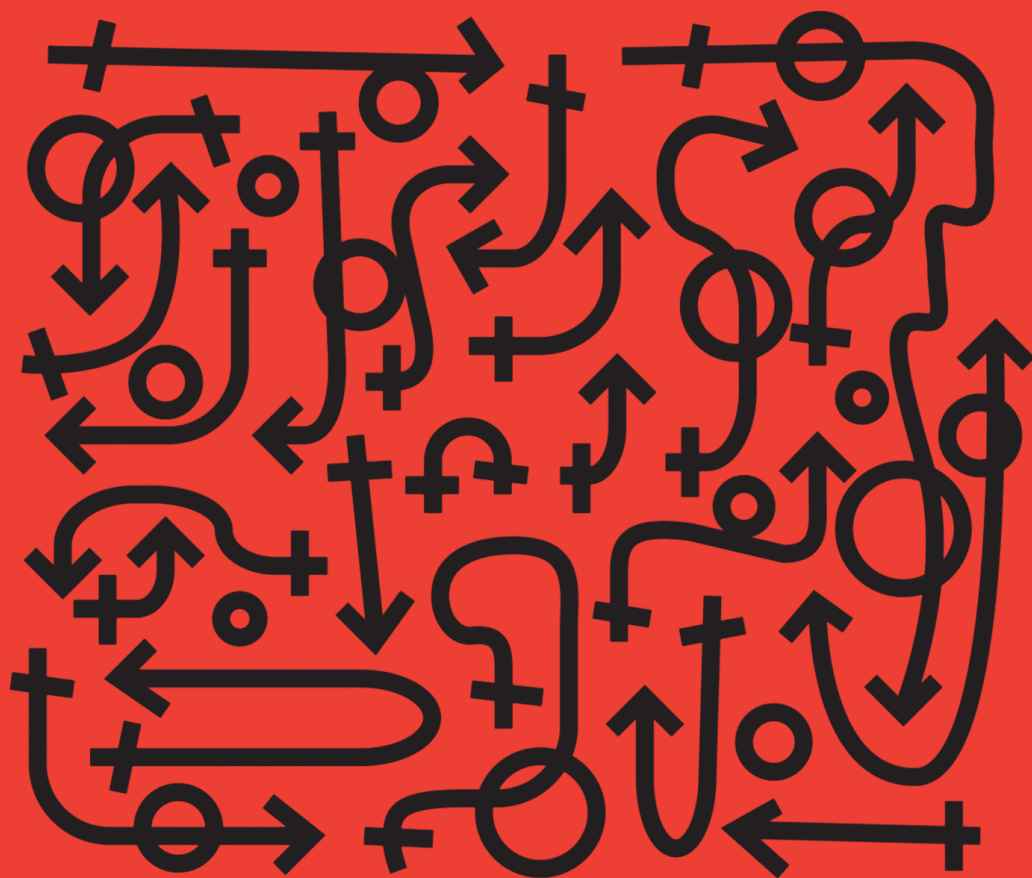


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



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

Global Information Society Watch 2015

Sexual rights and the internet

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BRAZIL

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



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Introduction

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

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

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

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

Policy and political background

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

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

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

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

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

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

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

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

What is the “Top 10”?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What happens when the Brazilian state looks at the problem?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

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

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

Action steps

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

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

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

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

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

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

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

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

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

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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