Introduction

ARTICLE 19 welcomes the efforts of the ITU and its Council Working Group on International Internet-Related Public Policy Issues (CWG-Internet) to engage in a multistakeholder process by holding this Open Consultation. We appreciate the opportunity to provide the Working Group with our position on Bridging the Gender Digital Divide, and we look forward to the discussions that will follow in January 2018 at the physical meeting in Geneva.

ARTICLE 19 is an international human rights organization that works to protect and promote the right to freedom of expression. With regional offices in Africa, Asia, Europe, Latin America, and the Middle East and North Africa, we champion freedom of expression at the national, regional, and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance. We actively participate in forums across the Internet governance and standards development landscape, including the Internet Corporation of Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), the Institute of Electrical and Electronics Engineers (IEEE), and the Internet Governance Forum (IGF). ARTICLE 19's Gender and Sexuality Team specializes in ensuring intersectionality and equity in the protection and promotion of human rights; currently, its work is focused on combating technology-related violence against women.

The Gender Digital Divide and the Right to Freedom of Expression

Generally, digital divides are gaps between individuals, households, businesses, and geographic areas that are at different levels, whether socially or economically, with regard to their opportunities to use, develop, and benefit from the Internet and information and communication technologies (ICTs).[1] These opportunities include not only meaningful access to hardware, software, connectivity, and digital content, but also digital skills and knowledge. Naturally, the gender digital divide is no different, manifesting as a discrepancy in the availability of these opportunities. But how should we understand the existence and persistence of this divide?

The gender digital divide is both a consequence and cause of systemic violations of women's human rights, both online and offline. It is a reflection of existing realities: the discrimination and marginalization that women face in society--not only on the basis of gender, but also through compounding factors rooted in location, economic status, age, racial or ethnic origin, and education--yield barriers to using, developing, and benefiting from the Internet and ICTs. As a result, women are disproportionately excluded from leveraging the transformative potential of these technologies to engage in political discourse, contribute to the creation of knowledge, and establish platforms for advocacy that may be safer than offline alternatives. At the same time,

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[1] Organization for Economic Cooperation and Development, *Understanding the Digital Divide* (2001), p. 5.

women that are able to access the Internet and ICTs are at risk of marginalization from discursive spaces, violence, and other harms that result in alienation from accessing these technologies altogether. Fundamentally, it is the free and full exercise of human rights that determine our ability to use, develop, and benefit from these technologies; indeed, the full realization of human rights would facilitate the end of the gender digital divide.

In particular, the right to freedom of opinion and expression is both a fundamental human right and an enabler of other rights that are necessary for closing this divide.[2] These include civil and political rights such as privacy, as well as economic, social, and cultural rights such as the right to work, the right to health, the rights of women with disabilities and the rights of the child. Freedom of expression includes the right to seek, receive, and impart information. As such, it is a crucial driver in itself for public participation beyond individuals' primary communities and a necessary condition for achieving the full potential of women's social and economic development, including their participation in the digital economy and their role in enterprise as owners and managers.

Scope and Structure of this Submission

There are five questions provided in this open consultation. However, based on ARTICLE 19's particular expertise and program of work, this submission will elaborate on two.

> ***Question Five.*** *What are the gaps in addressing these challenges? How can they be addressed and what is the role of governments?*

In response to Question Five, we assert that although infrastructural access remains a major challenge to bridging the gender digital divide, factors that alienate women from availing access where it does exists continue to be insufficiently addressed by relevant stakeholders. A critical example is technology-related violence against women (VAW). In response to this gap, stakeholders should adopt a human rights framework in considering the gender digital divide. Specifically:

- **Governments** should support the UN Guiding Principles on Business and Human Rights (UNGPs), while also implementing impact assessments to evaluate existing and future policies and programs.
- **Industry stakeholders** should meaningfully adopt the UNGPs and work with civil society and other experts to develop and implement human rights impact assessments.
- Finally, the **ITU** should continue to work within its existing mandate regarding gender equality and mainstreaming to facilitate capacity building among Members.

> ***Question One.*** *What approaches and examples of good practices are available to increase Internet access and digital literacy of women and girls, including in decision-making processes*

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[2] A/HRC/17/27, para. 22.

In response to Question One, we contend that to ensure the opportunities necessary for women to use and benefit from the Internet, the spaces in which Internet-related policy and standards decision-making occurs must be upheld by structures that deliberately foster and encourage the inclusion of individuals that have been disproportionately disenfranchised from access, including women. Specifically, we note the anti-harassment measures undertaken in recent years by the Internet Corporation of Assigned Names and Numbers (**ICANN**) and the Internet Engineering Task Force (**IETF**). The initiatives taken by these respective communities serve as examples from which other bodies, including the ITU, can draw. Specifically, we recommend that the ITU consider:

- Moving beyond initiatives designed solely to recognize the need for inclusiveness in ITU decision-making spaces.
- Establishing a clear and easily accessible anti-harassment policy for these decision-making spaces.
- Supporting anti-harassment policies for ITU decision-making with the development of clear and formal anti-harassment procedures.

As a final note, this submission is structured to respond to these two questions out of the order in which they were originally presented in the open consultation. The basis of our response to Question Five in turn frames our response to Question One.

Question Five

> *What are the gaps in addressing these challenges? How can they be addressed and what is the role of governments?*

The Existing Gap in Addressing Challenges of the Gender Digital Divide

At the start of 2017, 53% of the world's population had not yet come online.[3] The deployment of infrastructure has been unequally distributed, in both speed and uptake, across geographic, social, economic, educational, political, cultural, and institutional divides. These divides intersect with and further compound the growing disparities in access between women and men. Indeed, the size of the gender digital divide is inversely correlated with development: the more developed the state, the smaller percentage difference in Internet penetration rates between men and women.[4] It is therefore clear that Internet infrastructural development remains a major challenge to bridging the gender digital divide, one that serves as the primary focus for many Internet-related policy development organizations including the ITU. However, is it the only challenge to bridging this divide?

No, because the gender disparities do not end at the point of access. Even once online, women are between 30% and 50% less likely than men to use the Internet for economic and social empowerment.[5] Clearly, ensuring universal Internet connectivity is not sufficient to closing the gap; we must recognize that women may be alienated altogether from meaningfully participating in the civic space enabled by the Internet, even when they do have the ability to access it. **However, there exists a gap in most current approaches to addressing the gender digital divide, as both government and industry stakeholders are not necessarily aware of how to systematically identify and mitigate the factors that facilitate the marginalization of women online.**

We assert that **the human rights framework provides the basis for effectively responding to both of these persistent challenges to closing the gender digital divide.** By applying this framework, stakeholders can better understand how the offline dynamics of power that lead to oppression and marginalization--the disenfranchisement of civil, political, economic, social, and cultural rights--are replicated and further entrenched online. In doing so, governments and industry stakeholders alike can not only identify the barriers that continue to hinder universal Internet connectivity, but also the ways in which women may be threatened or excluded from social and economic participation online.

A major issue that exemplifies such systemic disenfranchisement is the prevalence of technology-related violence against women (VAW). On the basis of explicating this

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[3] ITU, *ICT Facts and Figures 2016*, 2016, p. 7.

[4] Ibid., p. 3.

[5] See World Wide Web Foundation, http://webfoundation.org/about/research/womens-rights-online-2015/.

phenomenon and its impact on further entrenching the gender digital divide, we will provide a series of recommendations for governments, industry, and the ITU.

Technology-related VAW

The Office of the High Commissioner for Human Rights defines technology-related VAW to encompass acts of gender-based violence that are committed, facilitated, or aggravated by the use of ICTs.[6] As other aspects of gender-based marginalization online, technology-related VAW is a reflection of the violence that women have long faced offline, though reproduced in new and specific forms of abuse, bullying, and harassment. It is pervasive: nearly 75% of women have been exposed to technology-related VAW.[7] Moreover, it is mounting: incidents of documented violence have risen sharply in recent years.[8] These dynamics compromise the ability of women to fully and freely exercise their human rights online; women may not engage in their right to free expression due to self-censorship, and the nature of the violence may violate victims' right to privacy. Ultimately, if the protections provided by the rights of women are weakened or compromised, women may choose not to participate in the digital civic space--including the digital economy--altogether. Thus, the gender digital divide persists.

Despite the fact that technology-related VAW remains both a manifestation of the divide and a major challenge to closing it, this issue has yet to be sufficiently addressed. There is currently a lack of understanding regarding incidences of technology-related VAW, including how local factors, including cultural and political dynamics, affects the perpetration, consequences, and responses to it. However, the application of a human rights framework by all relevant stakeholders ensures holistic engagement with the intersectional and compounding disparities that facilitate its prevalence, and so presents a strong and critical response to this challenge.

Recommended Responses

In responding to the challenge of gender-based marginalization online as a consequence of issues such as technology-related VAW, we strongly affirm the responsibilities of all relevant stakeholders, including governments and industry, to uphold human rights. By taking rights-based approaches in developing responses to these issues, stakeholders can work towards sustainably bridging the gender digital divide.

Recommendations for Member States

- **States must undertake actions to protect women from technology-related violence online.** States should consider preventive measures designed to reduce the incidence of violence, such as educational programs, in addition to reactive responses such as

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[6] Office of the High Commissioner for Human Rights, *Ways to Bridge the Gender Digital Divide from a Human Rights Perspective*, 2017, para. 35.

[7] United Nations, *Combatting Online Violence Against Women & Girls: A Worldwide Wake-Up Call*, 2015.

[8] Twitter Policy Blog, "Progress on Addressing Online Abuse", 2016.

investigation of incidents, actions against perpetrators, and redress and remedy for victims.

● **States must ensure that all actions taken in response to technology-related VAW are fully compliant with international human rights norms and standards.** Actions taken to address the gender digital divide may further exacerbate restrictions on human rights. Ostensible legal structures adopted under the premise of responding to technology-related VAW may be used as pretext to restrict freedom of expression.[9] Even concerning genuine efforts to respond to technology-related VAW, government programs and policies may inadvertently threaten human rights--for example, through the removal of content that is protected under international human rights standards.

○ States can identify potential and real impacts on human rights by implementing impact assessments of policies and programs designed to address the gender digital divide. States should consider working with research institutions that have demonstrated expertise in the development of impact assessment models, such as the Danish Institute for Human Rights.[10]

● **States must support the UN Guiding Principles on Business and Human Rights (UNGPs).** The UNGPs reaffirm states' responsibility to protect human rights. Government responses to the gender digital divide should take into consideration and, where possible, facilitate the adoption of UNGPs among industry stakeholders. In particular, states should ensure that national laws and regulations do not inhibit Internet infrastructure providers and other industry actors within the ICT sector from adoption.

Recommendation for industry stakeholders

● **Industry stakeholders must adopt the UNGPs.** Industry has already launched responses to technology-related VAW, such as tools to safeguard privacy and security features that protect users against harassment and abuse. However, these tools may inadvertently subvert users' human rights, including content regulation that falls outside permissible restrictions on freedom of expression. The UNGPs recognize the corporate responsibility to respect human rights in accordance with international human rights norms and standards and to provide access to remedy where human rights are violated. By adopting the UNGPs, industry stakeholders can meaningfully consider the impacts that their responses to the gender digital divide incur on human rights.

○ To meaningfully adopt the UNGPs, industry stakeholders should consider implementing human rights impact assessments (HRIAs). HRIAs are tools that systematically catalogue the real and potential human rights impacts that result from the policies and practices of a stakeholder. As such, the implementation of an HRIA serves as the first step towards full compliance with the UNGPs: stakeholders must first identify adverse impacts on human rights if they are to meaningfully form responses to mitigate them.

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[9] See Association for Progressive Communications, *From Impunity to Justice: Domestic Legal Remedies for Cases of Technology-related Violence Against Women,* 2015.
[10] See https://www.humanrights.dk/.

The use of HRIAs are especially important as data-driven technologies become more prevalent responses to other challenges, considering the potential that data gaps and input biases pose for reinforcing digital divides, including gender disparities.

Recommendations for the ITU

- **The ITU should continue to work within its mandate.** We commend the ITU for its commitment to promoting gender balance in the organizational structures of the ITU, particularly the ITU-T, as well as to building capacity for gender equality through work in the ITU-D, as enshrined in Plenipotentiary Resolution 70 and ITU-T Resolution 55. As the ITU continues to support Members through the development of policy recommendations and availability of gender-disaggregated data, we assert that the ITU, and in particular the ITU-T and ITU-D, should remain within the scope of their respective mandates on gender equality and mainstreaming. In doing so, the ITU fulfills a necessary and critical role that leverages its existing capacity and expertise.
- **The ITU should build greater transparency into its gender equality and mainstreaming initiatives.** Likewise, we commend the ITU for its commitment to developing initiatives aimed at promoting awareness and building capacity--whether through commitment, education, or resources--to increase women's participation in the use and development of Internet technologies and ICTs. However, we note that the ITU may strengthen these initiatives by establishing transparency measures that facilitate public evaluation of performance indicators and progress measurements.
  - In particular, we urge the ITU to increase transparency around the progress of the recently established Global Partnership for Gender Equality in the Digital Age and affiliated EQUALS campaign. As a multistakeholder initiative that seeks to achieve equal access to digital technologies, empower women to become ICT creators, and promote women as ICT leaders and entrepreneurs, we recognize the importance of this work.[11] By providing up-to-date and accessible data on the ongoing progress of the initiative's implementation, all interested stakeholders can better draw best practices and lessons from it, while also setting a strong precedent for other, similar initiatives.

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[11] Available at https://www.itu.int/en/equals/Pages/default.aspx.

Question One

What approaches and examples of good practices are available to increase Internet access and digital literacy of women and girls, including in decision-making processes on Internet public policy?

Good Practices in Internet-related Decision-Making Processes

The importance of structural inclusion

To ensure the meaningful access of women and girls to the Internet, it is crucial that the venues wherein Internet-related policy and technical decisions are made are themselves accessible. Bridging the gender digital divide is predicated on achieving universal access, which includes a priority for ensuring equitable access in relation to gender while recognizing the intersectionality of socioeconomic disadvantages to access.[12] However, it cannot be ensured without the meaningful participation of women and other underrepresented communities in Internet-related decision-making processes. These are individuals that are most at risk of being excluded from the opportunities to use and benefit from the Internet at the outset, and are therefore best able to identify and respond to how structural offline inequalities manifest in the design and management of technologies. These encoded biases lead to inequitable infrastructural development and deployment that disproportionately disenfranchises women, while also ultimately alienating those that do use the Internet.

These considerations are well-recognized in the context of bridging the gender digital divide through the human rights framework. The UN Special Rapporteur on Freedom of Expression has acknowledged that open and inclusive policy development and standards-setting are necessary to ensuring that the frameworks through which this work is carried out are sensitive to the needs of women and other vulnerable communities.[13] Moreover, the Office of the High Commissioner for Human Rights has affirmed that the absence of women in Internet-related decision-making structures is a prime factor that may prevent or inhibit women's access to and use of the Internet and ICTs.[14]

How, then, do we ensure that decision-making spaces are truly and sustainably inclusive to women's participation? Though this issue has been recognized in decision-making spaces including the ITU itself, initiatives that are predicated on recognition and raising awareness are not in themselves sufficient. The discursive space itself must be examined to account for how existing societal inequalities of power may be leveraged to raise the voices of some within the community at the expense of others. In response, technical communities must develop new

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[12] For a definition of universal access, see Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, *Freedom of Expression and the Internet*, 2013, p. 6.

[13] See A/HRC/32/38, para. 80.

[14] A/HRC/35/9, para. 11.

structures to underpin decision-making spaces--ones that establish clear and effective accountability and remedy mechanisms for all members of the community. The effect of these mechanisms is to engender a decision-making space that is safer for all participants.

Perhaps the best example in this regard is the growing adoption of strong anti-harassment measures among Internet technical communities in recent years. Harassment--particularly, gender-based harassment--remains a pervasive issue in Internet-related decision-making spaces. Gender-based harassment is unwelcome behavior that leverages the pre-existing power differential between individuals with the potential purpose to intimidate, threaten, or offend. As such, it creates an environment that may alter or altogether alienate the participation of those that are subject to it, disproportionately women.

Both the Internet Corporation for Assigned Names and Numbers (ICANN) and the Internet Engineering Task Force (IETF) have taken significant strides towards not only greater recognition of this issue, but also towards establishing clear and effective mechanisms for accountability. These efforts are delineated below.

Anti-harassment efforts in ICANN

In 2017, ICANN presented the official version of its Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure,[15] the first documents of their kind in the history of ICANN. The policy elaborates on the pre-established Expected Standards of Behavior, not only setting clear terms for determining what constitutes appropriate behavior and harassment in both online and face-to-face communication, but also clarifying the mechanisms for accountability and appeal through an ombudsperson that considers and evaluates formal submissions of complaint.

The notable aspect of ICANN's anti-harassment policy is the way in which it was developed. In an effort to be open and inclusive, ICANN included a public comment proceeding as part of the policy development process. **As the structures of decision-making spaces must consciously facilitate inclusive participation, it is necessary that these structures themselves are shaped by the needs and considerations of the community and that the process for developing these structures is subject to transparency.**

Anti-harassment efforts in the IETF

In 2016, the IETF updated its Anti-Harassment Procedures, which is published as a Best Current Practice (BCP).[16] Like ICANN, the IETF has had an anti-harassment policy that predated these Procedures, published to the IETF website in 2013.[17] However, the Procedures

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[15] Available here https://www.icann.org/resources/pages/community-anti-harassment-policy-2017-03-24-en.

[16] Internet Engineering Task Force, *IETF Anti-Harassment Procedures* (RFC 7776), 2016.

[17] Internet Engineering Task Force, "IETF Anti-Harassment Policy" (published Nov. 2, 2013), https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html.

are distinct from general guidelines for expected and appropriate behavior, as outlined, for example, in RFC 7154 or RFC 3934;[18] rather, they operationalize these general considerations by setting out the parameters and operations of the ombudsteam, which handles and responds to reports of harassment. As in the case of ICANN's policy, terms, and procedure, the IETF Anti-Harassment Procedures were subject to public scrutiny and review during its drafting phase, in line with the community's publication guidelines.

Fundamentally, inclusive participation cannot be sustainably fostered by only setting out expectations of behavior within the community. These expectations must be reinforced through the creation of mechanisms that create accountability among individuals within the community and provide a clear process for remedy.

Considerations for the ITU

The anti-harassment initiatives taken by both ICANN and the IETF serve as examples of good practices from which other Internet-related policy and standards organizations can draw. In particular, the ITU should consider the following:

- **Moving beyond initiatives designed to recognize the need for inclusiveness in ITU decision-making spaces.** We commend the ITU for steps it has taken to foster greater community among the women that participate in decision-making processes; a recent example is the Women's Breakfast that took place during the 2017 World Telecommunication Development Conference (WTDC-17) in Buenos Aires in October. However, events such as this and other similar initiatives are only effective insofar as recognizing that there is an issue of disproportionate representation in decision-making. Though important, they are not in themselves sufficient for ensuring that decision-making spaces in the ITU--not only at the conference level, but also at the study group level--structurally enable full and unfettered participation.
- **Establishing a clear and easily accessible anti-harassment policy for decision-making spaces.** Though we recognize the ITU's robust efforts to implement its Gender Equality and Mainstreaming (GEM) Policy,[19] we note that the policy does not include any reference to harassment. In his 2017 report on the process and results of the quadrennial review of the GEM Policy and compliance with the United Nations System-Wide Action Plan (UN-SWAP) on gender equality and women's empowerment, the ITU Secretary-General concluded that on the implementation of policies for the prevention of discrimination and harassment, the ITU generally approaches requirements under the UN-SWAP guidelines.[20] However, this consideration extends only to the organizational culture of the ITU, and is therefore relevant only to ITU staff and internal operations. These efforts do not consider the creation of any such policies to govern the behavior of

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[18] Internet Engineering Task Force, *IETF Guidelines for Conduct* (RFC 7154), 2014; Internet Engineering Task Force, *Updates to RFC 2418 Regarding the Management of IETF Mailing Lists* (RFC 2418), 2004.

[19] Available here https://www.itu.int/en/action/gender-equality/Documents/gender-policy-document.pdf.

[20] International Telecommunication Union, *Review of ITU's Gender Equality and Mainstreaming Policy (GEM) and Proposed Implementation Plan for 2017* (2017), p. 5.

individuals that participate in ITU decision-making at the conference and study group levels, a gap that may render a significant impact on the nature of meaningful participation in these spaces.

● **Supporting anti-harassment policies for ITU decision-making with clear and formal procedures.** In concert with the development of anti-harassment policies that apply to participants within ITU decision-making spaces, the ITU should consider the development of clear procedures for supporting these policies; in doing so, it may consider the initiatives taken in other organizations including ICANN and the IETF to create ombuds positions in efforts to formalize complaint procedures and processes for remedy. Any efforts to develop such structures should be carried out through open and transparent processes that meaningfully seek community and public input.