

# OGBV Law Checklist

## What is OGBV?

Online gender-based violence (OGBV) against women (women and girls) is any act of gender-based violence that is committed, assisted or aggravated in part or fully by the use of information and communication technology (ICT), such as mobile phones and smartphones, the internet, social media platforms or email, against a woman because she is a woman, or that affects women disproportionately and, as such, is a violation of their human rights.

States should recognize OGBV as a human rights violation and a form of discrimination and gender-based violence against women, and enact specialized legislative measures, consistent with their obligations under international human rights law and standards, to prevent and address OGBV.

## Guiding Principles

- The same human rights that people have offline must also be protected online. Thus, women's human rights, as guaranteed by international human rights law and standards, should be protected online, including through measures that prohibit and prevent OGBV.
- Criminal law should be interpreted consistently with international human rights law. Criminal law that restricts the exercise of any human rights should be consistent with the international human rights law principles of legality, legitimate purpose, necessity and proportionality, and non-discrimination.
- OGBV laws should clearly prohibit and criminalize all forms of OGBV against women amounting to a violation of their physical, sexual or psychological integrity. Criminal law should only prohibit forms of OGBV that inflict substantial harm to the fundamental rights and freedoms of victims/survivors, and amount to a violation of their physical, sexual or psychological integrity.
- Certain forms of OGBV that should be criminalized include: online threats of physical and/or sexual violence; severe harassment online, including sexual harassment; doxing (the non-consensual publication of private information, such as contact details, on the Internet with malicious intent, such as exposing the victim to harassment); sextortion (threatening to release intimate pictures of the victim to extort additional intimate content or sexual acts from the victim); online stalking; non-consensual distribution of intimate contents ("revenge porn"); and threats to share intimate contents.

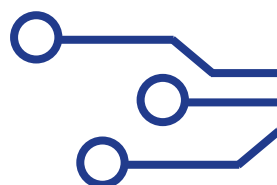
- Laws that criminalize forms of OGBV against women that amount to a violation of their physical, sexual or psychological integrity should apply a gender perspective to all online forms of violence, which are usually criminalized in a gender-neutral manner, in order to address them as acts of OGBV.
- Laws and regulations on OGBV should be constantly reviewed to ensure that they can respond to contemporary and emerging forms of OGBV.

## Prosecution and Punishment of Perpetrators

- Laws criminally proscribing certain forms of OGBV should only provide sanctions for perpetrators that are consistent with human rights, including by being non-discriminatory and proportionate to the gravity of the offence. Custodial sentences may only be imposed as a measure of last resort.
- Criminalized forms of OGBV should not, mandatorily, or otherwise, be referred to alternative dispute resolution procedures, such as mediation or conciliation. Alternative dispute resolution procedures should not constitute an obstacle to women's access to formal justice.
- The application of criminal law should be premised on the absence of freely given consent and take into account coercive circumstances and unequal power dynamics.

## Intersectional Discrimination

- OGBV laws should recognize and respond to intersecting forms of discrimination and the compounded negative impacts that OGBV has on women who may be subjected to one or multiple, intersecting grounds of discrimination prohibited by international human rights law.
- OGBV laws should recognize factors that contribute towards intersecting forms of discrimination against women, including, but not limited to grounds of discrimination prohibited by international human rights law, whether real or imputed, such as age; sex; sex characteristics; gender; sexual orientation; gender identity; gender expression; race; colour; national or social origin; nationality/citizenship; ethnicity; disability; immigration status; property; birth or descent, including on the basis of caste and analogous systems of inherited status; language; religion or belief; political or other opinion; membership of a particular social group; marital or family status; pregnancy; childbirth; parenthood; health status, including HIV status or drug dependence; economic and social status; occupational status; place of residence; indigenous identity or status; and minority or other status.



## Legal Protection

### Privacy of complainants and witnesses

- OGBV laws should establish effective measures to protect and assist women complainants of and witnesses to OGBV before, during and after legal proceedings.
- Such measures should ensure adequate protection of the victim's/survivor's privacy and avoid their revictimization.

### Protection from reprisals and retaliation

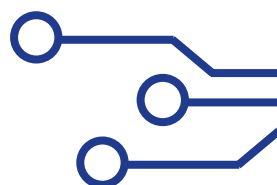
- OGBV laws should establish effective measures to protect victims/survivors, as well as their families, witnesses and legal representatives, from intimidation, retaliation and revictimization. Such measures should include effective risk-assessment for victims/survivors, and where applicable, their children, family and witnesses, consistently throughout the investigation, prosecution and trial phases, with a view to identifying danger and acting to prevent reprisals and retaliatory acts by the perpetrators and/or their affiliates.

### Protection from lawsuit reprisals

- OGBV laws should provide legal protection for victims/survivors, their families and their lawyers from criminal or civil lawsuits aimed at silencing them. For example, victims/survivors who do not report their cases to the authorities, but wish to make their experience of OGBV public, should be protected from defamation suits. Hence, legal protection should apply even if the victims/survivors have not reported their case to the authorities.
- States should substantially amend or repeal laws and regulations that have the potential to criminalize victims/survivors of OGBV and/or act as barriers to access to justice, such as overbroad criminal defamation provisions that are inconsistent with the principle of legality under international human rights law.

### Prevention and removal of harmful online content

- OGBV laws should allow victims/survivors, their families, relevant professionals and States actors to request an immediate injunction to prevent the publication of harmful content.
- OGBV laws should provide effective measures to remove the publication of harmful content featuring OGBV, including content that has been amplified by secondary perpetrators, such as when people repost the original harmful content that was published by the principal perpetrator.



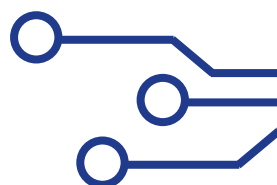
- The prevention and removal of harmful content should require prior approval from an independent and impartial judicial authority. The removal order should comply with due process and international law standards with respect to legality, legitimate purpose, necessity and proportionality.
- OGBV laws should establish an expedited judicial process to address urgent requests to prevent publication or expedite removal of harmful content. Victims/survivors of OGBV, their families and their lawyers should have the right to file urgent requests to prevent publication or expedite removal of harmful content.
- States and internet intermediaries, such as social media platforms and internet service providers, have a joint responsibility to prevent and address OGBV. Internet intermediaries should coordinate with State authorities to effectively implement orders to prevent or remove harmful content, while ensuring that such orders are consistent with international human rights law.

### Protection orders

- OGBV laws should grant competent judicial authorities the power to issue protection orders. Protection orders should prevent the perpetrator from posting or sharing intimate images without the victim's/survivor's consent or prevent the perpetrator from engaging in other forms of violence, whether online or offline.
- Protection orders should be available, where necessary, on an *ex parte* basis, irrespective of, or in addition to, other legal proceedings against the perpetrator, and they should not be contingent on the initiation of a criminal case against the perpetrator.
- The law should not impose strict time limits on access to protection orders to address forms of OGBV, particularly those occurring in the context of domestic violence, which are often part of a course of conduct taking place over time.
- The right to request protection orders should be available to victims/survivors, their families, relevant professionals and State actors.
- Protection orders should be effectively implemented and monitored. The law should impose appropriate criminal sanctions on perpetrators who breach protection orders.

## Reparations for Victims/Survivors

- OGBV laws should ensure that victims/survivors of OGBV have equal access to effective and timely remedies. Justice sector actors, including law enforcement officers, public prosecutors and judges, should inform victims/survivors of the remedies available and how to gain access to them.



- OGBV laws should provide a wide range of remedies for victims/survivors of OGBV, including monetary compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.

## Procedural Rules

### Gathering and securing digital evidence

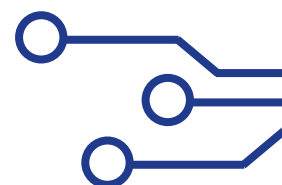
- OGBV laws should establish processes on gathering and securing digital evidence for OGBV cases, guided by international human rights law and standards, including with respect to the right to privacy of the victim/survivor and/or of witness/es. Any digital evidence that is gathered should be kept and utilized solely for the purpose of investigating and prosecuting OGBV.
- OGBV laws should establish measures to authenticate digital evidence, such as ensuring that a qualified forensic expert recovers and/or examines the evidence.
- OGBV laws should establish measures to prevent mishandling digital evidence, such as requiring investigators to conduct a risk assessment prior to the seizure of digital devices or online data and establishing guidelines on digital evidence preservation to prevent unauthorized access.
- OGBV laws should impose appropriate sanctions on justice sector actors who mishandle digital evidence leading to the revictimization of OGBV victims/survivors.

### Identifying anonymous perpetrators

- OGBV laws should establish processes to identify anonymous perpetrators, for example by linking digital identifiers, such as an IP address, to physical devices and perpetrators.
- The implementation of identification processes should require prior approval from an independent and impartial judicial authority. The order should comply with due process and international law standards with respect to legality, legitimate purpose, necessity and proportionality.

### Extraterritorial reach

- OGBV laws should establish a framework for international cooperation on prevention measures, protection and assistance to victims/survivors, prosecution of perpetrators and the enforcement of remedies and judicial orders. International cooperation includes establishing legal processes to make and respond to requests for mutual legal assistance effectively.



## Gender-Sensitive Implementation of OGBV Laws

- OGBV laws should mandate justice sector actors, including law enforcement, public prosecutors, judges and government service officials to apply a gender perspective and avoid revictimization when handling OGBV cases.
- States should provide adequate and continuous capacity-building training to justice sector actors, including law enforcement, public prosecutors, judges and government service officials, on the application of international human rights law and standards that are particularly relevant to the investigation, prosecution and adjudication of OGBV-related criminal offences.
- The training should increase the justice sector actor's understanding of the harms associated with OGBV, how to identify and respond appropriately to the specific needs of women victims/survivors of OGBV, how to avoid revictimization and the use of stereotyping language, and the gendered causes and impacts of OGBV.

## Further Reading

UN Human Rights Council, *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*, UN Doc A/HRC/38/47, 18 June 2018, available at: <https://www.undocs.org/A/HRC/38/47>.

UN Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 26 July 2017, available at: <https://www.undocs.org/CEDAW/C/GC/35>.

UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan*, UN Doc. A/76/258, 30 July 2021, available at: <https://www.undocs.org/A/76/258>.

