\_dig\\_0.pdf](https://www.genderit.org/sites/default/files/impunity_womens_legal_dig_0.pdf).

117. ASSOCIATIONS FOR PROGRESSIVE COMMUNICATIONS, *Countries*, <https://www.genderit.org/onlinevaw/countries/> (last visited Oct. 4, 2019).

118. *Id.*

119. TECH WITHOUT VIOLENCE, *Cyberviolence*, <https://techwithoutviolence.ca/cyberviolence> (last visited Oct. 4, 2019); see also OTTAWA COALITION TO END VIOLENCE AGAINST WOMEN, *TEDxKanata 2017 Speaker Dillon Black*, <https://www.octevaw-cocvff.ca/events/tedxkanata-2017-speaker-dillon-black> (last visited Oct. 4, 2019) (discussing a TED talk given by Dillon Black who self-describes as "a gender-nonconforming anti-violence activist meets tech feminist media-maker").

One academic commentator notes that “[f]rom its inception, the Internet has had a reputation for misogyny.”<sup>120</sup> In a 2017 report, titled *Unsocial Media: The Real Toll of Online Abuse against Women*, Amnesty International described social media as a “toxic and frightening place for women.”<sup>121</sup> Further, in its section on online violence against women, the 2017 U.N. Human Rights Council report on the gender digital divide expressed heightened concern for the increased risk of severe forms of online violence to girls and women from marginalized groups.<sup>122</sup>

#### A. Terminology and Definitions

Various terms are used to describe this phenomenon including online harassment,<sup>123</sup> online violence,<sup>124</sup> cyber violence against women and girls (“CyberVAWG”),<sup>125</sup> and technology-facilitated gender-based violence.<sup>126</sup> In the 2018 *Report of the UN Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*, Special Rapporteur Dubravka Šimonović acknowledges that “ICT-facilitated violence against women” might be considered the most inclusive term; however, she chooses the phrasing “online violence against women” because it is a more user-friendly formulation.<sup>127</sup> While these naming discrepancies are not necessarily problematic for purposes of conversation, they do present challenges for researchers, especially those who are attempting to measure the prevalence of this violence on a global scale.<sup>128</sup>

The precise definition of cyberviolence and its strictures are also somewhat fluid and multi-layered, which creates difficulties for researchers

120. PAMELA HILL NETTLETON, *The Cyber Abuse of Women on the Internet: Silencing the Female Voice*, in THE ROUTLEDGE HANDBOOK OF DEVELOPMENTS IN DIGITAL JOURNALISM STUDIES 425 (Scott A. Eldridge II & Bob Franklin eds., 1st ed. 2018).

121. Azmina Dhrobia, *Unsocial Media: The Real Toll of Online Abuse Against Women*, MEDIUM (Nov. 20, 2017), <https://medium.com/amnesty-insights/unsocial-media-the-real-toll-of-online-abuse-against-women-37134ddab3f4>.

122. U.N. Human Rights Council, *supra* note 107, at ¶ 17.

123. Maeve Duggan, *Online Harassment 2017*, PEW RES. CTR. (July 11, 2017), <https://www.pewinternet.org/2017/07/11/online-harassment-2017/>.

124. U.N. Human Rights Council, *supra* note 107, at ¶ 34–35.

125. *Taking Stock*, *supra* note 3, at 113; U.N. Broadband Comm’n for Digital Development, *Cyber Violence Against Women and Girls: A World-Wide Wake-Up Call*, at 21 (2015), <https://en.unesco.org/sites/default/files/genderreport2015final.pdf>.

126. Laura Hinson et al., *Technology-Facilitated Gender-Based Violence: What Is It, and How Do We Measure It?*, INT’L CTR. FOR RES. ON WOMEN 1 (2018), [https://www.svri.org/sites/default/files/attachments/2018-07-24/ICRW\\_TFGBVMarketing\\_Brief\\_v8-Web.pdf](https://www.svri.org/sites/default/files/attachments/2018-07-24/ICRW_TFGBVMarketing_Brief_v8-Web.pdf).

127. See Dubravka Šimonović (Special Rapporteur on Violence against Women), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on Online Violence Against Women and Girls from a Human Rights Perspective*, at 15, U.N. Doc. A/HRC/38/47 (June 18, 2018). The Special Rapporteur also observes that the “[t]erminology in this area is still developing and not univocal.” *Id.*

128. *Id.* at 1.

and makes it more challenging to craft possible legal and other remedies to curtail violence in this milieu.<sup>129</sup> Commentators have suggested that “[b]roadly speaking, the concept of cyberviolence is meant to encapsulate the kinds of harm and abuse facilitated by and perpetrated through digital and technological means.”<sup>130</sup> The UN General Assembly, in a 2013 declaration that addressed the protection of women’s human rights defenders, zeroed in on “information-technology-related violations, abuses, discrimination and violence against women” and indicated that these were a “manifestation of systemic gender-based discrimination . . . .”<sup>131</sup> The UN, then, called upon States and business enterprises to fight online violence against women while protecting other rights, such as freedom of expression.<sup>132</sup>

As a starting point, the UN and its entities typically use the definition of violence provided in the Declaration on the Elimination of Violence against Women (“DEVAW”), which is “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts.”<sup>133</sup> DEVAW, with its focus on women’s equality and guarantee of fundamental human rights, mentions the need for protection of women from violence in both public and private spaces, which seems sufficiently broad to encompass cyberspace, even if its drafters did not contemplate the growth and ubiquity of the World Wide Web, then in its nascent stages of development.<sup>134</sup>

Special Rapporteur Šimonović’s report grounds its analysis in anti-discrimination and equality language and extrapolates from the earlier UN-sponsored definitions.<sup>135</sup> She uses this definition of online violence against women: “any act of gender-based violence against women that is committed, assisted, or aggravated in part or fully by the use of ICT, such as mobile

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129. Laura Hinson et al., *Disrupting the Intersection of Technology and Gender-Based Violence*, SEXUAL VIOLENCE RES. INITIATIVE (Dec. 5, 2017), <https://www.svri.org/blog/disrupting-intersection-technology-and-gender-based-violence>; *Cyber Violence Against Women and Girls*, EUROPEAN INST. FOR GENDER EQUALITY 1,1 (June 23, 2017), <https://eige.europa.eu/publications/cyber-violence-against-women-and-girls>. Experts caution against “conceptualizing CyberVAWG as a completely separate phenomenon to ‘real world’ violence, when in fact it is more appropriately seen as a continuum of offline violence.” *Id.* But see Ken White, *Revisiting the UN Broadband Commission’s “Cyberviolence” Report*, POPEHAT (Sept. 28, 2015) <https://www.popehat.com/2015/09/28/revisiting-the-un-broadband-commissions-cyberviolence-report/> (pointing out the difficulties with drafting definitions in this area and criticizing the increased reliance on the police power for monitoring and enforcement).

130. Emma Louise Backe, Pamela Lilleston & Jennifer McCleary-Sills, *Networked Individuals, Gendered Violence: A Literature Review of Cyberviolence*, 5 VIOLENCE AND GENDER 135, 135 (2018).

131. G.A. Res. 68/181, at 3/7 (Jan. 30, 2014).

132. *Id.* at 1/7–6/7.

133. G.A. Res. 48/104, art. 1 (Feb. 23, 1994); U.N. Broadband Comm’n for Digital Development, *supra* note 125, at 21 (2015).

134. See G.A. Res. 48/104, art. 1 (Feb. 23, 1994); see also World Wide Web Found., *History of the Web* (last visited Nov. 8, 2019), <https://webfoundation.org/about/vision/history-of-the-web/>.

135. See Šimonović, *supra* note 21.

phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately.”<sup>136</sup>

Šimonović recognizes that it is challenging to define and categorize all forms of CyberVAWG because developments in technology, including artificial intelligence advances, shift the landscape continually.<sup>137</sup> Nevertheless, she highlights numerous manifestations of online violence against women including digital threats, dissemination of reputation-harming falsities, electronic sabotage, stalking, doxing, sextortion, trolling, so-called revenge porn, mobbing, and harassment.<sup>138</sup>

The Council of Europe’s Cybercrime Convention Committee and its 2018 “Working Group on cyberbullying and other forms of online violence, especially against women and children” also cites the DEVAW definition of violence as the foundation for its work, titled *Mapping Study on Cyberviolence* (“Mapping Study”).<sup>139</sup> The Working Group opted for a definition, which states, “[c]yberviolence is the use of computer systems to cause, facilitate, or threaten violence against individuals that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering and may include the exploitation of the individual’s circumstances, characteristics or vulnerabilities.”<sup>140</sup>

The DC-based International Center for Research on Women (“ICRW”) provides a global definition for technology-facilitated gender violence by declaring that it “is action by one or more people that harms others based on their sexual or gender identity or by enforcing harmful gender norms. This action is carried out using the internet and/or mobile technology and includes stalking, bullying, sexual harassment, defamation, hate speech and exploitation.”<sup>141</sup> The ICRW has worked on developing a conceptual framework that captures the possible motivation, intent, and online behavior of an abuser and the impact and coping and survival mechanisms of the victim.<sup>142</sup>

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136. *Id.* ¶ 23.

137. *Id.* ¶ 24.

138. *Id.* ¶ 31–41.

139. See Council of Europe, *Cybercrime Convention Comm., Mapping Study on Cyberviolence (with Recommendations Adopted by the T-CY on 9 July 2018)*, at 5 n.5 (2018) [hereinafter, *Mapping Study*], <https://rm.coe.int/t-cy-2017-10-cbg-study-provisional/16808c4914> (noting that the DEVAW definition, including the definitions under Article 3 of the Istanbul Convention and Article 1 of the the Belém do Pará Convention, form the basis for regional conventions dealing with violence against women but also recognizing that this working definition is “broad and needs to mature further.”).

140. *Id.* at 5.

141. Hinson *supra* note 126, at 1.

142. *Id.* at 2.

### B. *The Extent of Cyberviolence*

There is a dearth of data about the true extent of CyberVAWG.<sup>143</sup> The authors of the recently-issued *Taking Stock* report characterized the tracking of cyberviolence as “tricky” due to the “evolving nature of technology” and the concomitant opportunities for cyberviolence to develop.<sup>144</sup> The Working Group of the Mapping Study noted that “[g]iven that concepts and definitions are yet to be agreed upon, and that cyberviolence is often a continuum of offline violence, it is difficult to compare different sets of data and to arrive at an overall assessment of the scale and impact of cyberviolence.”<sup>145</sup> Nevertheless, some common indicators are available.

In 2016, a survey regarding violence online against women in India revealed that 58% of respondents acknowledged having encountered “some kind of online aggression in the form of trolling, bullying, abuse or harassment.”<sup>146</sup> While 30% characterized being subjected to abuse online as “extremely upsetting”, 15% recounted effects on their personal well-being with manifestations of “depression, insomnia, and stress.”<sup>147</sup> Survey designers found it troubling that no action was taken by 36% of those who had experienced this harassment.<sup>148</sup> Conversely, others blocked abusive accounts or reported the actions to the social media platforms.<sup>149</sup>

These findings in India comport with experiences of women in other locales who, despite having been harassed online, did nothing and provided explanations for their inaction such as “it’s not worth reporting,” “it happens all the time,” and “authorities don’t care.”<sup>150</sup> One woman from a focus group in Bogota, Colombia stated:

I’ve submitted complaints to Facebook and Twitter, but the response has been non-existent. The authorities act very poorly. That is causing self-censorship . . . I’ve also changed my habits: I closed my Facebook account because I saw it was a more hostile environment. I control more than before what I say, where and with who I am. I feel more intimidated and more vulnerable [on social networks].<sup>151</sup>

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143. *Taking Stock*, *supra* note 3, at 114.

144. *Id.*

145. *Mapping Study*, *supra* note 139, at 14.

146. JAPLEEN PASRICHA, FREEDOM HOUSE, “VIOLENCE” ONLINE IN INDIA: CYBERCRIMES AGAINST WOMEN & MINORITIES ON SOCIAL MEDIA (2016), [https://feminisminindia.com/wp-content/uploads/2016/05/FII\\_cyberbullying\\_report\\_website.pdf](https://feminisminindia.com/wp-content/uploads/2016/05/FII_cyberbullying_report_website.pdf).

147. *Id.*

148. *Id.*

149. *Id.* (noting that some distrusted these platforms and “didn’t report [the harassment] to Facebook because their policies hardly find any [abusive behaviour] wrong. Right now, Facebook objects only to women’s nipples[.]”) (quoting one respondent).

150. World Wide Web Found., *supra* note 21, at 39.

151. *Id.* at 40.

A 2017 Amnesty International poll of women in eight countries (Denmark, Italy, New Zealand, Poland, Spain, Sweden, the UK, and the U.S.) revealed that 23% had encountered online abuse or harassment with a quarter of those reporting threats of assault either physical or sexual.<sup>152</sup> A significant percentage of these women expressed apprehension when thinking about going online, which also resulted in changes to their usage, particularly, of social media platforms.<sup>153</sup>

A Pew Research Center survey (“Pew survey”), also conducted in 2017, reported that 41% of Americans had personally experienced online harassment and 66% indicated that they had witnessed forms of cyberspace harassment levelled against others.<sup>154</sup> The Pew Center defines this type of harassment as: 1) making physical threats; 2) stalking; 3) harassment over a sustained period; 4) sexual harassment; 5) offensive name-calling online; or 6) intentional efforts to embarrass someone.<sup>155</sup> Moreover, 62% of those surveyed considered online harassment to be a serious problem “regardless of the severity of their personal experiences with online abuse.”<sup>156</sup>

Although more men (44%) than women (37%) reported being subjected to at least one of the six types of harassment, there were significant variations in their specific experiences and the lingering impact of the harassment.<sup>157</sup> Young women, in particular, were more than twice as likely than men to deal with sexualized forms of abuse, to the extent that, more than 50% of young women had received unwanted explicit images.<sup>158</sup> In terms of reactions to online harassment, 35% of women viewed their most recent encounter to be either “extremely” or “very upsetting” while only 16% of men felt similarly.<sup>159</sup>

### C. *Addressing the Ongoing Threat of CyberVAWG*

Having identified CyberVAWG as detrimental and a deterrent to women’s full and equal participation in ICT-facilitated activities, the question remains: what should be done about this problem? Special Rapporteur Šimonović opts for a strategy that comprises prevention, protection, prosecution, punishment, and provision of reparations that is often suggested

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152. Dhrodia, *supra* note 121, at 2.

153. *Id.* at 10/19–12/19; see also Anastasia Powell & Nicola Henry, *Technology-Facilitated Sexual Violence Victimization: Results From an Online Survey of Australian Adults*, 34 J. OF INTERPERSONAL VIOLENCE 1, 1 (2016) (citing an online survey of nearly 3000 Australian adults, revealing that “although women and men report experiencing similar overall prevalence of [online] victimization, the nature and impacts of those experiences differ in particular gendered ways that reflect broader patterns in both gender relations and “offline” sexual harassment.”).

154. Maeve Duggan, *Online Harassment 2017*, PEW RES. CTR. (2017), <https://www.pewInternet.org/2017/07/11/online-harassment-2017/>.

155. *Id.* at 4.

156. *Id.* at 9.

157. *Id.* at 7.

158. *Id.*

159. *Id.*

to deal with real world violence against women.<sup>160</sup> Using the approaches and achieving the results identified by Special Rapporteur Šimonović is more complicated when the purported violent activity occurs across borders—and perhaps even more so when it is perceived as a speech rather than a conduct issue.<sup>161</sup>

Not all countries have the same degree of fealty to the vigorous protection of freedom of speech provided by the First Amendment to the U.S. Constitution.<sup>162</sup> Under section 230 of the U.S. Communications Decency Act (“CDA”), information service providers, websites, and search engines are provided immunity from liability for user-generated content, which seemingly limits available remedies for those subjected to abuse seeking monetary compensation.<sup>163</sup>

In Canada for example, a man was charged with criminal harassment for “trolling” two feminists on Twitter.<sup>164</sup> These women activists had urged their followers to contact and to protest to the creator of an online game, which was designed to encourage participants to repeatedly punch the avatar of a well-known female gamer in the face.<sup>165</sup> The accused claimed that he had not made statements of a violent or sexually threatening nature toward the activists; however, the Crown prosecutor was willing to pursue this case.<sup>166</sup> Although the defendant was ultimately found “not guilty,” the situation provided an opportunity for public engagement in a broader dialogue about online harassment.<sup>167</sup>

European countries have taken greater strides toward addressing CyberVAWG due in part to the availability of Council of Europe treaties including The Budapest Convention on Cybercrime and its additional

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160. See Šimonović, *supra* note 127, ¶¶ 66–70; see generally OXFORD UNIV. PRESS, *COMPARATIVE PERSPECTIVES ON GENDER VIOLENCE: LESSONS FROM EFFORTS WORLDWIDE* (Rashmi Goel & Leigh Goodmark eds., 2015). While Šimonović’s approach remains a predominant methodology across the globe, anti-carceral feminists have decried the use of state power and the automatic alignment of anti-violence advocates with law enforcement and the criminal justice system without paying sufficient heed to the agency and choices of individual women subjected to abuse. See *id.*

161. See Nicola Lucchi, *Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression*, 19 CARDOZO J. OF INT’L & COMP. LAW, 645, 646 (2011) (making the point that computer-mediated communication is beyond the control of the nation-state).

162. U.S. CONST. amend. I.

163. 47 U.S.C. § 230 (2012). This immunity does not extend to violations of federal criminal statutes or intellectual property laws. See *id.* § 230(e).

164. Flannery Dean, *Can Online Harassment Result in IRL Jail Time?*, FLARE: TV AND MOVIES (Jan. 22, 2016), <https://www.flare.com/tv-movies/gregory-alan-elliott-twitter-harassment/>.

165. *Id.*

166. *Id.*

167. *Id.*

protocol,<sup>168</sup> The Istanbul Convention,<sup>169</sup> and The Lanzarote Convention.<sup>170</sup> These three instruments have the potential to address the cyberviolence issue from various angles in ways that can be helpful to victims. The Council of Europe's 2017 Mapping Study and the 2018 European Parliament's 2018 study on cyberviolence and hate speech online against women highlight the relevant domestic laws of countries throughout the region.<sup>171</sup> The latter study recognizes that "Member States' laws addressing cyber violence and hate speech online against women vary and reflect their societies' perceptions and stands on gender equality and violence against women."<sup>172</sup>

While the occurrence of CyberVAWG might not be framed as a classic human rights issue since the violence is usually perpetrated by private actors, some observers do use human rights discourse to urge remedies to address this problem.<sup>173</sup> This encompasses a recognition by States and intermediaries that online violence against women is "grounded in discrimination," which thwarts the opportunity for women to participate fully in Internet spaces.<sup>174</sup> If the basis for possible regulation stems from historical inequality concerns based on race, ethnicity, or religion, then gender should qualify for similar treatment as well.<sup>175</sup> The principle of due diligence, as interpreted in the international realm, requires States to take reasonable steps to address discrimination against women, which includes violence perpetrated against them, , even in the case of non-State actors.<sup>176</sup>

Professor Danielle Keats Citron, author of the book titled *Hate Crimes in Cyberspace*, admits that pursuit of a law-related agenda to deal with these situations, especially in the U.S., will not necessarily be the most expeditious

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168. Convention on Cybercrime, Nov. 23, 2001, C.E.T.S. No. 185.

169. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, May 11, 2011, C.E.T.S. No. 210.

170. Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, Oct. 25, 2007, C.E.T.S. No. 201.

171. Mapping Study, *supra* note 139, at 54–100; Adriane Van Der Wilk, *Cyber Violence and Hate Speech Online Against Women* 1, 50 (Aug. 2018), [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL\\_STU\(2018\)604979\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU(2018)604979_EN.pdf).

172. Adriane Van Der Wilk, *supra* note 171, at 10. Upon close examination, few specific laws deal with cybercrimes directly, although existing laws can be interpreted to include the cyberworld context. *See id.*

173. Kim Barker & Olga Jurasz, *Gender, Human Rights, and Cybercrime: Are Virtual Worlds Really That Different?* in *LAW AND POPULAR CULTURE: INTERNATIONAL PERSPECTIVES* 90 (Michael Asimov, Kathryn Brown, & David Ray Papke, eds., 2014).

174. Zarizana Abdul Aziz, *Due Diligence and Accountability for Online Violence Against Women* 1, 18 (July 2017), <http://duediligenceproject.org/wp-content/uploads/2019/05/Paper-on-Due-Diligence-and-Accountability-for-Online-Violence-against-Women-make-this-active-link.pdf>.

175. Barker & Jurasz, *supra* note 173, at 90.

176. U.N. Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 36, U.N. Doc. C/GC/28 (Dec. 16, 2010); *see generally* Robert P. Jr. Barnidge, *The Due Diligence Principle under International Law*, 8 INT'L COMM. L. REV. 81 (2006).

path.<sup>177</sup> Instead, she recommends that “digital gatekeepers” take steps to address cyberviolence through mechanisms such as “terms-of-service agreements and community guidelines.”<sup>178</sup> Citron recognizes that a sizeable resource commitment would be required to bring this to fruition and calls upon users to be norm enforcers as well.<sup>179</sup> She expresses skepticism about certain suggested approaches such as the adoption of real-name policies by providers because harassers, for example, would likely find work-arounds while those subjected to abuse might be deterred from seeking online assistance.<sup>180</sup>

Citron also understands and appreciates the impact of cyberviolence on women’s equality.<sup>181</sup> She states, “[t]he Internet and its potential as an engine of equality has all too often reflected and reinforced the power imbalances of our offline experiences. Eradicating bigoted cyber harassment is going to be a difficult task.”<sup>182</sup> Finally, Citron believes it is critical to maintain the joint efforts of advocacy groups and individuals to create a “cyber civil rights legal agenda” while attempting to change societal attitudes that currently tend to minimize the harm of online harassment.<sup>183</sup>

In her human rights focused report, U.N. Special Rapporteur Šimonović, underscores the significance of attaining gender equality and “eliminating violence against women in public and private life” and in all spaces, including the online environment.<sup>184</sup> Šimonović, characterizes online violence against women as “a human rights violation and a form of discrimination against women.”<sup>185</sup> She views ICTs as having the potential to facilitate this work and calls upon stakeholders, States, and intermediaries to cooperate in formulating an effective response to cyberviolence.<sup>186</sup>

Looking to the private sector, Šimonović, calls upon Internet providers, first and foremost, to uphold the principle of protecting human rights online.<sup>187</sup> Her concrete suggestions center on adoption of complaint mechanisms to report online violence, provision of terms-of-service and reporting tools, and enhanced security and privacy measures.<sup>188</sup> Šimonović, proposes a potpourri of civil and criminal approaches for States to adopt, including several remedies that rely on the criminal justice system and law enforcement for their implementation.<sup>189</sup>

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177. DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE 226 (2014).

178. *Id.* at 230.

179. *Id.* at 236.

180. *Id.* at 239.

181. *Id.* at 254.

182. *Id.* at 253.

183. CITRON, *supra* note 177, at 254.

184. Šimonović, *supra* note 127, ¶ 89.

185. *Id.* ¶ 93.

186. *Id.* ¶ 91.

187. *Id.* ¶ 115.

188. *Id.* ¶¶ 116–118.

189. *See id.* ¶ 100 (hold perpetrators liable); ¶ 101 (prohibit and criminalize online violence); ¶ 102 (avoid secondary victimization of women through processes); ¶ 105 (training

Her report also recommends methods such as: 1) the provision of legal aid to victims;<sup>190</sup> 2) the availability of injunctive relief;<sup>191</sup> 3) the issuance of civil protection orders;<sup>192</sup> 4) the creation of reparation measures;<sup>193</sup> and 5) the development of “enhanced education, outreach, and gender-sensitive training” mechanisms.<sup>194</sup> Regardless of the role of government, intermediaries, programmers, and industry representatives, it is imperative that advocates and activists working on issues affecting women subjected to violence are active participants about the ways to deal with CyberVAWG.<sup>195</sup>

#### D. *Other Approaches: Forms of Informal Justice*

In a training session on using ICTs to combat violence against women in a remote area of Uganda, one participant recounted how women in previous generations would climb to the top of an anthill in the village and shout about their husbands’ abuse and the beatings they endured with the expectation that shame would change the problematic spousal behavior.<sup>196</sup> Foregoing the traditional naming, blaming, and shaming approach, women in this community have now learned to use SMS technology to contact local leaders and others from the area to document these acts of gender-based violence against women.<sup>197</sup>

Social media and online platforms provide a forum for women to tell their stories, sometimes for multiple purposes. For example, a spin-off of the Hollaback! Movement,<sup>198</sup> which focuses on ending harassment in all its forms, the #HeartMob project, provides the opportunity for those subjected to online harassment to report and document the abuse across platforms, to contact allies, and to reach out to get the kind of community support that is needed.<sup>199</sup> This project occupies a space between using ICTs primarily as an activism tool to end violence against women and using ICTs to seek some form of justice for those who have already been subjected to violence.

In 2003, Tarana Burke founded a non-profit organization to assist teen girls who had experienced sexual harassment or sexual assault and she

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for lawyers, judges, and law enforcement); ¶ 106 (develop protocols and codes of conduct for law enforcement).

190. Šimonović, *supra* note 127, ¶ 103.

191. *Id.*

192. *Id.* ¶ 104.

193. *Id.* ¶ 108.

194. *Id.* ¶ 110.

195. *See* Jac sm Kee, *supra* note 69, at 84.

196. Loyce Kyogabirwe, *Anthills to Airwaves*, in *WORLD PULSE: WOMEN WEAVE THE WEB, RECOMMENDATIONS FOR WOMEN’S DIGITAL EMPOWERMENT: A SUMMARY OF GLOBAL DISCOVERIES*, 14 (2015), [https://issuu.com/worldpulse/docs/www\\_recommendations\\_package](https://issuu.com/worldpulse/docs/www_recommendations_package) (last visited Oct. 4, 2019).

197. *Id.*

198. HOLLABACK!, *Who We Are*, ABOUT, <https://www.ihollaback.org/about/> (last visited Oct. 4, 2019).

199. I HEART MOB, <https://iheartmob.org/about>.

subsequently gave her work a slogan in solidarity: Me Too.<sup>200</sup> She hoped perhaps one day the phrase might appear on a bumper sticker as a sort of secret bat signal to connect survivors; however, she could not have predicted that 10 years later, thanks to the Internet and social media, #MeToo would become a viral movement.<sup>201</sup> Many contributors to this campaign simply want to be heard and to tell their stories, to provide support and solidarity to others, to seek empathy, and not to demand specific consequences for the harasser.<sup>202</sup>

Other #MeToo survivors may be interested in pursuing a form of restorative justice that allows return to a space, pre-incident, which then enables them to feel whole and empowered.<sup>203</sup> While this may look different to different people, restorative justice mechanisms typically share certain features such as acknowledgment, responsibility-taking, harm repair, non-repetition, and reintegration.<sup>204</sup> In their recent article on this topic, University of Illinois Law professors Lesley Wexler, Jennifer Robbennolt, and Colleen Murphy draw from the insights of transitional justice to provide direction to reform efforts in the area of sex discrimination and harassment.<sup>205</sup> They urge movement leaders and participants to consider a range of strategies to address sexual misconduct and to pay particular attention to the #MeToo experiences of marginalized women.<sup>206</sup>

A trio of Australian academics recently examined the phenomenon of the so-called survivor selfie whereby women subjected to abuse—or their friends—post photos online of the injuries sustained during the violent episode.<sup>207</sup> The researchers explore the principal rationales behind posting the graphic images: naming and shaming offenders, awareness-raising, and justice seeking.<sup>208</sup> Terming the widespread attention received by some of these postings as a representation of “viral justice,” they examine the factors that contribute to the vitality of certain images and not others.<sup>209</sup> While

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200. Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html>.

201. Emma Brockes, *#MeToo Founder Tarana Burke: “You have to use your Privilege to Serve Other People”*, (Jan. 15, 2018), <https://www.theguardian.com/world/2018/jan/15/me-too-founder-tarana-burke-women-sexual-assault>.

202. Lesley Wexler, *2018 Symposium Lecture: #MeToo and Procedural Justice*, 22 RICH. PUB. INT. L. REV. 13, 18 (2019).

203. Lesley Wexler & Jennifer Robbennolt, *#MeToo and Restorative Justice*, 25(2) DISP. RES. MAG. 16, 16 (2019).

204. *Id.* at 17.

205. Lesley Wexler, Jennifer Robbennolt, and Colleen Murphy, *#MeToo, Time’s Up, and Theories of Justice*, 2019 U. ILL. L. REV. 45, 103–109.

206. *Id.*; see also Nora Stewart, *The Light We Shine into the Grey: A Restorative #MeToo Solution and an Acknowledgment of Those #MeToo Leaves in the Dark*, 87 FORDHAM L. REV. 1693 (2019).

207. Mark Wood, Evelyn Rose, and Chrissy Thompson, *Viral Justice? Online justice-seeking, intimate partner violence and affective contagion*, 23(3) THEORETICAL CRIMINOLOGY 375, 376 (2019).

208. *Id.* at 378–79.

209. *Id.* at 387.

acknowledging the possible therapeutic benefit of these postings, they question whether IPV survivor selfies “reproduce limiting representational frameworks, ignore less visible forms of IPV and obscure its cultural and structural underpinnings,” which warrants greater scrutiny of the benefits for both affected individuals and society.<sup>210</sup>

#### E. *Possible Backlash*

Although offering personal testimonials can be cathartic and empowering for their creators, concerns about due process for the alleged perpetrators might prompt caution in circumventing the existing formal justice processes.<sup>211</sup> However, as one academic commentator has observed, the fact that women and girls choose to pursue redress by way of these online forums indicates their perception of the inadequacies of the formal system’s response to sexual violence.<sup>212</sup>

In the U.S., civil rights attorneys have identified multiple systemic deficiencies such as: 1) burdens of proof that are too high in sexual harassment cases; 2) statutes of limitations that are too short; 3) court decisions at all levels that allow broad defenses for employers; 4) caps on compensatory and punitive damages; 5) the dearth of laws to protect domestic workers, contract employees and unpaid interns; and 6) ineffective, complicated, and unwieldy internal reporting procedures to Human Resources departments.<sup>213</sup> Under some circumstances, women who opt to use the formal legal system may feel re-victimized by the process and its participants.<sup>214</sup>

In this age of the viral video, the viral post, and the viral tweet, attention is needed with respect to the use of informal justice methods. With screen capture, something briefly available in cyberspace could be permanently recorded for posterity. Heightened awareness should also be paid to the fact that many forums allow public discourse or comments. The victim-blaming

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210. *Id.*

211. *Id.*

212. Michael Salter, *Justice and Revenge in online counter-publics: Emerging responses to sexual violence in the age of social media*, CRIME, MEDIA, CULTURE, 5 (2015), [https://www.researchgate.net/publication/289327874\\_Justice\\_and\\_revenge\\_in\\_online\\_counter-publics\\_Emerging\\_responses\\_to\\_sexual\\_violence\\_in\\_the\\_age\\_of\\_social\\_media/link/56c4095e08ae8a6fab5a36cc/download](https://www.researchgate.net/publication/289327874_Justice_and_revenge_in_online_counter-publics_Emerging_responses_to_sexual_violence_in_the_age_of_social_media/link/56c4095e08ae8a6fab5a36cc/download); see also Anastasia Powell, *Seeking Rape Justice: Formal and informal responses to sexual violence through technosocial counter-publics*, THEORETICAL CRIMINOLOGY (2015) (examining the “various ways in which communication technologies are mediating new social practices of informal justice in response to rape.”).

213. Lynne Bernabei & Devin Wrigley, *The New Social Media and Crowdsourcing Campaigns to Stop Sexual Harassment*, available at: <https://www.bernabeipllc.com/Articles/The-New-Social-Media-And-Crowdsourcing-Campaigns-To-Stop-Sexual-Harassment.shtml>.

214. *Id.*

comments made by outsiders in an open forum context could have a negative impact on the well-being and self-esteem of women subjected to violence.<sup>215</sup>

A recent research study reviewed the content analysis of posts made in response to allegations of domestic abuse levelled at film actor Johnny Depp by his then-wife, Amber Heard, who is a model and actress.<sup>216</sup> Conducted in part to gauge public discourse about IPV accusations, the study also categorized the 400 comments analyzed to ascertain if they constituted victim-blaming or perpetrator-blaming; 37% fell into the former category and only 9% into the latter.<sup>217</sup> Obviously, the celebrity status of the couple cannot be discounted since fans may have had preconceived notions about the individuals involved.<sup>218</sup> Heard penned an op-ed on domestic abuse in the Washington Post in December 2018 without specifically naming Depp, but alluding to their violent relationship.<sup>219</sup> Depp then filed a \$50 million defamation suit against Heard, averring that she was the hostile party.<sup>220</sup>

A 2018 article in the Guardian proclaimed that “[d]efamation cases have exploded around the world in response to sexual misconduct allegations.”<sup>221</sup> The article details more than ten such lawsuits in five different countries involving high profile plaintiffs, highlighting the case of Australian actor Geoffrey Rush who claimed that the *Nationwide New*, a tabloid newspaper published by Rupert Murdoch, wrongly depicted the actor as having engaged in inappropriate conduct involving a female co-star.<sup>222</sup> He was awarded the equivalent of a record \$2 million USD after a bench trial that concluded in May 2019.<sup>223</sup> This outcome dealt a blow to the Australian #MeToo movement where, according to advocates, “the country’s strict defamation laws have helped keep it from gaining steam.”<sup>224</sup>

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215. Jason B. Whiting et al., *Online Blaming and Intimate Partner Violence: A Content Analysis of Social Media Comments*, 24(1) *THE QUALITATIVE REPORT* 78, 81 (2019).

216. *Id.* at 79.

217. *Id.* at 85–6, 89.

218. *Id.* at 90.

219. Amber Heard, *Amber Heard: I spoke up against sexual violence —and faced our culture’s wrath. That has to change*, *WASHINGTON POST* (Dec. 18, 2018), [https://www.washingtonpost.com/opinions/ive-seen-how-institutions-protect-men-accused-of-abuse-heres-what-we-can-do/2018/12/18/71fd876a-02ed-11e9-b5df-5d3874f1ac36\\_story.html](https://www.washingtonpost.com/opinions/ive-seen-how-institutions-protect-men-accused-of-abuse-heres-what-we-can-do/2018/12/18/71fd876a-02ed-11e9-b5df-5d3874f1ac36_story.html).

220. Eriq Gardner, *Johnny Depp’s \$50M Defamation Suit Against Amber Heard Allowed in Virginia*, *THE HOLLYWOOD REPORTER* (July 26, 2019, 8:45 AM), <https://www.hollywoodreporter.com/thr-esq/johnny-depps-50m-defamation-suit-amber-heard-allowed-virginia-1227186>. At the time of authorship, the lawsuit was still pending, despite Heard’s claims of forum shopping by Depp. *Id.*

221. Richard Ackland, *#MeToo has led to an Asphyxiating Vortex of Litigation*, *THE GUARDIAN* (Apr. 3, 2018), <https://www.theguardian.com/commentisfree/2018/apr/03/metoo-has-led-to-an-asphyxiating-vortex-of-litigation>.

222. *Id.*

223. Clarissa Sebag-Montefiore, *Geoffrey Rush Awarded \$2 Million in Defamation Case, a Record for Australia*, *N.Y. TIMES* (May 23, 2019), <https://www.nytimes.com/2019/05/23/world/australia/geoffrey-rush-defamation.html>.

224. *Id.*

Proving defamation in the U.S. is more difficult for allegedly defamed plaintiffs because the law favors defendants, such as those women survivors who have publicly blogged or posted about problematic behavior of specific individuals on social media platforms.<sup>225</sup> At the same time, there is less risk in initiating an action in the U.S. courts because, unlike other countries, fee-shifting rarely happens in civil matters.<sup>226</sup> The threat of a financially and emotionally draining protracted litigation alone may operate as a deterrent to relating incidents of sexual assault or criminal misconduct on social media.<sup>227</sup>

In some instances, forms of backlash might be directly punitive. For example, a Jamaican female activist was arrested after identifying perpetrators of gender-based violence on social media and was charged with violation of the Cybercrime Act on “malicious communication,” which was enacted in part to combat online violence against women.<sup>228</sup> In other circumstances, so-called cyber mobs can turn on family and friends of the victim by threatening them as well.<sup>229</sup> These secondary attacks could compound the feelings of guilt and shame experienced by many subjected to cyber abuse.<sup>230</sup>

#### F. *Countering Violence against Women by Using ICTs*

On a more positive note, while the possibility of being subjected to cyberviolence can constrain women’s Internet usage, researchers have also found that digital technologies have the potential to provide web-based interventions to counteract violence against women.<sup>231</sup> These include “mobile device applications (apps) and websites providing information on services for survivors of violence, safety assessment and planning tools, relationship support interventions, and interventions promoting perpetration-related behavior changes for men.”<sup>232</sup>

More recently, Canadian researchers, who were concerned about intimate partner violence (“IPV”) perpetrated against immigrant women,

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225. DAN B. DOBBS, PAUL T. HAYDEN, ELLEN M. BUBLICK, *HORNBOOK ON TORTS* 971 (2nd ed. 2016).

226. Joel Feldman et al., *Reinventing the Practice of Law Fee-Shifting*, AM. BAR ASS’N: STANDING COMM. ON THE DELIVERY OF LEGAL SERVICES, [https://www.americanbar.org/groups/delivery\\_legal\\_services/reinventing\\_the\\_practice\\_of\\_law/](https://www.americanbar.org/groups/delivery_legal_services/reinventing_the_practice_of_law/).

227. Joanne Sweeny, *You can be Sued for Sharing your #MeToo Story?*, SALON (Dec 16, 2017), <https://www.salon.com/2017/12/16/can-you-be-sued-for-sharing-your-metoo-story/>.

228. Dhanaraj Thakur & Lauran Potter, *React with Gender-Responsive ICT Policy: the Key to Connecting the Next 4 Billion*, at 9 (Jan. 8, 2019) <https://webfoundation.org/docs/2017/09/REACT-with-Gender-Responsive-ICT-Policy.pdf>.

229. CITRON, *supra* note 177, at 116.

230. Beverly Engel, *Why Don’t Victims of Sexual Harassment Come Forward Sooner?*, PSYCHOLOGY TODAY (Nov. 16, 2017), <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201711/why-dont-victims-sexual-harassment-come-forward-sooner>.

231. Rachel Jewkes & Elizabeth Dartnall, *More Research is Needed on Digital Technologies in Violence Against Women*, 4 THE LANCET 270 (June 2019), [https://www.thelancet.com/pdfs/journals/lanpub/PIIS2468-2667\(19\)30076-3.pdf](https://www.thelancet.com/pdfs/journals/lanpub/PIIS2468-2667(19)30076-3.pdf).

232. *Id.*

commenced an ethnographic study of the ways that the survivors of violence accessed and used ICTs to seek assistance or to escape their batterers.<sup>233</sup> Although no definitive pattern emerged, apart from the fact that those who seemingly benefitted most had some exposure to higher education, the researchers threw down the gauntlet for further study of significant correlations and for the potential of ICTs to facilitate obtaining necessary services by those subjected to abuse.<sup>234</sup>

Starting from the premise that IPV is a public health problem, a team of nursing and health sciences professors at the University of Pittsburgh launched a pilot study of women in Pennsylvania who had separated from their abusers and obtained protection from abuse (PFA) orders.<sup>235</sup> Participants received either an online e-mail or face-to-face intervention tool to reduce the harmful effects of IPV.<sup>236</sup> The material comprised six modules that presented information about personal thoughts and emotions, health, interpersonal relationships and healing, safety, legal matters, and empowerment.<sup>237</sup> Post-instruction assessment revealed that the participants who received the intervention via e-mail showed “consistent significant improvements in all outcome measures” while those in the face-to-face group showed “less consistent significant improvements.”<sup>238</sup> These results, in conjunction with the observations of previous researchers, led to the conclusion that the Internet provides a protected environment that allows IPV survivors to maintain a greater sense of control without risking possible disapproval of the in-person instructors.<sup>239</sup>

Canadian Health Sciences faculty members assessed various online interventions and examined the content of information that was provided to abused women at different stages of their individual processes in extricating themselves from an IPV situation.<sup>240</sup> While recognizing that ICTs, especially smartphones, have allowed easier access to services and supports, the authors opine that the IPV-focused studies to date have not adequately captured the efficacy of interventions.<sup>241</sup> The authors did conclude that the interventions under their review seemed to center on “safety planning for those who were

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233. Arshia U. Zaidi, Shanti Fernando & Nawal Ammar, *An Exploratory Study of the Information Communication Technology (ICT) or Computer Mediated Communication (CMC) on the Level of Violence and Access to Service Among Intimate Partner Violence (IPV) Survivors in Canada*, 41 *TECH. IN SOC'Y* 91 (2014).

234. *Id.* at 95–96.

235. Rose E. Constantino *et al.*, *Comparing Online with Face-to-Face HELLP Intervention in Women Experiencing Intimate Partner Violence*, 36(6) *ISSUES IN MENTAL HEALTH NURSING* 430 (2015).

236. *Id.* at 433–34.

237. *Id.*

238. *Id.* at 437.

239. *Id.*

240. Ebony Rempel *et al.*, *Intimate Partner Violence: A Review of Online Interventions*, 44(2) *INFORMATICS FOR HEALTH & SOC. CARE* 204 (2019).

241. *Id.* at 205.

leaving or preparing to leave an abusive relationship”<sup>242</sup> The online information pertinent to women who had already left an abusive relationship was meager, which was noted as an area for further development, attention, and research.<sup>243</sup>

In a broad analysis across twenty countries, University of Pennsylvania researchers noted a strong correlation between household ownership of ICTs and women’s rejection of the justifications for domestic violence against women.<sup>244</sup> This finding builds on a previous World Health Organization (“WHO”) finding of a correlation between women who were more accepting of “wife-beating” and their actual experience of IPV in thirteen of fifteen research locales.<sup>245</sup> In the University of Pennsylvania study, greater access to knowledge online seemingly led to women’s empowerment and their viewing traditional gender roles differently.<sup>246</sup> After issuing caveats such as the fact that ownership of ICTs does not necessarily translate into access to those devices and stressing the difference between causality and association, the authors suggest that the increase in the number of ICTs globally could result in positive changes of social norms regarding violence against women.<sup>247</sup>

Intriguingly, none of the studies to date have explored whether ICTs can be used more robustly to combat CyberVAWG upfront. The prospect of having an impact on normative behavior through ICTs shows promise. Perhaps media platforms could be used in creative ways to condemn the impropriety or criminality of sexual misconduct. For example, a sketch on Comedy Central titled “Inside Amy Schumer—A Very Realistic Military Game,” shows a young man and woman playing a combat video game that turns out quite differently for an onscreen male soldier than for an onscreen female soldier because she is sexually assaulted.<sup>248</sup> As the female character tries to trigger the reporting process, the sketch mirrors what might transpire in real life. Since he was out of the room, the young woman’s boyfriend refuses to believe her account of what happened during the video game and claims that she must have done something wrong. Numerous points about sexual assault in the military are made with maximum effectiveness and the YouTube video of the vignette has garnered nearly 1.5 million views.<sup>249</sup>

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242. *Id.* at 215.

243. *Id.* at 215–16.

244. Lauren F. Cardozo & Susan B. Sorenson, *Violence Against Women and Household Ownership of Radios, Computers, and Phones in 20 Countries*, 107(7) AM. J. OF PUB. HEALTH 1175 (2017).

245. *Id.* at 1175 (citing to Tanya Abramsky et al., *What Factors are Associated with Recent Intimate Partner Violence? Findings from the WHO Multi-Country Study on Women’s Health and Domestic Violence*, 11(109) BMC PUB. HEALTH 109 (2011)).

246. *Id.* at 1179.

247. *Id.* at 1179–80.

248. Comedy Central, *Inside Amy Schumer—A Very Realistic Military Game*, YOUTUBE (Aug. 26, 2014), <https://www.youtube.com/watch?v=BXGJGuH59qw>.

249. *Id.*

Changing attitudes and norms is a necessary step to take the problem of CyberVAWG more seriously.<sup>250</sup> An enhanced conception of digital citizenship should be fostered that will inspire individual users to take greater responsibility to respect and look out for others online.<sup>251</sup>

## V. INTERNET ACCESS AND ITS IMPLICATIONS FOR HUMAN RIGHTS

Listing the practical benefits of increased meaningful and substantial access to ICTs for women tells only part of the story. An examination of the current state of online gender inequality is also imperative, due to its direct connection to the ability of women to exercise their basic human rights. The precise interrelationship between Internet access and human rights has been debated vigorously for the past two decades.<sup>252</sup> The question is sometimes framed as whether Internet freedom and access should be characterized as a basic human right.<sup>253</sup> A divergent approach is to view Internet access as an extrapolation designed to protect existing fundamental human rights such as freedom of expression, freedom of association, freedom of assembly, freedom to receive information, or the right of citizen participation in democracy.<sup>254</sup>

### A. Internet Access as a Basic Human Right

Several prominent commentators seem to adopt something akin to the “independent right” perspective. In 2010, then Secretary of State Hillary Clinton referred to the “freedom to connect—the idea that governments should not prevent people from connecting to the Internet, to websites, or to each other. The freedom to connect is like the freedom of assembly, only in cyberspace.”<sup>255</sup> In a provocative 2004 essay, Professor Michael Best explained that “there arises a need for access to appropriate information technology if I am to have any hope for securing my right to free

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250. G.A. Res. 48/104, *supra* note 133, at 27.

251. *Id.* The proposed solutions to dealing with CyberVAWG seems to march in lock step with addressing violence against women offline where bystander intervention against sexual assault is becoming a recommended strategy. See National Sexual Violence Resource Center, Bystander Intervention Tips and Strategies, National Sexual Violence Resource Center (2018), [www.nsvrc.org/sites/default/files/2018-02/publications\\_nsvrc\\_tip-sheet\\_bystander-intervention-tips-and-strategies\\_1.pdf](http://www.nsvrc.org/sites/default/files/2018-02/publications_nsvrc_tip-sheet_bystander-intervention-tips-and-strategies_1.pdf).

252. See generally Juan Carlos Lara, *Internet Access and Economic, Social and Cultural Rights*, ASS'N FOR PROGRESSIVE COMM'NS, 5–6, (Sept. 2015), [https://www.apc.org/sites/default/files/APC\\_ESCR\\_Access\\_Juan%20Carlos%20Lara\\_September2015%20%281%29\\_0.pdf](https://www.apc.org/sites/default/files/APC_ESCR_Access_Juan%20Carlos%20Lara_September2015%20%281%29_0.pdf).

253. Daniel Joyce, *Internet Freedom and Human Rights*, 26(2) EUR J. INT'L LAW 493, 510–11 (2015) (citing EVGENY MOROZOV, *THE NET DELUSION: HOW NOT TO LIBERATE THE WORLD* 233 (2011)).

254. Stephen Tully, *A Human Right to Access the Internet? Problems and Prospects*, 14 HUMAN RIGHTS L. REV. 175, 184–85, (2014).

255. Hillary Clinton, *Remarks on Internet Freedom*, U.S. DEP'T. OF STATE (Jan. 21, 2010), <https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/01/135519.htm>.

expression.”<sup>256</sup> Additionally, he posited that “a symmetric information right to some extent requires the Internet, and thus access to the Internet itself has become a human right.”<sup>257</sup>

Academic co-authors of a recent article in an Internet industry publication concluded that “access to the Internet is tied to a set of human capabilities that are considered fundamental to a life worth living.”<sup>258</sup> They continue by emphasizing the unique nature of the Internet, which “advances freedom of expression in a manner and to an extent that dwarfs all other modes of communication.”<sup>259</sup> Finally, with respect to Internet access, one online observer flips the question and asks: “aren’t we taking a risk by not calling it a right at all?”<sup>260</sup> He suggests “the risk is that it makes it easier for governments to place restrictions on access or even shut it down entirely.”<sup>261</sup>

Even those who might be characterized as “Internet access as a human right” skeptics lean more toward Internet access as directly implicating human rights. Professor Jesse Tomalty, after concluding that Internet access is neither a natural right nor a legal right, concedes that “in view of the tremendous importance of the Internet it seems reasonable to hold that to prevent someone from accessing the Internet is to deprive her of adequate opportunities to exercise her freedom of expression and association.”<sup>262</sup> Other scholars such as Professor Ivar Hartmann have made a case for characterizing internet access—and free internet access—as a social right.<sup>263</sup> He allows that this categorization is most compatible with a jurisprudential tradition of judicial protection for social rights that currently exists only in a few countries.<sup>264</sup>

Of course, Internet access has not been universally acknowledged as either a civil or human right. In 2012, an op-ed appeared in the New York Times titled *Internet Access is Not a Human Rights*, which was authored by Vinton G. Cerf, the Chief Internet Evangelist and a Vice-President at

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256. Michael L. Best, *Can the Internet be a Human Rights?* 4 HUMAN RIGHTS & HUMAN WELFARE 23, 24 (2004), <https://pdfs.semanticscholar.org/93b3/4da632398bd954de0811214994a8269266b3.pdf>.

257. *Id.* at 24.

258. Stephen B. Wicker & Stephanie M. Santoso, *Viewpoint: Access to the Internet Is a Human Right*, 56(6) COMMUNICATIONS OF THE ACM 43, 45 (2013).

259. *Id.*

260. Mathew Ingram, *Is Internet Access a Fundamental Human Right?*, GIGAOM (Jan. 5, 2012, 9:33 AM), <https://gigaom.com/2012/01/05/is-Internet-access-a-fundamental-human-right/>.

261. *Id.*

262. Jesse Tomalty, *Is There a Human Right to Access the Internet?*, 118 PHILOSOPHY NOW, 6, 8 (2017).

263. Ivar Hartmann, *A Right to Free Internet? On Internet Access and Social Rights*, 13 J. HIGH TECH L. 297, 300 (2013).

264. *Id.* at 362.

Google.<sup>265</sup> Heralded as one of the “Fathers of the Internet,”<sup>266</sup> Cerf opined that “technology is an enabler of rights, not a right itself.”<sup>267</sup> Cerf does concede that there may be a stronger claim to Internet access as a civil right, one conferred by law, in contrast to its being a human right, which he characterized as “intrinsic to us as human beings.”<sup>268</sup> A few months later, Brian Skepys, another Google employee, authored a piece making his case that the commonly made arguments supporting a human right access to the Internet “all fail.”<sup>269</sup> Subsequently, Federal Communications Commission (“FCC”) member Michael O’Rielly made a stronger statement by declaring that it was “ludicrous to compare Internet access to a basic human right.”<sup>270</sup>

Each of these commentators arguably had self-interest and protectionism in mind when making these definitive statements. If Internet access were firmly established as a human right, there would be an onus placed on governments to provide opportunities for individuals to obtain non-discriminatory subsidized Internet services with possible concomitant, heightened government regulation.<sup>271</sup> Indeed, Research Fellow Adam Thierer, another naysayer on designating Internet access as a human right, inquires bluntly: “who or what pays the bill for classifying the Internet or broadband as a birthright entitlement?”<sup>272</sup>

Citizen survey respondents across the globe questioned the wisdom of government Internet regulation and 58% of Internet users agreeing with the expansive statement that “the Internet should never be regulated by any level of government anywhere.”<sup>273</sup> One suggested approach for governments is their adoption of a “gender-responsive ICT policy.”<sup>274</sup> Much like the notion

265. Vinton G. Cerf, *Internet Access is Not a Human Right*, THE N. Y. TIMES (Jan. 4, 2012), <https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html>.

266. *Official Biography: Vint Cerf*, INTERNET HALL OF FAME, <https://internethalloffame.org/vint-cerf> (last visited Oct. 6, 2019).

267. Cerf, *supra* note 265.

268. *Id.* This represents a rather narrow and time-specific way of defining human rights. *See id.*

269. *See* Brian Skepys, *Is there a Human Right to the Internet?*, 5 J. POL. AND L. 15 (2012).

270. Rudy Takala, *FCC Commissioner: Internet Access Is Not a ‘Basic Human Right’*, CNS NEWS (June 30, 2015, 12:47 PM), <https://www.cnsnews.com/news/article/rudy-takala/fcc-commissioner-Internet-access-not-basic-human-right>.

271. Hartmann, *supra* note 263, at 300.

272. Adam Thierer, *Vint Cerf on Why Internet Access Is Not a Human Right (+ A Few More Reasons)*, Technology Liberation Front blog, (Jan. 5, 2012), <https://techliberation.com/2012/01/05/vint-cerf-on-why-Internet-access-is-not-a-human-right-a-few-more-reasons/>. In his article on the internet as a social right, Professor Hartmann proposes ways that governments could finance digital inclusion policies such as the public funding of broadband access, the provision of subsidies to enhance the digital literacy of marginalized individuals, or the imposition of a specific tax levy on software developers. Hartmann, *supra* note 263, at 366.

273. *Fake Internet Content a High Concern, but Appetite for Regulation weakens*, Global Scan. (Sept. 21, 2017), <https://globescan.com/tag/bbc-world-service-survey/>.

274. *See* World Wide Web Found., *supra* note 21.

of gender mainstreaming, this policy would consider the ICTs needs of both men and women but take into particular account the distinctive connectivity challenges that women experience when accessing and using the Internet.<sup>275</sup>

The responsibility and role of powerful, dominant private corporations such as Facebook, YouTube, Twitter, and Google, which is Cerf's employer, in the human rights arena is much less clear-cut.<sup>276</sup> Thierer again weighs in from the perspective of a free market advocate and expresses concern about the right to free broadband access due to "... all manner of unintended consequences, from squelching competition to providing a poor level of service."<sup>277</sup> According to the 2011 U.N. Guiding Principles on Business and Human Rights, business enterprises have a duty to avoid adversely affecting the human rights of others.<sup>278</sup> Moreover, the parameters of corporate social responsibility currently remain undefined.

A Contract for the Web was proposed by the members of a 2019 Working Group, who comprise a coalition of representatives of companies, governments and civil society organizations.<sup>279</sup> Under the Contract's Principle 6.1, companies are required "to develop technologies that support the best in humanity and challenge the worst."<sup>280</sup> The Contract also obligates businesses to report on their efforts to respect and support human rights, as outlined by the U.N. Guiding Principles on Business and Human Rights.<sup>281</sup> Since behemoth social media corporations often find themselves to be the targets of bad publicity and government scrutiny, an alignment with social justice initiatives to increase subsidized access for marginalized groups could be a loss-leader in the short run and then result in accrual of larger benefits longer-term.<sup>282</sup>

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275. *Id.* The UN has defined gender mainstreaming as:

The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetrated. The ultimate goal is to achieve gender equality.

U.N. Women, *Gender Mainstreaming*, <https://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming>.

276. Joyce, *supra* note 253, at 510–511 (2015) (citing EYGENY MOROZOV, *THE NET DELUSION: HOW NOT TO LIBERATE THE WORLD* 221 (2011)).

277. Laurence Cruz, *The Broadband Debate*, CISCO (Oct. 17, 2011), <https://newsroom.cisco.com/feature-content?type=webcontent&articleId=502224>.

278. U.N. Special Representative of Secretary-General, *Guiding Principles on Business and Human Rights*, U.N. Doc. A/HRC/17/31, annex (June 16, 2011).

279. *See generally* A CONTRACT FOR THE WEB, <https://contractfortheweb.org>.

280. *Id.*

281. *Id.*

282. Newley Purnell & Resty Woro Yuniar, *5 Things to Know about Facebook's Internet Initiative*, WALL ST. J. (Sept. 24, 2015 6:41 PM), <https://blogs.wsj.com/briefly/2015/09/24/5-things-to-know-about-facebooks-internet-initiative/>.

B. *Protection of Relevant Fundamental Human Rights in the International System*

There may be greater support for the position that the ability to access the Internet is not a human right *per se*, but rather, it is essential to protect underlying rights, most notably, the freedom of expression. As one U.S. Federal Court proclaimed, “[i]t is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country—and indeed the world—has yet seen.”<sup>283</sup> The Court, underscoring the “democratization” promoted by Internet communication, observes that “individual citizens of limited means can speak to a worldwide audience on issues of concern to them.”<sup>284</sup> In the modern human rights era, a plethora of international treaties, conventions, documents, and policies valorize the essential and fundamental nature of rights related to freedom of speech.

Under Article 19 of the Universal Declaration of Human Rights, “everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>285</sup> This 1948 assertion seems prescient in contemplating possible new media and a cross-border delivery mechanism that would be so ubiquitous that it could become synonymous with communication itself.

This right to free expression is repeatedly emphasized in international conventions. The International Covenant on Civil and Political Rights (“ICCPR”) underscores the protections of the UNDR by reiterating in its Article 19:

- A. Everyone shall have the right to hold opinions without interference.
- B. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>286</sup>

Other international human rights treaties provide protection for free expression. The International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) mentions this right under Article 5(d)

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283. *Am. Civil Liberties Union v. Reno*, 929 F. Supp. 824, 881 (E.D. Pa. 1996), *aff’d*, 521 U.S. 844 (1997).

284. *Id.*

285. G.A. Res. 217 (III) A, art. 19, Universal Declaration of Human Rights (Dec. 10, 1948).

286. Int’l Covenant on Civ. And Pol. Rts., art. 19, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

(viii).<sup>287</sup> Article 13 of the Convention on the Rights of the Child (“CRC”) mirrors the language of the ICCPR,<sup>288</sup> as does the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (“ICMW”) under its Article 13.<sup>289</sup> Although somewhat attenuated, Article 15 of International Covenant on Economic, Social and Cultural Rights (“ICESCR”) promotes “the right of everyone: (a) To take part in cultural life; [and] (b) To enjoy the benefits of scientific progress and its applications.”<sup>290</sup> Each of these ICESCR provisions can be positively linked to Internet access.<sup>291</sup>

In force for only 13 years, a period that correlates with the greater availability of ICTs, the Convention on the Rights of Persons with Disabilities (“CRPD”) under Article 21 places broader expression-related obligations on States Parties than previous human rights treaties.<sup>292</sup> Contemplating different forms of communication and varied types of free assistive technologies, the CRPD indicates that States Parties can comply with its mandate by:

- a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;<sup>293</sup>

Even the title of Article 21 “Freedom of expression and opinion, and *access to information*” (emphasis supplied) seems, for the first time, to place “access” on similar footing with other treaty protected human rights.<sup>294</sup>

A like-minded opinion about the crucial and revolutionary role of the Internet comes from the report of U.N. Special Rapporteur Frank La Rue in May 2011 where he declares that “the Internet has become a key means by which individuals can exercise their rights to freedom of opinion and expression, as guaranteed by article 19.”<sup>295</sup> His conclusion and recommendation section further state that “the Internet has become an

287. Int’l Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, 660 U.N.T.S. 195.

288. Convention on the Rts. of the Child, art. 13, Nov. 20, 1989, 1577 U.N.T.S. 3.

289. G.A. Res. 45/158, art. 13, (July 1, 2003).

290. Int’l Covenant on Econ., Soc., and Cultural Rts., art. 15, Dec. 16, 1966, 993 U.N.T.S. 3.

291. See John Carlos Lara, Internet access and economic, social, and cultural rights, Association for Progressive Communications (APC), Sept. 2015, <https://www.apc.org/en/pubs/Internet-access-and-economic-social-and-cultural-r>.

292. G.A. Res. 61/106, art. 21, (May 3, 2008).

293. G.A. Res. 61/106, *supra* note 292, art. 21.

294. *Id.*

295. Human Rights Council Res. 7/36, A/HRC/17/27, ¶ 20 (May 16, 2011).

indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress.”<sup>296</sup> As such, he creates the expectation that States will adopt policies “to make the Internet widely available, accessible and affordable to all segments of population.”<sup>297</sup>

During this same time period, the U.N. General Assembly began focusing greater attention on online access and, in 2014, the U.N. Secretary General indicated that the U.N. intended “to ensure that the Internet is an affordable, reliable, secure and trustworthy global public resource that can help people to improve our world.”<sup>298</sup> Tasks related to this mandate would be the responsibility, at least in part, of the International Telecommunication Union (“ITU”), which is the U.N. specialized agency for information and communication technologies (“ICTs”).<sup>299</sup>

International cooperation between governments of Member States and private sector members, associates, and academics was a founding principle of the ITU, which was established in 1865.<sup>300</sup> The ITU was the moving force behind promulgation of the “Declaration of Principles: Building the Information Society: a global challenge in the new Millennium.”<sup>301</sup> The ITU remains a leading global forum through which stakeholders can address and work toward agreement on a myriad of ICT issues.<sup>302</sup> The ITU’s cross-sector participation adds a dimension that might have been absent from inter-governmental dialogue alone.

### C. *Protection for Relevant Fundamental Human Rights at the Regional and Domestic levels*

In the regional treaty area, Article 10 titled “Freedom of Expression” of The European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>303</sup> and Article 13 titled “Freedom of Thought and

296. *Id.* ¶ 85.

297. *Id.*

298. U. N. Secretary-General, *Secretary-General’s video message to the fourth Annual Freedom Online Coalition Conference: Free and Secure Internet for All* (Apr. 29, 2014), <https://www.un.org/sg/en/content/sg/statement/2014-04-29/secretary-generals-video-message-fourth-annual-freedom-online>.

299. *See generally* INT’L TELECOMM. UNION, <https://www.itu.int/en/about/Pages/default.aspx>.

300. *Id.*

301. World Summit on the Information Society, *Declaration of Principles—Building the Information Society: A global change to the new Millennium*, U.N. Doc. WSIS-03/Geneva/DOC/4-E (Dec. 12, 2003).

302. INT’L TELECOMM. UNION, *supra* note 299. The ITU is not without its detractors. *See, e.g.*, L. Gordon Crovitz, *The UN’s Internet Sneak Attack*, WALL ST. J. (Nov. 25, 2012), <https://www.wsj.com/articles/SB10001424127887324352004578136902821852508> (claiming that “letting the Internet be rewired by bureaucrats would be like handing a Stradivarius to a gorilla.”).

304. European Convention for the Protection of Human Rights and Fundamental Freedoms art. 10, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221, 230 (entered into force Sept. 3, 1953).

Expression” of the American Convention on Human Rights track the ICCPR language.<sup>304</sup> Related guarantees under Article 9 of the African Charter on Human and Peoples’ Rights are worded more succinctly, which suggests that they might be construed more narrowly regarding the status of the Internet since there is no reference to any sort of a communication mechanism:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.<sup>305</sup>

In 2002, almost two decades after the adoption of the African Charter, the African Commission clarified that the protections under Article 9 include the principles that: “[e]veryone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.”<sup>306</sup> The Charter’s specifically highlighting access and the principle of anti-discrimination augments the traditional language of most other international and regional conventions.

Several countries have adopted domestic laws that either require the State to work to ensure that Internet access is broadly available or prevent the state from unreasonably restricting an individual’s access to information and the Internet. In 2000, Estonia became the first country to describe Internet access as a fundamental human right.<sup>307</sup> Article 5A of the 2008 revised Constitution of Greece pronounces that “[a]ll persons have the right to information, as specified by law” and obliges the government to facilitate access.<sup>308</sup>

In reviewing a case about piracy and illegal downloading, France’s Constitutional Council, in 2009, declared that Internet access is a fundamental human right and “an essential tool for the liberty of communication and expression.”<sup>309</sup> In 2010, the highest court in Costa Rica reached a similar result by determining that there is a fundamental right of access to ICTs.<sup>310</sup>

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304. American Convention on Human Rights art. 13, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 143, 148 (entered into force July 18, 1978).

305. African Charter on Human and Peoples’ Rights art. 9, *opened for signature* June 27, 1981, 1520 U.N.T.S. 217, 247 (entered into force Oct. 21, 1986).

306. African Commission on Human and Peoples’ Rights, *ACHPR Res.62(XXXII)02: Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa* (Oct. 23, 2002), <https://www.refworld.org/docid/51949e234.html>.

307. Vivienne Walt, *Is This Tiny European Nation a Preview of Our Tech Future?*, FORTUNE (April 27, 2017), <http://fortune.com/2017/04/27/Estonia-digital-life-tech-startups/>.

308. 2001 Syntagma [Syn.] [Constitution] 2(5A) (Greece).

309. Conseil Constitutionnel [CC] [Constitutional Court] decision No. 2009-580DC, June 10, 2009 (Fr.). See also Ian Sparks, *Internet access is a fundamental right, rules French court*, DAILY MAIL (June 11, 2009), <https://www.dailymail.co.uk/news/article-1192359/Internet-access-fundamental-human-right-rules-French-court.html>.

310. *Acceso a Internet es un derecho fundamental*, LA NACIÓN (Sept. 8, 2010), <https://www.nacion.com/el-pais-servicios/acceso-a-Internet-es-un-derecho-fundamental/J7TYWCB4WFABRDAK4SGN3CLFZM/story>.

Finland was the first country to make broadband Internet access the legal right of every citizen, effective in July 2010.<sup>311</sup>

The cumulative effect of the provisions contained in more recently promulgated international treaties such as the CRPD, plus the pronouncement of the African Commission, a newer regional treaty body, along with Special Rapporteur LaRue's report, suggest that the human rights trend is toward protecting access to information more expansively. This bodes more favorably toward access to the Internet's being regarded in the international realm as a human right, which seemingly comports more closely with the sentiments of the population-at-large. For example, responses to a 2017 BBC World Service poll of more than 16,000 people conducted by Globescan across eighteen countries revealed that more than four in five adults (83%), Internet users and non-users alike, agreed that access to the Internet should be a fundamental right.<sup>312</sup> The highest percentage of persons subscribing to this view came from Brazil (96%), Greece and China (93%), India (91%), and Nigeria (90%).<sup>313</sup> A few years earlier, an overwhelming majority of women online users who were queried in a cross-border survey had agreed with a similar statement: "Access to the Internet should be a fundamental right of all people."<sup>314</sup>

#### D. *Women's Equality: The Human Rights Dimension*

The concept of equality forms an integral part of modern foundational human rights instruments, beginning with the UN Charter that reaffirms faith in "... the equal rights of men and women."<sup>315</sup> The UDHR states in its Preamble that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," and then repeats this proposition under Article 1, which states "all human beings are born free and equal in dignity and rights."<sup>316</sup> The International Covenant on Civil and Political Rights ("ICCPR") under Article 3 requires States Parties to "ensure the equal right of men and women to the enjoyment of all civil and political rights . . . ."<sup>317</sup> The International Covenant on Economic, Social and Cultural Rights ("ICESCR") tracks similar language under its Article 3.<sup>318</sup>

311. *Finland Makes Broadband Internet Access A Law*, NPR (Oct. 15, 2009), <https://www.npr.org/templates/story/story.php?storyId=113816647>.

312. *Fake Internet Content a High Concern, but Appetite for Regulation Weakens*, GLOBESCAN (Sept. 21, 2017), <https://globescan.com/tag/bbc-world-service-survey/>.

313. *Id.*

314. Intel Corp. & Dalberg Global Investors, *supra* note 1, at 35.

315. U.N Charter pmb1.

316. G.A. Res. 217 (III) A, *supra* note 285, at art. 1.

<sup>316</sup> International Covenant on Civil and Political Rights art. 3, Mar. 23, 1976, 911 U.N.T.S. 171, 174. *See also* Human Rights Commission, *General Comment No. 28: Article 3* (replaces Comment 4), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (May 27, 2008).

318. International Covenant on Economic, Social and Cultural Rights art. 3, Jan. 3, 1976, 993 U.N.T.S. 3, 5. *See also* Commission On Economic, Social and Cultural Rights, *General*

Women's equality and anti-discrimination based on sex was placed front and center with the promulgation of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") in 1979.<sup>319</sup> Feminist jurists, scholars, and activists Alda Facio and Martha Morgan identify three distinct components of equality under CEDAW: "the principle of nondiscrimination, the principle of state obligation, and the principle of substantive equality—the equality of results."<sup>320</sup>

CEDAW, as its title suggests, centers on discrimination against women, which is defined under Article 1 as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>321</sup>

Article 2 of CEDAW renounces all forms of discrimination against women and mandates that all States "pursue by all appropriate means and without delay a policy of elimination of discrimination against women . . . ."<sup>322</sup> Under CEDAW, States Parties must take "all appropriate measures, including legislation" to assure that women possess "human rights and fundamental freedoms on a basis of equality with men."<sup>323</sup>

The CEDAW Committee issued General Recommendation 25, in 2004, which clarified that the equal treatment of men and women is insufficient to meet the Convention's equality mandate.<sup>324</sup> Citing substantive equality—women's *de facto* equality with men—as a goal, the Committee looks to equality of results.<sup>325</sup> Achieving this equality of results requires broader sociocultural changes that eradicate gender role stereotyping and gender bias.<sup>326</sup> The Committee emphasizes that it is also essential to address "the underlying causes of women's inequality."<sup>327</sup>

Pushing beyond previous iterations of substantive equality, Professor Sandra Fredman puts forth a multi-dimensional approach to explain her

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*Comment No. 16: The equal right of men and women to the enjoyment of all economic, social, and cultural rights*, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005).

319. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

320. Alda Facio & Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW's Equality Principles*, 60 ALA. L. REV. 1133, 1134 (2009).

321. CEDAW, *supra* note 319, at art. 1.

322. *Id.* at art. 2.

323. *Id.* at art. 3.

324. CEDAW Committee, General Recommendation 25, ¶ 8.

325. *Id.* ¶ 7.

326. *Id.*

327. *Id.* ¶ 10.

expanded concept of substantive equality.<sup>328</sup> These are: 1) to redress disadvantage—the distributive dimension; 2) to address stigma, stereotyping, prejudice and violence—the recognition dimension; 3) to enhance voice and participation—the participative dimension; and 4) to accommodate difference and achieve structural change—the transformative dimension.<sup>329</sup> She also notes that these dimensions are mutually reinforcing, and serve to consider equality from the perspective of out-groups.<sup>330</sup> Substantive equality, especially when considered comprehensively, provides a theoretical basis for the contention that the global disparity in women’s meaningful and substantial access and usage of ICTs is an equality-based human rights issue.

E. *Women’s Equality and ICTs: The Beijing Declaration and Platform for Action (“BDPFA”)*

The Fourth World Conference on Women was held in Beijing, in 1995, and is often remembered for Hillary Clinton’s reiteration in her keynote address that “women’s rights are human rights.”<sup>331</sup> The Conference also produced the Beijing Declaration and Platform for Action (“BDPFA”), which refers to gender equality and ICTs.<sup>332</sup> Article 234 recognizes that ICTs have created a cross-border network that affects not only public policy but private attitudes and behavior, especially of children and young adults.<sup>333</sup> Strategic objective J.1. mandates, in pertinent part, the existence of “greater gender equity in expression and decision-making through new technologies of communication.”<sup>334</sup>

The BDPFA required monitoring of progress toward its goals and objectives at five-year intervals.<sup>335</sup> In 2000, at Beijing +5, there was a gender and ICT session that showcased examples of women’s empowerment through ICTs in a wide range of domains such as education, employment, and politics.<sup>336</sup> Beijing +10 seemingly concentrated on broader themes rather than assessing progress made in the ICT area.<sup>337</sup> But five years later, the Beijing +15 contains multiple references that link technology to women’s

328. Sandra Fredman *Substantive Equality Revisited*, 14(3) INT’L J. CONST. L. 712, 714 (2016).

329. *Id.* at 727–34.

330. *Id.* at 734–36.

331. Hillary Clinton, Keynote Address at the Fourth World Conference on Women (Sept. 5, 1995).

332. Fourth World Conference on Women, *Beijing Declaration and Platform for Action* (Sept. 4, 1995) [hereinafter BDPFA].

333. *Id.* ¶ 234.

334. *Id.* at Strategic Objective J.1.

335. G.A. Res. A/RES/50/203, Follow-up to the Fourth World Conference on Women and Full Implementation of the Beijing Declaration and Platform for Action, ¶¶ 21–25 (Feb. 23, 1996).

336. J. Ann Dumas, *The Beijing World Conference on Women, ICT Policy and Gender*, in 1 GENDER AND INFORMATIONAL TECHNOLOGY 57, 58 (Eileen M. Trauth ed., 2006).

337. *Id.* at 59.

empowerment through access, education, training, and entrepreneurship.<sup>338</sup> The Beijing +20 report, issued in 2015, chastises world leaders for their failure to move more rapidly toward achieving gender equality overall.<sup>339</sup> The lack of progress two decades later prompted the Executive Director of U.N. Women to mount a new campaign that calls upon governments to “step it up” in solidifying their commitment to equality through concrete measures.<sup>340</sup>

#### F. *Women’s Equality and ICTs: Circumscribed by Sociocultural Factors*

An ongoing challenge lies in confronting the range of socio-cultural factors that affect women’s equality generally, and in the area of access to—and usage of—ICTs, specifically. Under CEDAW Article 5(a), States are required to:

take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>341</sup>

The specter of sexism and discrimination hangs over women’s usage of ICTs because preference for ownership and usage, along with education, often goes to males, e.g. fathers, brothers, husbands, and sons, in the household.<sup>342</sup> Sometimes, it is family condemnation that deters women from owning mobile phones.<sup>343</sup> A women in India with an engineering degree indicated that her family limited her access to the household computer “for fear that if she touched it something would go wrong.”<sup>344</sup>

In the Arab world, women-only internet cafes have been established so that women can avoid sexual harassment, bias, and the unwanted gazes of men in other public computer spaces.<sup>345</sup> In New Delhi and Manila, nearly two-thirds of men agreed with the statement that women should not be allowed to use the Internet in public places, and over half agreed that men have the

338. See generally U.N. Comm’n on the Status of Women, Rep. on the Fifty-Fourth Session, U.N. Doc. E/CN.6/2010/11 (May 6, 2010).

339. U.N. Women, *Summary Report: The Beijing Declaration and Platform for Action Turns 20*, RELIEFWEB (Mar. 6, 2015), <https://reliefweb.int/report/world/summary-report-beijing-declaration-and-platform-action-turns-20>.

340. *Id.*

341. CEDAW, *supra* note 319, at art. 5(a).

342. See *Women and the Web*, *supra* note 1.

343. Oliver Rowntree, *The Mobile Gender Gap Report 2019*, at 22, GSMA (February 2019), <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/03/GSMA-Connected-Women-The-Mobile-Gender-Gap-Report-2019.pdf>.

344. *Women and the Web*, *supra* note 1.

345. *Yemeni Capital Opens First Women-Only Internet Café*, AL ARABIYA ENGLISH (November 28, 2013), <http://english.alarabiya.net/en/life-style/art-and-culture/2013/11/28/Yemeni-capital-opens-first-women-only-internet-caf.html>.

responsibility to restrict what women look at online.<sup>346</sup> Although sex segregation may not necessarily seem empowering, one Afghani female high school noted, “We never have things that are just for women, everything in Afghanistan is always for men. But we are the same, equal.”<sup>347</sup>

Lillian from Kenya was studying medicine in Canada, but she felt responsible to return home to help her mother provide for the education of her brothers.<sup>348</sup> She has since set up a health and beauty business in her home area with nine employees, and she uses ICTs to organize activities in her salon, to keep in contact with customers, to track her daughter’s events, and for socialization with family members.<sup>349</sup> Lillian can rightfully be viewed as a successful, tech-savvy small business owner. At the same time, it would be possible to conclude that the larger picture here shows “patterns of gender socialization [that] are being perpetuated and reproduced in the use of the new technology and choice of business re-emphasizing the fact that technological innovation and the opportunity to become an entrepreneur do not guarantee empowerment for women.”<sup>350</sup> Moreover, the considerable barriers to women’s development in the economic, political and social realms remain unaddressed.<sup>351</sup>

#### G. *Women’s Equality and ICTs: the U.N.’s Involvement*

Although it took several years, the issue of gender disparities in Internet access and usage ultimately surfaced in the U.N. human rights domain, that is, apart from the work of the CEDAW treaty body. In 2013, the Human Rights Council (“Council”) promulgated Resolution 23/2 on the role of freedom of opinion and expression in women’s empowerment.<sup>352</sup> In 2016, the Council adopted Resolution 32/13 titled “The promotion, protection and enjoyment of human rights on the Internet.”<sup>353</sup> The Council expressed its concern “that many forms of digital divides remain between and within countries and between men and women, boys and girls” and it acknowledged the need to close these gaps.<sup>354</sup> It also stressed the empowerment of women

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346. World Wide Web Found., *Women’s Rights Online*, *supra* note 21 at 5–6. Interestingly, in a 2015 survey, those same two cities recorded the highest number of women female internet users. *Id.*

347. Amie Ferris-Rotman, *Afghanistan Opens First Women-Only Internet Café*, REUTERS (Mar. 8, 2012, 8:00 AM), <https://www.reuters.com/article/afghanistan-women-internet-idUSL4E8E83X220120308>.

348. Alice Wanjira Munyua, *Women Entrepreneurs in Nairobi: Examining and Contextualizing Women’s Choices*, in AFRICAN WOMEN AND ICTS: INVESTIGATING TECHNOLOGY, GENDER AND EMPOWERMENT 119, 125 (Ineke Buskens and Anne Webb eds., 2009).

349. *Id.*

350. *Id.* at 126.

351. *Id.*

352. U.N. Human Rights Council Res. 23/2, U.N. Doc. A/HRC/23/2, ¶ 7 (June 13, 2013).

353. U.N. Human Rights Council Res. 32/13, U.N. Doc. A/HRC/32/L.20 (June 27, 2016).

354. *Id.* ¶ 12.

and girls that would result from enhanced ICT access, literacy, education, and training.<sup>355</sup>

Gender considerations were addressed further under paragraph 13, which requests the United Nations High Commissioner on Human Rights (“UNHCHR”) to use a human rights lens to develop a report with suggested approaches to narrow the *gender digital divide*.<sup>356</sup> The mandate was to concentrate on the “measurable gap between women and men in their access to, use of and ability to influence, contribute to and benefit from information and communications technologies (ICTs).”<sup>357</sup> The final report was submitted to the Council at its thirty-fifth session in June 2017.<sup>358</sup>

This UNHCHR 2017 report (“UNHCHR report”) provides a useful framing device to explore the question of the human rights implications of the global gender digital divide. According to its authors, the gender gap is “both a consequence and cause of human rights violations.”<sup>359</sup> The UNHCHR report begins with a definition section, which explains that the gender digital divide “refers to the measurable gap between women and men in their access to, use of and ability to influence, contribute to and benefit from ICTs.”<sup>360</sup>

In contrast to the more commonplace “freedom of expression” starting point for examining the human rights implications of the global gender digital divide, the UNHCHR report keys first on the right to privacy.<sup>361</sup> Characterizing this privacy right as a “prerequisite for the full exercise of other rights,” the UNHCHR report recognizes that anonymity is often critical to protect women’s rights advocates in countries where their activism may be heavily discouraged or even criminalized.<sup>362</sup> Surveillance, “doxing,” and data aggregation are identified as problems that may affect women in ways that are different and arguably more pernicious than when men are affected.<sup>363</sup> Again, this is due in large part to discriminatory treatment of women in the real world that carries over to the cyberworld.

The rights to freedom of opinion and expression and freedom of peaceful assembly and association are identified in the UNHCHR report as important

355. *Id.* ¶ 13.

356. *Id.* (emphasis added).

357. U.N. Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*, ¶ 3 U.N. Doc. A/HRC/35/9 (May 5, 2017) [hereinafter *HRC Annual Report*].

358. *Id.* ¶ 1.

359. *Id.*

360. *Id.* ¶ 3. The report also clarifies that the term *women* encompasses “girls and anyone identifying as a woman.” *Id.* at n. 3. Others have also pointed out the “conventional male/female dichotomy that commonly informs gender analysis in ICT.” Tina Beyene and Remy Frost, *Gender Variance and the Gender Digital Divide*, in *TAKING STOCK*, 208, 209 (Araba Sey and Nancy Hafkin eds. 2019), <https://i.unu.edu/media/cs.unu.edu/attachment/4040/EQUALS-Research-Report-2019.pdf>.

361. *HRC Annual Report*, supra note 357, ¶¶ 18–19.

362. *Id.* ¶ 18.

363. *Id.* ¶ 19.

for women to attain a full panoply of human rights protections.<sup>364</sup> Significantly, the Internet is cited as a critical—and perhaps sole—channel for women to obtain information and to voice their opinions on issues that matter to them.<sup>365</sup> The online environment replicates physical spaces used for peaceful assembly and permits cross-border online networking and the opportunity to exchange ideas replicates physical spaces used for peaceful assembly.<sup>366</sup>

The ability of women to access ICTs is characterized in the UNHCHR report as closely associated with the right to employment under favorable and just conditions.<sup>367</sup> Attention is paid to the opportunities for women that could exist to obtain employment especially in technical roles, or to ascend to leadership positions in the tech sector.<sup>368</sup> The right to health and the ability to obtain health information is significantly affected by ICT access; obtaining reproductive and sexual health materials in a confidential manner without stigma is viewed as particularly beneficial to women.<sup>369</sup> Since the Internet is “emerging as a critical platform for scientific and cultural flows and exchanges,” barriers to access have an effect on women’s equal participation in cultural life.<sup>370</sup>

The report recognizes that the impact of reduced ICT availability falls more heavily on two specific populations: women with disabilities and children.<sup>371</sup> This is notable because the Convention on the Rights of Persons with Disabilities (“CRPD”), the Convention of the Rights of the Child (“CRC”), and their respective treaty bodies have recognized the benefits of ICTs in achieving other fundamental rights for these groups that are vulnerable and marginalized in various ways.<sup>372</sup> There are also indicators that the accessibility to ICTs is a generational issue with fewer women online in the so-called Baby Boomer cohort, especially in the Global South.<sup>373</sup>

The Human Rights Council, which commissioned this report, mandated that the UNHCHR propose some “ways to bridge the gender digital divide from a human rights perspective.”<sup>374</sup> Although much of the report supplies background information on the nature of the problem, the final “Conclusions and recommendations” section is divided into three parts: 1) Need for a human rights-based approach to bridging the gender digital divide; 2) Access

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364. *Id.* ¶ 20–24.

365. *Id.*

366. *Id.* ¶ 8.

367. HRC Annual Report, *supra* note 357, ¶ 8.

368. *Id.*

369. *See id.* ¶ 9.

370. *Id.* ¶ 10.

371. *Id.*

372. *See Id.*

373. *See generally* Anna Puji Lestari & Sunarto Sunarto, *Digital Gender Gap Pattern in Indonesia*, 73 E3S WEB CONF. 11007, 1 (2018), [https://www.e3s-conferences.org/articles/e3sconf/pdf/2018/48/e3sconf\\_icens18\\_11007.pdf](https://www.e3s-conferences.org/articles/e3sconf/pdf/2018/48/e3sconf_icens18_11007.pdf).

374. U.N. Human Rights Council Res., 32/13, U.N. Doc. A/HRC/32/L.20, ¶ 13 (June 27, 2016).

to information and communications technology and the necessary infrastructure; and 3) Combating online violence against women.<sup>375</sup>

Its 18 recommendations are directed to States, business enterprises, and civil society organizations and alternate between the use of the modal auxiliary verbs “should” and “must.”<sup>376</sup> Nearly all the recommendations fall into the advice or suggestions realm.<sup>377</sup> But the UNHCHR takes a stronger stance when addressing equitable access by mandating that “States *must* ensure equitable access to online information and public services.”<sup>378</sup> In the area of online violence against women, certain activities are required including the adoption of a multi-pronged approach to combating this violence and acting in compliance with human rights norms.<sup>379</sup>

During the same time period, the Sustainable Development Goals (“SDGs”) were promulgated by the U.N. and require a commitment by States to “[s]ignificantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020.”<sup>380</sup> A report from U.N. Women *Turning Promises into Action: Gender Equality in The 2030 Agenda For Sustainable Development* concluded that “gender inequalities manifest themselves in each and every dimension of sustainable development.”<sup>381</sup> The SDGs, under Target 1.4, compel states to ensure that all men and women will have equal access to basic services, including appropriate new technology, by 2030.<sup>382</sup> Target 5B states: “Enhance the use of enabling technologies, in particular information and communication technology to promote the empowerment of women.”<sup>383</sup> The SDG progress report for 2018 indicates ICT-related gender equality under Goal Five of the SDGs is still far from being achieved.<sup>384</sup>

Apart from the mandate of the SDGs, corroboration exists on the value of closing the gender gap in the use of ICTs due to its effects on development. Researchers conducting a recent study on ICTs in Nigeria concluded that “the

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375. HRC *Promotion, protection, and enjoying of human rights on the Internet*, *supra* note 107, ¶ 14–15.

376. *Id.* ¶ 44–62.

377. *Id.*

378. *Id.* ¶ 54 (emphasis in original).

379. *Id.* ¶ 57–58.

380. G.A. Res. 70/1, *Transforming Our World: the 2030 Agenda for Sustainable Development*, at 21 (Sept. 25, 2015).

381. U.N. Women, *Turning Promises Into Action: Gender Equality In The 2030 Agenda For Sustainable Development* (2018), <https://www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the-2030-agenda-for-sustainable-development-2018>.

382. G.A. Res. 70/1, *supra* note 380, at 15.

383. G.A. Res. 71/313, *Work of the Statistical Commission Pertaining to the 2030 Agenda for Sustainable Development*, at 7 (July 10, 2017).

384. *See*, U.N. Department of Economic and Social Affairs, *Global Sustainable Development Report: The Future is Now—Science for Achieving Sustainable Development*, at 121 (2019), [https://sustainabledevelopment.un.org/content/documents/24797GSDR\\_report\\_2019.pdf](https://sustainabledevelopment.un.org/content/documents/24797GSDR_report_2019.pdf).

women that [could not] access and use the Internet cannot participate in meaningful development of the society because they do not have the necessary information.”<sup>385</sup> The U.N. subsequently adopted a 2018 resolution on Information and communications technologies for sustainable development that enhance “by enhancing the emphasis on gender, and reaffirms the commitment to ensure women’s full participation in decision-making processes related to information and communications technologies.”<sup>386</sup>

The U.N. Broadband Commission Working Group (the “Working Group”) on the Digital Gender Divide issued its 2017 progress commentary on bridging the gender gap in Internet and broadband access and use.<sup>387</sup> Four specific action steps were proposed for stakeholders: 1) support the collection, tracking, and analysis of sex-disaggregated data on Internet access and use; 2) integrate a gender perspective in strategies, policies, plans and budgets; 3) address barriers including access, affordability, safety, digital skills and relevance; and 4) work together and share good practice and lessons.<sup>388</sup>

The Worldwide Web Foundation, established by Sir Tim Berners-Lee who is credited as the inventor of the Web, had also been following the digital gender gap, and issued its initial report on the topic in 2015 titled *Women’s Rights Online: Translating Access into Empowerment*.<sup>389</sup> In 2018 alone, the Web Foundation produced multiple reports concerning the gender digital divide, including a toolkit for researchers to use as a template in data collection.<sup>390</sup> It also delivered a 2019 challenge to policymakers to take immediate action “to REACT—that is, to focus on Rights, Education, Access, Content, and Targets—to close the gender digital divide.”<sup>391</sup>

In September 2018, the Broadband Working Group published a follow-up report that reviewed the actions taken during the past year in each of the identified areas.<sup>392</sup> Progress on each of action steps was described by citing to the specific programs and collaborative projects that were developed by public and private stakeholders during the previous year.<sup>393</sup> The Broadband

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385. Hadiza Jummai Ibrahim, *Gender Disparity in Internet Access and Usage in Nigeria: Implication for Development*, 3(12) INT’L J. OF L., GOV’T AND COMM. 41, 48 (2018).

386. G.A. Res. 72/200, *supra* note 5, ¶ 13.

387. U.N. Broadband Commission for Sustainable Development, *Working Group on the Digital Gender Divide: bridging the gender gap in Internet and broadband access and use Progress Report*, at 5 (2017), <https://www.broadbandcommission.org/Documents/publications/WG-Gender-Digital-Divide-Report2017.pdf>.

388. *Id.*

389. World Wide Web Found., *Women’s Rights Online*, *supra* note 21.

390. World Wide Web Found., *A toolkit for researching women’s internet access and use* (2018), <https://webfoundation.org/research/a-toolkit-for-researching-womens-Internet-access-and-use/> [hereinafter World Wide Web Found., *Toolkit*].

391. World Wide Web Found., REACT (2019), <https://webfoundation.org/react/>.

392. *See generally* U.N. Broadband Commission for Sustainable Development, *supra* note 387.

393. *See generally, id.*

Working Group under its action group four on good practices signaled the release of an in-depth report prepared by the Global Partnership to Bridge the Gender Digital Divide (“EQUALS”).<sup>394</sup>

Ongoing collaborative work culminated in the in-depth report titled *Taking Stock: Data and Evidence on Gender Equality in Digital Access, Skills and Leadership* was released in March 2019.<sup>395</sup> A joint project involving the United Nations University, U.N. Women, ITU, ITC and GSMA— operating under the moniker EQUALS— was designed to gather representatives from the private, government, academic, and NGO sectors to develop training materials, to improve data collection, and to address the gender digital divide by proposing evidence-based solutions.<sup>396</sup> The six chapters of Part One of *Taking Stock* include: 1) Gender Equality in ICT Access; 2) Gender Equality in ICT Skills; 3) Gender Equality in ICT Industry Leadership; 4) The Dark Side of ICT Access, Skills, and Leadership; 5) Barriers to Gender Equality and Recommendations; and 6) The State of Sex-disaggregated Data.<sup>397</sup> In Part Two, there is a spotlight on gender inequality in specialized populations and locales such as users in the Global South, youth, and artificial intelligence.<sup>398</sup>

*Taking Stock* is an up-to-date resource that combines quantitative and qualitative research on the gender divide in ICT access from every corner of the globe. One commentator summarized its reception as follows: “Widely welcomed by the UN, interested NGOs, and private sector actors in the field, its findings set the foundation needed to build strong, evidenced-based strategies to close the gap.”<sup>399</sup> The EQUALS group seems poised to continue its work, which is dedicated to “promoting awareness, building political commitment, leveraging resources and knowledge, harnessing the capacities of partners, and supporting real action . . . .”<sup>400</sup>

The human rights connection to access and use of ICTs has been repeatedly enshrined in international human rights documents.<sup>401</sup> Equally important, ICT disparities between men and women raise equality concerns. This is especially true when women are subjected to gender-role stereotyping that prevents their full exercise and enjoyment of digital technology. The established international human rights system can continue to support and monitor the ongoing efforts to reduce and eliminate cyber gender inequality.<sup>402</sup> The U.N., its various organs, and affiliates should play a

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394. *Id.* at 22.

395. U.N. University, *Taking Stock*, *supra* note 3, at 3–4.

396. *Id.* at 10.

397. *Id.* at 11–12.

398. *Id.* at 12–13. The last chapter in this section is wittily titled, “Hello Siri, how does the patriarchy influence you?” *Id.*

399. U.N. University, *Taking Stock*, *supra* note 3, at 10 (quoting Dr. David M. Malone, Rector of the United Nations University, Under-Secretary-General of the U.N.).

400. *Id.* at 4.

401. *See, supra* notes 285–294 and accompanying text for a more in-depth discussion of the applicable human rights documents.

402. U.N. Plenipotentiary Conference of the International Telecommunications Union, Mainstreaming a gender perspective in ITU and promotion of gender equality and the

prominent role in highlighting and working to eliminate the gendered aspects of ICT access.

## VI. FUTURE DIRECTIONS

Awareness of a global gender digital divide in access, usage, and needs fulfillment from ICTs has always existed— and it remains an ongoing issue. This disparity not only denies the opportunity to reap the practical benefits of ICTs to some women and girls, it infringes the human rights that are essential to personhood in the 21st Century.

To appreciate more fully the different barriers women and men face in Internet use, an immediate direction in which to proceed must be the collection of sex-disaggregated data and the support of research at the policy level.<sup>403</sup> Although a voluminous amount of data has been collected on the global gender digital divide by multiple groups across various sectors, the information remains incomplete for decision-making purposes. The authors of the introduction to a 2018 GMSA Toolkit explain that:

[t]he challenge is to collect sound, gender disaggregated data (both qualitative and quantitative) on women's internet access and use, highlighting the issue. This data can be used by a range of stakeholders, including policymakers, the private sector and others, to inform and develop strategies to close the gender gap in internet access and use and track the progress of these efforts.<sup>404</sup>

This GMSA Toolkit, along with a similar toolkit instrument developed under the auspices of USAID, offer guidance to researchers conducting empirical studies on the ICT gender gap.<sup>405</sup> Although somewhat different in length and tone, each imparts practical information about survey preparation, data collection, and analysis with accompanying quantitative and qualitative survey tools.<sup>406</sup>

Similar to the scrutiny needed of the overall global gender digital divide, one recurring theme among commentators is the need for more information

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empowerment of women through telecommunications/information and communication technologies, Resolution 70 (Dubai, 2018).

403. U.N. University, *Taking Stock*, *supra* note 3, at 114; *see also Toward Gender Equity Online: Research with the Next Billion Users*, at 27, GOOGLE (2019), [http://services.google.com/fh/files/misc/toward\\_gender\\_equity\\_online.pdf](http://services.google.com/fh/files/misc/toward_gender_equity_online.pdf); *see also* van der Spuy & Aavriti, *supra* note 18.

404. World Wide Web Found., *Toolkit*, *supra* note 390, at 4.

405. *Id.*; Catherine Highet, Hannah Skelly, & Alexandra Tyers, *Gender and Information Communication Technology (ICT) Survey 4–5*, USAID (2017), [https://www.usaid.gov/sites/default/files/documents/15396/Gender\\_and\\_ICT\\_Toolkit.pdf](https://www.usaid.gov/sites/default/files/documents/15396/Gender_and_ICT_Toolkit.pdf).

406. *Id.*; *See also* Jac sm Kee, *Feminist Internet Research and Domains of Change: Planning and Assessment*, ASS'N FOR PROGRESSIVE COMM'NS (June 2019) (analyzing feminist research practices and value in the context of research projects), <https://www.apc.org/en/pubs/feminist-internet-research-domains-change-planning-and-assessment>.

about CyberVAWG, its conception, and the studies devoted to it.<sup>407</sup> One recent effort to do just that include a literature review undertaken to gauge the status of research efforts in this area and to locate informational gaps with the goal of determining a path for further investigation.<sup>408</sup>

The question remains: who should be responsible for this data collection? There are two possible entities that seem well-positioned to coordinate these efforts. The first is Evidence and Data for Gender Equality (“EDGE”), which operates under the umbrella of the U.N. Statistics Division and U.N. Women and already works in collaboration with critical partners.<sup>409</sup> Another prospect is through the Gender Data Portal that was developed by the World Bank’s Gender Cross Cutting Solution Area (“CCSA”), as well as the Development Economics Data Group (“DECDDG”).<sup>410</sup> Obtaining in-depth information continues to be vital in crafting effective solutions to bridge the current ICT gender gap.

A bolder future direction is to consider the various proposals for a so-called “Feminist Internet.” There is no monolithic voice on the meaning of this term.<sup>411</sup> It can refer to something fairly basic, such as gender mainstreaming, which has now become a mainstream concept in and of itself.<sup>412</sup> Some feminist Internet advocates envision the creation of a separate space for women to interact online as a form of “strategic separatism.”<sup>413</sup> Gender justice advocates have noted the Internet’s ability to create a space to carve out and amplify feminist discourse in contexts where women’s voices are being ignored or oppressed.<sup>414</sup> Others contend that, at a minimum, the

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407. U.N. University, *Taking Stock*, *supra* note 3, at 114; *Mapping Study*, *supra* note 139, at 14.

408. See generally Backe et al., *supra* note 130.

409. Evidence and Data for Gender Equality (EDGE), U.N. STATISTICAL DIVISION and U.N. WOMEN, <https://unstats.un.org/edge/> (last visited Oct. 6, 2019).

410. *Gender Data Portal*, WORLD BANK, <http://datatopics.worldbank.org/gender/about> (last visited Oct. 6, 2019).

411. Joanna Walsh, “*She wore a USB cord, instead of a necklace*”: *Whatever happened to Cyberfeminism?*, NEWSTATESMAN (May 25, 2016), <https://www.newstatesman.com/politics/feminism/2016/05/she-wore-usb-cord-instead-necklace-whatever-happened-cyberfeminism>. It should be noted that discussions around a feminist Internet differ from dialogues on “cyberfeminism,” a term coined in the 1990s, that is sometimes defined as “undefined.” *Id.*; See also *Decolonising the internet: Second International Cyberfeminist Meeting*, ASS’N. FOR PROGRESSIVE COMMC’NS (May 15, 2018), <https://www.apc.org/en/blog/decolonising-internet-second-international-cyberfeminist-meeting>. The most recent International Cyberfeminist Meeting took place March 2018 in Brazil, more than 20 years after the First Cyberfeminist International took place in Germany in 1997. *Id.*

412. U.N. Economic and Social Council Res. 2013/16, *Mainstreaming a gender perspective into all policies and programmes in the United Nations system* (Oct. 9, 2013).

413. Faith Wilding, *Where is Feminism in Cyberfeminism?* NEME (Mar. 28, 2006), <http://www.neme.org/texts/cyberfeminism>; see also Elizabeth Jay Friedman, *INTERPRETING THE INTERNET: FEMINIST AND QUEER COUNTERPUBLICS IN LATIN AMERICA* 127–163 (2017) (discussing La Red Informativa de Mujeres de Argentina, one of the longest-lasting women’s electronic distribution list in Latin America, as a counterpublic).

414. Rochelle Jones, *The Makings of a Feminist Internet*, ASS’N FOR WOMEN’S RIGHTS IN DEV. (Dec. 7, 2017), <https://www.awid.org/news-and-analysis/makings-feminist-internet>.

Internet must be a safe place for women and girls.<sup>415</sup> Finally, although not a position embraced by feminists exclusively, there is a sense that a part of the Internet should be preserved and nurtured as a “social, non-commercial commons.”<sup>416</sup>

The Association for Progressive Communication (“APC”) describes a feminist Internet in terms of its role, which emphasizes empowerment and integration:

A feminist internet works towards empowering more women and queer persons— in all our diversities— to fully enjoy our rights, engage in pleasure and play, and dismantle patriarchy. This integrates our different realities, contexts and specificities— including age, disabilities, sexualities, gender identities and expressions, socioeconomic locations, political and religious beliefs, ethnic origins, and racial markers.<sup>417</sup>

APC has also encouraged implementation of “The Feminist Principles of the Internet” that address issues in areas including access, movements and public participation, economy, expression, and agency.<sup>418</sup> As one of the primary drafters of these principles explains, it is “an expression of the kind of internet we would like to have, and will contribute to shaping.”<sup>419</sup>

Another descriptive moniker that has been mentioned is a “woman-forward Internet.” In explaining what this might look like, one author recounts that it could begin with “greater protections for users.”<sup>420</sup> This “woman-forward” approach was taken in a somewhat different direction by two female entrepreneurs who built a text-based platform that they describe as “emotional media” rather than “social media,” which is designed to *connect* people in cyberspace.<sup>421</sup> This tactic is not markedly different from the work of progressive feminists to “preserve and nurture at least a part of the internet as a social, non-commercial commons.”<sup>422</sup>

415. Sophie Hemery, *What would a feminist internet look like?*, OPEN DEMOCRACY (Nov. 22, 2018), <https://www.opendemocracy.net/en/5050/what-would-feminist-internet-look-like/>.

416. Anita Gurumurthy & Nandini Chami, *Data: The New Four-Letter Word For Feminism*, GENDERIT (May 31, 2016), <https://www.genderit.org/articles/data-new-four-letter-word-feminism>.

417. *Feminist Principles of the Internet— Version 2.0*, ASS’N FOR PROGRESS COMM’NS, (Aug. 2016), [https://feministinternet.org/sites/default/files/Feminist\\_principles\\_of\\_the\\_internetv2-0.pdf](https://feministinternet.org/sites/default/files/Feminist_principles_of_the_internetv2-0.pdf).

418. *Id.*

419. Jac sm Kee, *supra* note 69, at 84 (2018), <https://link.springer.com/article/10.1057%2Fs41301-017-0137-2>; *see also* van der Spuy & Aavriti, *supra* note 18.

420. Andrea Barrica, *How Women Are Rebuilding a Man-Made Internet*, FORBES (Mar. 5, 2019) <https://www.forbes.com/sites/andreabarrica/2019/03/05/how-women-are-rebuilding-a-man-made-internet/#1f9c15741096> (citing to the example of Bumble, the online dating service where women make the first move).

421. *Id.*

422. Gurumurthy & Chami, *supra* note 416 (urging that a data-stratified society be reimagined through a feminist radical practice of community and connectedness).

The common thread throughout the varied calls for a feminist Internet is the notion of dignity, respect, equality, and freedom. Many would agree these are principles that should apply in any online space. A feminist Internet to be truly inclusive must remain cognizant of the multiple identities of women such as ethnicity, race, age, disability, caste, and class in the overall assessment of the relationship of women and girls to ICTs.<sup>423</sup> Perhaps digital equality will be closer to attainment when women assume a greater role as creators and controllers of information.<sup>424</sup>

## VII. CONCLUSION

Globally, more women than men, do not have meaningful and substantial access to Information and Communication Technologies (“ICTs”). Some of the benefits associated with ICTs include educational and economic empowerment, political participation and mobilization, and the development of voice and agency. Denial of access, or reduced access, for women has practical ramifications and directly implicates women’s human rights.

There are impediments to ICT access that affect both men and women such as availability of infrastructure and financial constraints. But women’s access to ICTs is restricted in unique ways because gender inequality in the real world is transposed to the online space, which makes gender inequality both a source and an effect of the digital divide. To overcome identified obstacles, stakeholders should continue to work cooperatively and collaboratively in a coordinated manner to craft effective solutions that will advance women’s human rights, promote equality, and foster empowerment.

Although many other barriers to access are slowly being dismantled, eliminating cyberviolence against women and girls (“CyberVAWG”) is daunting because it is systemically gendered and pervasive. To date, CyberVAWG has been seemingly inexorable and unresponsive to traditional legal remedies. This places an onus on so-called digital gatekeepers including government, intermediaries, programmers, industry representatives, and consumers to confront online violence and, at the very least, establish community usage guidelines. It is also crucial for advocates working on issues of online violence to be actively involved in the conversation about ways to deal with cyberviolence.

Meaningful and substantial ICT access is quickly becoming coextensive with the notions of complete personhood and human flourishing and ICT access has been characterized by some as a fundamental right *per se*. Others contend that the importance of access is to protect underlying fundamental rights such as freedom of expression, association, and assembly that are memorialized in international human rights documents. In either instance, ICT disparities between men and women raise substantive equality concerns. ICTs and information services have the potential to become sources of

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423. *Id.*

424. Anita Gurumurthy, *Gender and ICTs Overview Report*, at 11 (2004), <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Gender-ICTs.pdf>.

empowerment for women, but this gender divide must be traversed so that women will be treated with equal dignity as full participants in the digital space.