PRIVACY INTERNATIONAL

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Women's Day 2016

Initiative of the Privacy International Network

Introduction

The right to privacy is a qualified right. Gender is not and cannot be its qualification.

For this year's International Women's Day, the Privacy International Network is sharing some of its successes as well as the challenges and opportunities we face in at the intersection of gender issues and the right to privacy.

Interferences and violations of the right to privacy, as described in the UN Declaration of Human Rights, affect society as a whole. However, the consequences and implications of these fundamentally vary amongst different groups. Pre-existing inequalities in society combine with violations to privacy to multiply injustice. And that is unfortunately the case for women

But what are the intersection points between gender inequality and privacy intrusion? One example is how surveillance and violations of women's privacy is used to assert control. Technology-related forms of violence, such as online harassment and cyberstalking, have continued to be of increasing concern particularly for women human rights defenders, activists and journalists.

The above issues are as much, even more, about the right to equality than the right to privacy, but the later enables the enjoyment of certain rights when these are denied because of one's classification, such as gender. Currently privacy laws assume women are equal to men before the law and equality law assumes women are socially equally to men. Until women are treated as equals and equally enjoy their fundamental rights, we must continue our mission to protect their privacy so they can exercise them now. In the context of sexual and reproductive rights, there are various dynamics as presented by Derechos Digitales in Chile and Dejusticia in Colombia in terms of the legal framework regulating abortions. Bytes for All highlights two campaigns they are involved with aimed at challenging gender perspectives and stereotypes in Pakistan as for them the current patriarchal legislative system is inadequate to ensure the adoption of gender sensitive laws that effectively protect and promote the right to privacy.

Nevertheless, whilst a lot of progress still needs to be made to achieve gender equality, women have arguably never had as much power and resources to engage, and be heard, and take measures to promote and protect themselves, and their privacy. Technology has been part of that process such as in the Philippines, where Foundation for Media Alternatives have worked with 8 Layer Technologies, a free and open source company, to develop a mobile application to report gender-based violence they experience or witness. But

seeing the use of surveillance technologies and broader surveillance powers as an effective deterrent to tackle violence against women, which is ultimately a societal problem, is also concerning - as highlighted by the Digital Rights Foundation in Pakistan in response to the newly passed Protection of Women Against Violence Act 2015 by the provincial Government of Punjab. The experience of women human rights defenders in Kenya also reflect some of the challenges they face as women but as they undertake their work in light of the growing surveillance powers and apparatus of the Kenyan government.

As we undertake our work as privacy advocates it crucial that we understand the complexity of these issues, to ensure that we advocate for the respect, protection and promotion of the right to privacy that is gender-sensitive. At the same time the fight for women's rights and gender issues will require us to give full consideration to the right to privacy, and related topics including surveillance, data protection and data exploitation.



Derechos Digitales
Chile

Anonymity & Sexual and Reproductive Rights: the Latin American Case

Danae Tapia & Paz Peña
Derechos Digitales, Chile

In patriarchal societies where governments, conservative power groups and a sexist public opinion harass women who exercise their sexual and reproductive rights in a daily basis, anonymity has become a powerful tool for solidarity and self-defence.

Being a woman in Latin America is a dangerous thing within a macho culture. According to the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), in 2014 at least 1,678 women were killed by gender reasons in 14 countries in Latin America and three in the Caribbean. This is just an estimated number because not all the local governments have implemented methodologies to calculate femicides so the number could easily grow. Moreover, ECLAC points out the street harassment as "one of the most downplayed and naturalized form of violence against women" in the region. The dramatic situation is not different with the sexual and reproductive rights of women in Latin America and the Caribbean. Chile, Nicaragua, El Salvador, Haiti, Suriname and Dominican Republic are the few remaining countries in the world where abortion is outlawed regardless of the particular case with harsh penalties for those who perform abortions, along with Malta and the Vatican. The situation is especially dramatic when Zika virus is present in almost all countries in the region.

The fight against conservative political forces that have denied all types of abortion in Chile since 1989 (the last year of the conservative dictatorship of Augusto Pinochet) has been held up by different feminist collectives. The last attempt is occurring now: the Chilean Congress is discussing a new legislation that contains three types of circumstance in which abortion would not be a crime. On March 1st the bill was passed in the Constitution commission in the Chamber of Deputies. Even though this is great news, the conservative parties in the Senate will probably going to stop any possibility to go further with this discussion.

Meanwhile, far away from the vivid discussions between pro-choice and "pro-life" in an almost all-male Chilean Congress, poor women have to struggle in order to get an abortion in the shadows. The Ministry of Health has said that in Chile there are more than 33,000 abortions performed each year, with an average of 90 abortions per day. However, as Amnesty International points out, other studies estimate between 60,000 to 70,000 abortions a year, while for others the numbers increase at 160,000 abortions by year. In this context, in order to get an abortion in Chile and not be punished, anonymity is essential.

This desolating context, however, has promoted the emergence of protocols and activities of solidarity among Chilean women. All the actions are carried with an extremely high level of protection of identities because the political context in one of the most conservative countries in the world has made think to activists that their communications are prone to be intercepted: several cases of doctors denouncing to the police the women who arrive to hospitals after the complications of a home-made abortion, or the situation in the north of Chile (on the border with Peru and Bolivia) where immigrant women are pursued and deported after been found at clandestine abortion centres, as local activists confirm, or even the public harassment performed by conservative groups and general public to women who have admitted to have aborted which has been labelled it as "hate speech" by some local activists.

All these examples make evident the importance of the construction of secure communications channels in order to preserve anonymity not just for the feminists collectives but for the security of the women looking for a safe abortion. Now Chilean feminist groups understand this need and are increasingly interested in adopt measures and tools to anonymise their communications. Organisations as Línea Aborto Libre provide anonymously information to perform safe abortions at home. Other groups as Centro de Acción Feminista and Colectivo Tijeras excel at accompanying women who decide to have abortions and at delivering legal support to protect their identities. Sometimes in dramatic cases that involve rape survivors or under-age women.

Discussions on digital security must address these kind of approaches. We have to incorporate the particular contexts of the developing world and make an effective connection with the technological resources available, and in this specific case of the criminalisation of abortion, to ensure that anonymity will be protected at every stage of the process.

At the same time, the digital security approach by itself is not enough. As anonymity is a vital issue for vulnerable people as low class women who want to perform an abortion, the fight against surveillance gets a political accent. The gender perspective must to be adopted and feminists and gender collectives have to be incorporated in the discussion.



Digital Rights Foundation

Bytes For All

Pakistan

Privacy and Online Gender Rights Activism: A Pakistani Perspective

Zoya Rehman
Bytes For All, Pakistan

The increasing prevalence of the internet in the lives of Pakistanis has made it more possible for women and LGBTQ individuals to gain access to, as well as create, more meaningful spaces for meeting other like-minded individuals and sharing experiences. This allows us to witness gender identities being articulated, power relationships and misogyny being challenged, and feminist efforts being organized online. The internet is indeed a transformative instrument that lets many Pakistani individuals - especially those who cannot fully express themselves publicly because of the multiple oppressions they experience on a day-to-day basis - maintain their freedom of expression and right to privacy.

Privacy is what helps us create safe spaces at a time when the internet, much like our personal lives, is becoming increasingly political and gendered. Valuing privacy means being able to work on nuanced, often polarizing, issues as gender rights activists. It lets us go against the ideas of regulating gender identity and sexual expression, moral and body policing, the violation of consent, confusing the importance of privacy with the idea of guarding honor and family status, and imposing the 'chadar aur chaar dewari' (confines of the four walls of one's house) concept on women to condone abuse and violence. Privacy, from a gender lens, means valuing anonymity as an integral part of personal safety, particularly for queer and trans people, and women experiencing domestic violence and abuse. Privacy means shunning the idea of women's roles being restricted to their homes, and not using this logic to restrict online spaces and support established patriarchal norms.

We have seen several examples of how the internet has helped promote sexual expression in Pakistan, be it in the form of Chay Magazine, a website that delves into sex and sexuality in South Asia, or in the writings of Nuwas Manto or Eiynah. However, the state and mainstream media have done little to protect our privacy, be it in the form of unethical reporting or censorship and surveillance. This is why we wish to explore the way privacy issues affect women in Pakistan through our Aurat Raj (women rule) campaign, which delves into women empowerment in a digital world (just like the iconic 1970s Pakistani film of the same name that questioned male-dominated societies). Another local campaign we developed focused on APC's 'feminist principles of the internet' (drafted by feminist activists from around the world) and linked them to the broader gender rights movements in Pakistan.

Both these campaigns seek to encourage community-driven solutions that help Pakistanis express their politics and gender identities freely and on their terms. This leads us to believe that while we keep fighting for laws that are 'gender-friendly', new legislation (such as the problematic Prevention of Electronic Crimes Bill, as well as the Punjab Protection of Women Against Violence Bill) usually entails an increase in state control (as well as privacy violations), and actual implementation is almost always unsatisfactory. The experience of feminist politics in advocacy efforts not only raises doubts about law reform and formal legal rights being transformative instruments in areas of privacy but, more importantly, shows how our legal system is rife with features that are actively discriminatory towards women and LGBTQ individuals. The legal fraternity and state, mostly comprising men, interpret laws in patriarchal ways, and ignore our subjective experiences of oppression, which explains why there are fewer convictions in cases of gender-based abuse and violence. Because of this, the implementation of laws, no matter how they are drafted, will always remain conservative and biased in the area of privacy. The law is simply not enough when it comes to building strong, gender sensitive spaces based on the quintessential right to privacy.

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Is Wearing A GPS Tracker Really a Solution for Domestic Violence In Pakistan?

Nighat Dad & Adnan Ahmad Chaudhri
Digital Rights Foundation, Pakistan

In late February, the provincial Government of Punjab passed the Protection of Women Against Violence Act 2015. In 2014, over 7,010 domestic violence cases were reported in Punjab alone, more than in any other province in Pakistan. The presence and passing of this law, in theory, which recognises and criminalises violence against women, is a step forward at the first glance. Before we celebrate the Act, however, we have to look at its flaws, and how they reflect on how often the protection of women's rights, whilst given lip service, needs to be held up to greater scrutiny.

The Act mentions tackling forms of violence, such as stalking and cybercrime, but does so without clear indications or definitions as to what these terms entail. What constitutes a "cybercrime", for instance? As DRF has elaborated in its work on the matter, cybercrime includes:

"Cyberstalking, harassment through social media, sharing of inappropriate (and usually stolen) material, unauthorised power and access of computer systems, and the distribution of personal information belonging to other people all constitute cybercrimes"

If the Act is to protect people, especially women, it needs to elaborate on what acts come under the umbrella of cybercrime in order for people to be able to report against them. Overly broad language cannot help protect women and others that suffer from domestic violence. The Act also highlights a trend amongst governments: the idea that surveillance technology, encouraged by the provision of broad surveillance powers, could be enough to discourage violent abusers and stalkers. A provision in the Act in particular suggests that a guilty party may,

"Wear ankle or wrist bracelet GPS tracker for any act of grave violence or likely grave violence which may endanger the life, dignity or reputation of the aggrieved person"

Monitoring perpetrators in order to prevent future acts of violence plays well in media outlets, and to relevant stakeholders, at least on the surface. As is often the case with legislative language that purports to protect particular groups, the reality is different.

In the case of GPS tracking, for example, there is no mention of what happens

to the victim whilst the abuser wears an ankle or wrist bracelet. The following questions, however, are still unanswered: Do they still share the same living space? Does the tracking hardware and software indicate that the abuser is in the vicinity of the victim if, for example, the latter is shopping in a market, or is visiting a friend?

The Act goes on to explain the consequences for the abuser if the GPS bracelet is hampered with but it does not present any detailed explanation regarding the position of the victim, nor does it talk much about which authorised body is to be responsible for overseeing the implementation and tracking aspect of the Act. This makes us wonder whether or not the government has sufficient mechanisms, if at all, to be able to track and step in, should the abuser commit another act of violence. The next thing to think about is, "What happens when and if the GPS tracker on the abuser is removed?"

Will the abuser be continuously monitored, and will the victim be at risk once again? Rather than causing the former to reflect on their actions, the public humiliation of wearing tracking hardware in public could lead to even more violent abuse towards the victim.

We brought up the GPS provision of the Act as an example of how legislative action, that is ostensibly to protect a vulnerable part of the population, in this case victims of domestic abuse, runs the risk of failing, by reverting to the notion that state surveillance mechanisms are sufficient for their protection. This then, permits the state to say that surveillance can help ensure that the rights of women are enforced, by monitoring the actions of abusers and stalkers, without pursuing more concrete and effective means of empowering women.

The basis of surveillance, however, is not to provide a state's citizens with greater protection – this tends to be an additional outcome, and one that has had dubious benefits. The reality is that surveillance works to provide state and non-state actors with quantifiable data, which they can use, often for purposes of control.

Women have historically suffered from surveillance initiatives, especially as they work towards equality. The early 1900s saw British female suffragettes under heavy covert surveillance undertaken by Scotland Yard. This included photographs taken of them in prison without their consent or knowledge, and officers in plainclothes following them at all times. This surveillance did not prevent them from being attacked by violent anti-suffragette individuals. In the modern day, feminist groups, such as Russia's feminist collective Pussy Riot, that operate in more repressive nations have reported that they remain under surveillance.

The recognition of domestic violence, as a crime, no longer to be treated as taboo behind closed doors but as something to act upon, is an important step, especially as we move towards International Women's Day 2016. Whether that step takes us forward, or two steps backwards, is up to us, as we push for more effective and holistic action on behalf of women worldwide, so that they

are free from surveillance, state and non-state.

According to the UN, violence against women is, "one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

We must work to ensure that social and state mechanisms that do not work towards the empowerment of women and their freedom from violence, are re-examined and refashioned.



Dejusticia
Colombia

Privacy in the Midst of Sexual and Reproductive Rights of Colombian Women

Vivian Newman Pont & María Paula Ángel
Dejusticia, Colombia

In 2006 in Colombia there was a paradigmatic policy change regarding sexual and reproductive rights of women. By judicial ruling C-355 of 2006, the Colombian Constitutional Court decriminalized abortion in three specific circumstances, in which the Court considered it was disproportionate to force women to continue with their pregnancies. Since then, abortion is a fundamental right recognized through case law as part of the sexual and reproductive rights of women.

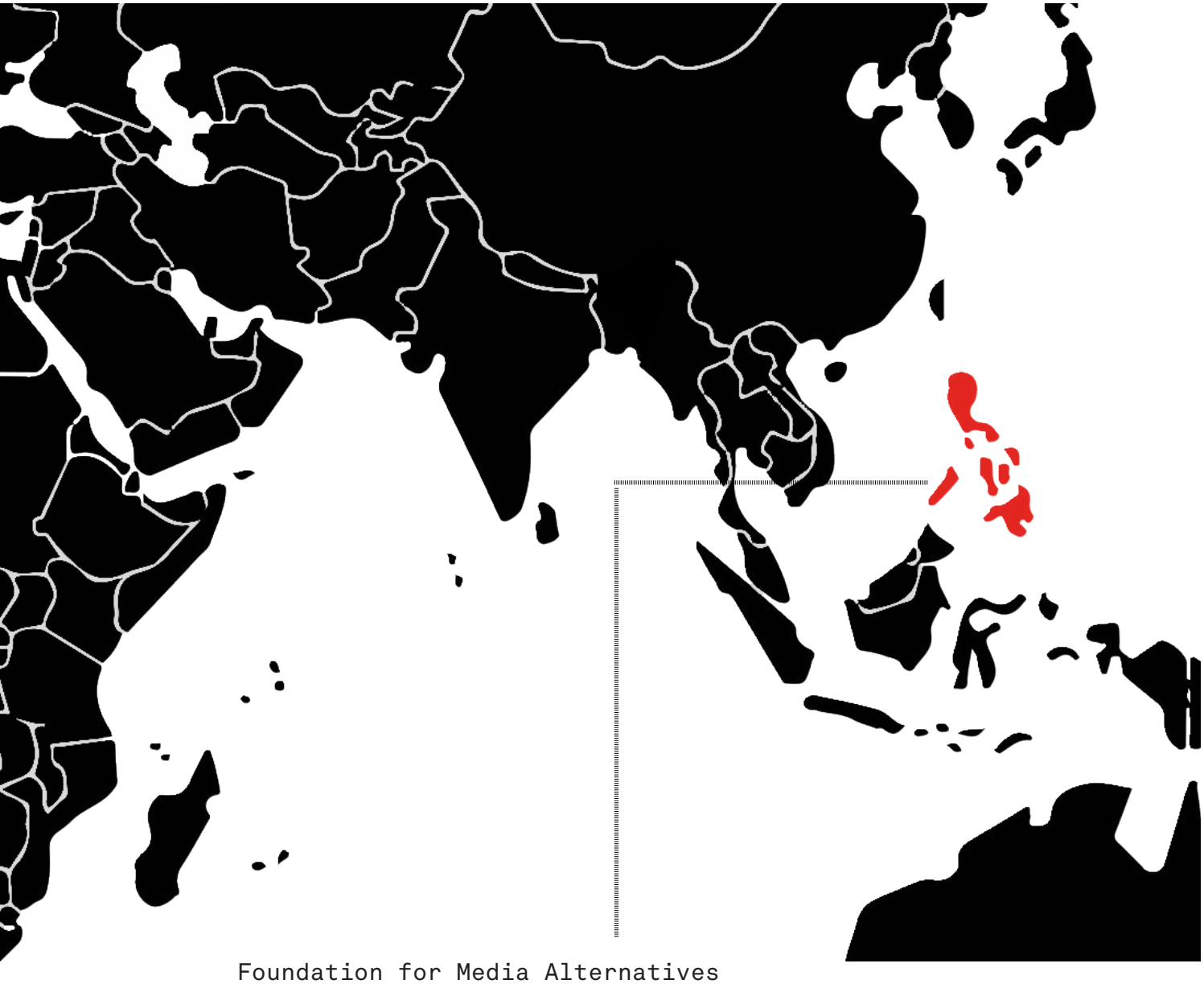
Thus, when a woman believes that her case fits in one of the three said prescribed circumstances, but her health care provider denies the service, she can go before a court to claim her fundamental right to the voluntary termination of pregnancy. As a consequence, her case is studied by a judge and registered in a judicial file, which according to the right to access to public information is usually public.

In order to protect these women's right to privacy, the Colombian Constitutional Court has established the obligation of judges to keep secret the identity of the woman requesting the abortion, regardless of the outcome of the judicial process (regardless of whether or not the abortion is ordered). Additionally, the Constitutional Court has ruled that if judges become aware of an abortion that was not ordered by a judicial decision, they do not have a duty to report it as a criminal offense if: (i) there is any doubt that the woman's case could have fit in any of the prescribed circumstances; and (ii) the doubt is due to the inefficiencies of the health care service providers in Colombia. Thereby, the Constitutional Court has protected the right to privacy of women as a means to safeguard other constitutional rights at stake, such as their fundamental rights to have access to justice and to the voluntary termination of pregnancy.

But not always the tensions produced are solved with the safeguard of women´s rights. Sometimes they may deter women´s legitimate intention to interrupt their pregnancies. For example, despite the mentioned rulings, there is a high Colombian authority in charge of the public discipline and safeguard of human rights that has been trying to collect personal data of women registered in the judicial rulings that did not grant the right to stop pregnancy. The intention lying behind this authority relates to the possibility of filing a criminal complaint against the women that, not authorized by the judicial decision, could have aborted or against the public servants that could have collaborated.

In Dejusticia, a Colombia-based think and do tank, we have been doing some research to make explicit the tensions between the right to privacy of women who want to access abortion and access to information in the context of judicial proceedings. In particular, we are trying to understand the tension between personal data to identify women that use that access the judiciary for voluntary interruption of pregnancy. In addition, we are studying the tension between the right to privacy involved in the right to abortion and the duty of presenting a criminal complaint by public servants where there is doubt whether the women that practiced voluntary interruption of pregnancy are in one of the three decriminalized causes.

Analysing these tensions is very relevant because the formulas adopted to resolve them may limit disproportionately the effective realization of these rights, or on the contrary they may contribute to safeguard rights in a more integral way. Thus, in short we intend to contribute to the discussion of harmonization and optimization in the tensions that the right to a legal abortion may pose with the right to privacy, for the benefit and advancement of the rights of women.



Foundation for Media Alternatives
Manila, Philippines

Taking control of technology and strategically using ICT platform for activism against gender based violence

Lisa Garcia
Foundation for Media Alternative, The Philippines

Every year, the Foundation for Media Alternatives (FMA) makes it a point to participate in the celebration of International Women's month. For the last three years, FMA, through its Gender and ICT program, has actively participated in the activities of the World March of Women - Philippines. Together with our partners from different women's organizations, we take to the streets demanding that women's voices be heard on various issues. We also sign statements conveying our stand on issues that affect women. On May 9 this year, the Philippines will hold its national elections and women's groups are challenging candidates for various local and national posts on their positions with regards to job contractualisation, climate change, violence against women and militarism.

FMA has also launched a mobile application called Aksyon VAW recently. Aksyon is the Filipino word for action, and VAW stands for violence against women. The app is a project of the Foundation for Media Alternatives (FMA), a non-government organisation based in Quezon City that assists individuals and groups in their strategic and appropriate use of various means of information and communications technology (ICT). FMA partnered with 8 Layer Technologies, a free and open source company, to develop the said app.

This mobile application calls on users, especially women and girls, to take control of technology and strategically use any ICT platform for activism against gender based violence. It demonstrates the need for users to know their rights and to keep safe online.

AksyonVAW features three stories of technology-related violence against women - cyberbullying, identity theft, and online harassment. Each story has a scenario where the app user can help choose an action regarding the case. For example, a victim of cyberbullying in school can choose to report to school authorities about the incident or just keep quiet about it. If the user chooses one option, a resulting scenario appears. It has to be noted though that some of the responses to the cases are based on Philippine law. Tips on what to do in case of online abuse are also featured in the app.

The app is now available for downloading but further improvements to it will still be added in the next few days.



The National Coalition of Human Rights Defenders-Kenya
Kenya

National Coalition of Human Rights Defenders - Kenya

Securing the Right Privacy for Women Human Rights Defenders in an Environment of Surveillance

Yvonne Owino-Wamari
The National Coalition of Human Rights Defenders-Kenya

Women have achieved great milestones in their fight for equality and recognition. Despite these positive gains, considerable challenges remain to women's meaningful realization of their human rights. Economic, political and cultural factors have conspired to deny women the opportunity to actively participate in development of their country, while women human rights defenders are faced with various hurdles or persecution when they engage in the promotion and protection of human rights and fundamental freedoms. Additionally, their right to privacy is often violated.[1]

Surveillance within Kenya[2]

Surveillance can take place in two ways. First, authorities have direct access to networks and services and can pull information themselves: Surveillance can be initiated directly by the government agency which would involve the government using communications surveillance technologies. In Kenya, the State has put in place numerous initiatives that grossly affect the working environment of HRDs under the guise of counter terrorism measures. These include the Integrated Public Safety Communication and Surveillance System[3], Umoja Kenya Initiative[4], SIM card registration[5], registration when using public Wi-Fi, increasing capabilities of the Kenyan National Intelligence Service (NIS) to conduct surveillance[6], and the adoption of restrictive legislation with the amendments to the Security Laws (Amendment) Bill, 2014[7]. Secondly, the authorities can request assistance for surveillance from operators. Cooperation with telecommunication providers is sometimes referred to by surveillance proponents as 'lawful access', when laws require communications service operators to deliver information[8] to either law enforcement or intelligence agencies[9] when requested.

Impact of Surveillance measure on Women Human Rights Defenders

The privacy implications of the aforementioned are numerous and significant. Key concerns include the possibility of data sharing with third parties (including foreign agencies and the private sector), the processing and collection of

1 Privacy is provided for as a fundamental right in the United Nations Declaration of Human Rights (UDHR) 1948, Article 12 and the same is echoed in the Constitution of Kenya under Article 31.
2 https://www.privacyinternational.org/node/735
3 http://www.capitalfm.co.ke/business/2014/05/integrated-communication-surveillance-system-to-boost-security/
4 State to partner with Israeli firm to create online database of Kenyans http://mobile.nation.co.ke/business/Online-Database-Technology-Public-Servants-Profile/-/1950106/2421390/-/format/xhtml/-/in8ob8z/-/index.html
5 http://www.nation.co.ke/news/CA-WiFi-Internet-Rules-Cybercrime/-/1056/2771118/-/mbci1a/-/index.html
6 http://somtribune.com/wikileaks-kenya-national-intelligence-service-purchased-software-to-crack-websites/
7 https://www.privacyinternational.org/node/99
8 https://www.documentcloud.org/documents/804662-1241_utimaco_product-description.html
9 http://www.justice.gc.ca/eng/cons/la-al/sum-res/faq.html

communications and images without the consent of individuals, the risks of insecure storage facilities and unauthorised external access, and the potential for data to be deleted or modified.

The provision of Article 31(c) and (d) of the Constitution are given effect by the Data Protection Bill which regulates the collection, retrieval, processing, storage, use and disclosure of personal data. However, this bill has not yet been enacted thereby lacking a legal framework to protect individuals from violations or seek redress for violations meted against them.

Digital biometric technologies rely on soft and contemporary biometrics which quickly sort people into categories of race and gender. Therefore digital biometric technologies would facilitate hi-tech forms of racial and gender profiling which can be classified as gender based violence in accordance with the United Nations definition[10].

Disclosure on intimate information has a detrimental effect on the lives of Women Human Rights Defenders (WHRDs) who not only have their dignity and reputations to uphold but also need to protect their children whom are usually targets of such malicious acts. The right to privacy is conceived of as a protection against potential abuses by the state. Yet state surveillance, too, when its target is a woman, often takes a specific gendered form. This was evidenced in 2014 with smear campaigns against the son of a prominent WHRD in the local dailies fabricating stories that he raped a minor, yet at the time of the alleged incident he was not even in the country.

Another interest very commonly associated with the term "privacy" is the interest in controlling access to one's body—by touching, sight, and other forms of surveillance. There is a deep concern for keeping certain parts of the body, and certain bodily acts, hidden from the sight of others—and also a more general concern that, whatever one is doing, one should not be watched without one's consent.

Physical surveillance is enabled through the initiative that have been put in place by the state. These can be used to not only infiltrate communication but also to locate the whereabouts of an individual. In Kenya, the security forces are known for torturing people who they require pertinent information from or to intimidate HRDs into silence. The threat alive to WHRDs is the risk of sexual forms of torture to silence them.

All surveillance must meet the minimum standards of being both necessary in a democratic society to achieve a legitimate aim and proportionate to that aim[11]. Individuals must be protected against arbitrary interference with their right to communicate privately. When a government wishes to conduct communications surveillance, it must only be done in accordance with clear and transparent law which will maintain the dignity of individuals, especially WHRDs who are prone to psychological torture that is attached to the adverse use of sensitive by third parties to intimidate them from carrying out their human rights work.

10 The United Nations defines violence against women as "a manifestation of historically unequal power relations between men and women" and that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." It calls out by name "physical, sexual and psychological violence" in the family, general community and as perpetrated or condoned by the State.

11 https://necessaryandproportionate.org