

“The Internet and mobile technologies have created new ways to connect, share resources and experiences, and build communities. However, these digital spaces have also provided tools and platforms for the replication and continuation of the perpetration of violence against women.”

– Human Rights Report 2016, “Ending Technology-Assisted Violence against Women”

- ICJ Kenya



Introduction

Technology-assisted Violence Against Women (TAVAW) encompasses acts of gender-based violence that are committed through the use of information and communication technologies (ICTs), such as phones, the Internet, social media platforms, and email.

Violence against women is one of the most pervasive human rights abuses in the world today.

¹ According to UN Women, one in three women is likely to experience physical and sexual violence at some point in her lifetime, and 35% of women worldwide have experienced either physical or sexual violence at some point in their lives. ² Developments in technology have given rise to digital spaces and tools that facilitate replication of such violence online.

The need to end gender-based violence against women continue to be the subject of global discourse. It has been elaborated in numerous international and regional instruments such as the Declaration on the Elimination of Violence against Women (DEVAW), the Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW) and its Optional Protocol, the African Platform for Action (the Dakar Declaration), the Beijing Platform for Action, and the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa (the Maputo Protocol).

Despite the surge of incidences of TAVAW documented in Kenya, the domestic legal regime provides very limited legal responses to the phenomenon. While Kenya's National Cyber Security Strategy ³ and the National ICT Master Plan, ⁴ for instance, identify cyber-security as a national priority, there is no mention is made of TAVAW. Similarly, existing legal frameworks such as the Sexual Offences Act(2006)and the Penal Code, do not explicitly contemplate TAVAW. These legal lacunae give rise to significant policy gaps. The inadequacy of the existing policy and legal structures in Kenya to address TAVAW, coupled with poor implementation of existing laws and policies, leaves women and children vulnerable to TAVAW, eludes justice for victims, and engenders impunity amongst perpetrators.

¹ Violence against Women (VAW): Most Pervasive Form of Human Rights Violation, United Nations Economic Commission for Africa (2009): <<http://www1.uneca.org/Portals/awro/Publications/32VAW%20-%20Most%20Pervasive%20Form.pdf>>

² Facts and figures: Ending violence against women, UN Women: <<http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>>

³ See: <http://www.icta.go.ke/wp-content/uploads/2014/03/GOK-national-cybersecurity-strategy.pdf>

⁴ See: <https://www.kenet.or.ke/sites/default/files/Final%20ICT%20Masterplan%20Apr%202014.pdf>



Approach & Results

Between 2015 and 2016, ICJ Kenya conducted a survey to gauge the extent and manifestations of TAVAW in Kenya and to analyze the legal protections and remedies available. Primary data was collected through questionnaires and interviews of sampled respondents, non-governmental organizations, telecommunications company representatives, Internet service providers (ISPs) and law enforcement personnel. The study also relied on secondary data sources such as international instruments, domestic legislation and regulations, and terms of service and user policies.

The study identified the prevalent forms of TAVAW in Kenya as cyber-stalking, cyber-bullying, online harassment, trolling, hacking, surveillance, impersonation, denigration, malicious distribution, and in the case of children, grooming. The sharing of embarrassing material on social networking accounts and the receipt of offensive communication were the most common types of incidents reported by respondents. Discussions with law enforcement officials confirmed that a majority of the complaints received were based on offensive communication, the sharing of photos, stalking, luring of women and girls, and threats. With regard to children, incidences of cyber-bullying, harassment, stalking, online

grooming and blackmail were noted to be on the rise. 94.1% of respondents felt that TAVAW should be criminalised and that clearer cyber laws with stronger penalties were required. Additionally, clarity on reporting procedures as well as greater awareness among law enforcement and the public was recommended by respondents.

The study also found that while many platforms through which TAVAW occurs (e.g. Facebook, Twitter, YouTube, etc.) have policy guidelines that regulate conduct and allow for reporting, there is still more that needs to be done. In some platforms, reporting and complaints handling mechanisms remain weak. These accountability challenges are exacerbated by limited transparency with regards to the statistics of the number of complaints made through the platforms.

Discussions with law enforcement officials revealed several challenges, most notably, that it was difficult to deal with acts that were not defined as offences in law. It was also observed that the police did not keep statistics of complaints that are filed, making it difficult to establish trends. Lastly, resource constraints and a lack of knowledge and training of police, prosecution and judicial officers, on technology and cyber-crimes, presented serious challenges in investigating and collecting evidence in TAVAW cases.



Conclusion

The proliferation of new technologies in recent years has meant that women are more vulnerable to, and face disproportionate levels of online violence. ⁵ In Kenya, TAVAW is a growing problem with grave repercussions. It can cause psychological and emotional harm, loss of privacy, reinforce prejudice, damage reputation, cause economic loss, pose barriers to participation in public life, and may lead to sexual and other forms of physical violence. ⁶ The elusiveness of online security and the fact that modern technology transcends national boundaries makes it more difficult to prevent and regulate TAVAW.

Nevertheless, to tackle online violence against women, a clear and comprehensive approach is required and is paramount. A key visible gap and difficulty in Kenya is the lack of legislation and policies that identify and address TAVAW as well

as inadequate implementation of existing laws. Responsive legislative frameworks are crucial in ensuring clarity in the law and in creating new offences that reflect evolving trends in violence against women. Law enforcement and public officials should be trained to ensure that they can respond to the needs of women and girls who have been subjected to online violence. When victims are encouraged to report cases, alongside timely investigations and the prosecution of offenders, public confidence in the law is boosted and access to justice is bolstered.

Lastly, a coordinated, multi-stakeholder approach should inform the development of regulations or law on TAVAW so that all stakeholders are provided with adequate opportunity to contribute and shape policy and legal measures.

⁵ Online Harassment, Pew Research Center (2014): <<http://www.pewinternet.org/2014/10/22/online-harassment>>

⁶ Technology-Related Violence Against Women – A Briefing Paper, APC Women's Rights Programme (2015): <https://www.apc.org/en/system/files/HRC%2029%20VAW%20a%20briefing%20paper_FINAL_June%202015.pdf>



Recommendations

1. Legislative Amendments

Legislative review and the enactment of new laws and bodily integrity. However, penal laws must to deal with TAVAW are vital. The Constitution be strengthened to comprehensively deal with of Kenya recognizes and requires the protection TAVAW. The proposed legislative interventions are and promotion of the right to privacy, dignity, set out below:

Law	Proposal
Penal Code	<ul style="list-style-type: none"> Decriminalise defamation Include denigration, create a general provision with a rider for an aggravated level where ICTs are used to commit offences
Sexual Offences Act, 2006	<ul style="list-style-type: none"> Include cyber-stalking, online harassment, online distribution of offensive material, malicious distribution, and soliciting Provide mechanisms for protection e.g. restraining orders Create a provision with a rider for an aggravated level where ICTs are used to commit sexual offences (including sexual assault, rape, defilement, indecent act with child or adult; child sex tourism; child prostitution; and child pornography)
Kenya Information and Communication Act, 2013	<ul style="list-style-type: none"> Include online trolling, cyber-bullying, online shaming, hacking, surveillance, spamming Provide for the limitation of intermediary liability Require service providers to register SIM cards used by children separately, filter content to such SIM cards and provide tools to parents/schools for child protection Provide a clear procedure for seeking information from ISPs Establish a multi-agency team to coordinate handling of cybercrimes in every county Adopt communication principles embodied under the proposed African Declaration on Internet Rights and Freedoms
Children Act, 2001	<ul style="list-style-type: none"> Include online grooming, online child prostitution, provide for online child protection measures e.g. protection orders and retribution for child victims of TAVAW
Data Protection Bill, 2012	<ul style="list-style-type: none"> Revise and enact with stronger penalties for privacy breaches; require intermediaries to report on data requests; include online sources



Cybercrime and Computer Related Crimes Bill, 2016	<ul style="list-style-type: none"> • Merge proposed provisions in this bill into KICA or in the alternative, extract all provisions relating to cybercrime enforcement into this new Bill
Criminal Procedure Act, Chapter 75 Laws of Kenya	<ul style="list-style-type: none"> • Empower judicial officers to determine and order compensation/ restitution in criminal cases, without having to go to civil court
Evidence Act, Chapter 80 Laws of Kenya	<ul style="list-style-type: none"> • Provide clear direction on framework for chain of custody and the standards of admissibility of electronic evidence

2. Stakeholder-Specific Recommendations

a) Government

- Enact legislation and policies that provide clear definition of TAVAV as well as reporting and redress mechanisms.
- Laws should be revised to be clearer, to provide for cybercrimes constituting TAVAV and to provide for stiffer penalties for these offences. Efforts should be put in place to raise awareness for the public about TAVAV. This will deter incidents of TAVAV, enable individuals to recognize the signs of TAVAV and understand avenues of reporting and redress.
- Cyber-awareness programs on online safety, protection and digital security are necessary for the public, including young children and parents. Such programmes should also include training of police, prosecutors and the judiciary on emerging cyber threats in order to enable them to appreciate the nature of the crimes, to respond effectively to complaints when filed, and to enforce existing laws
- Regulations should be revised to ensure that mobile phones in use by children are identified and content to such devices filtered.
- Regular data collection, monitoring and review of trends is essential to prevention and in the design of counter-measures.
- The Sex Offenders Register should be integrated within the Criminal Investigation Department's criminal database and digitised to ensure that law enforcement personnel can readily access background information about offenders. An updated database of suspected and convicted persons of sex offences should also be kept to enable the monitoring of possible recidivism.
- The complaints-handling and feedback systems must be improved; the government should designate a one-stop shop for handling complaints relating to cyber offences.
- The government should work with other countries and develop working relationships with local intermediaries and multinationals such as Google and Facebook to aid investigations.
- Coordination and information-sharing on TAVAV between law enforcement, businesses and regulators should be enhanced.
- Victim support structures should be established at police stations to provide for counselling, legal aid, treatment. Further support to the Victim Protection Board is



critical to ensure that its services are available to victims across the country.

- Focal points for dealing with TAVAW issues should be established within the relevant government agencies and devolved to the counties.
- Regulated training of prosecutors and judicial officers on cyber laws, including on the handling of and admissibility of digital

b) Intermediaries (Private Sector)

- Intermediaries should provide training to their staff on human rights, including specific issues affecting the rights of women.
- Website owners including blogs, social media pages, particularly those with comment sections, forums, or chat rooms should not tolerate conduct on their sites that constitute TAVAW. Where incidents arise, they should intervene and immediately take firm action including moderating comments, publicly condemning perpetrators, reporting them to authorities, or banning such users. Owners should adopt zero-tolerance policies on TAVAW.
- Local ISPs, especially those providing internet access to schools, should take measures

c) Civil Society

- Capacity-building initiatives geared towards members of the public, State actors and the private sector should be enhanced.
- Advocacy for policy, legal and institutional reforms to ensure lasting change and guarantees for the protection of the rights of victims of TAVA should be advocated.
- Evidence-based research on the impact of online violence on women in society should

evidence.

- The government should adopt a framework to strengthen coordination between law enforcement agencies including the police, children's department, prosecution and regulators both locally and within the region, to enable information-sharing and evidence collection.

to ensure children using their networks are protected through filtering of unsuitable content.

- Internet users should be encouraged to use the reporting tools available in most social media networks which allow the flagging and reporting of offensive conduct.
- Service providers should provide tools to users for reporting, as well as to law enforcement to aid investigations. Reporting frameworks should be simple and should allow users to make complaints anonymously.
- Intermediaries should be encouraged to make a public commitment to human rights standards and specifically, the protection of women's rights.

be supported.

- Strategic public interest litigation should be conducted in order to deliver remedies to victims and to jumpstart reform processes where the state is unwilling to.
- Women's rights organizations should endeavour to strengthen the existing coalitions already working on women's rights issues to include online violence in their



agenda. The same should also be promoted within other human rights organizations, and expanded to leverage on existing partnerships with other sectors, such as the private sector to ensure greater understanding and sensitivity to the issues.

- Where there are incidences of TAVAW,

civil society online and the general online community should support by documenting the violence by, for example, capturing screenshots of offensive conduct and submitting it to website administrators, forum moderators and relevant authorities or organizations.

3. General Recommendations

In order to address online violence against women, it is important to address the following general areas collectively:

- Recognition: Recognition and awareness of TAVAW is critical; it must be acknowledged that women are more vulnerable to and face a disproportionate level of online violence
- Prevention: Efforts should be made to improve institutional structures, policy and legislation, compliance and enforcement mechanisms, and education and awareness to prevent TAVAW
- Reporting and Detection: Measures should be put in place to improve feedback to victims, efficiency and effectiveness of personnel in responding to reports of TAVAW, and

collaboration between relevant institutions

- Investigation: Reforms should be instituted to improve the timeliness, efficiency and quality of investigations, as well as the exchange of information between authorities, intermediaries and victims
- Redress: There should be a comprehensive review of judicial and non-judicial measures to deal with TAVAW; investments should be made in capacity-strengthening of personnel and institutions
- Coordination: To ensure that laws and policies are comprehensive and well-informed, a coordinated, multi-stakeholder approach to preventing and regulating TAVAW is important



About HIVOS

Hivos is an international organisation that seeks new solutions to persistent global issues. With smart projects in the right places, we oppose discrimination, inequality, abuse of power and the unsustainable use of our planet's resources. Counterbalance alone, however, is not enough. Our primary focus is achieving structural change. This is why we cooperate with innovative businesses, citizens and their organisations. We share a dream with them of sustainable economies and inclusive societies.

We believe that every human being has the right to live in freedom and dignity. You can be who you are, whether you are male, female, gay, straight, or anything in between. Moreover, you should have the freedom to believe and say what you want, to challenge governments and stir up the established order. Your freedom only ends where another person's freedom begins, and of course where the earth imposes her limits. The depletion of natural resources, loss of biodiversity and climate change already have major implications for the most vulnerable inhabitants of our planet. They, and future generations, are entitled to a truly sustainable world.

The problems Hivos wants to confront are complex and can change rapidly. Against a background of structural poverty, climate change and repression, we see economic crises, rising food prices and growing inequality. There are no simple or quick fixes. For real change to take place, we need to foster smart thinking and innovative solutions. Courage, creativity and knowledge are required to build a green and open world.

We cooperate with various partners across four continents. These can be artists, lawyers, or hackers, but also governments, energy companies and knowledge institutions. The projects we develop and support can be large-scale and long-term, but also small and experimental – a farmers cooperative, or a breeding ground for Internet entrepreneurs, for example. They can also be in the form of a campaign against corruption, a partnership with a coffee trader or a safe haven for a gay activist. What our partners have in common is that they seek to bring about social change through innovative ways. We recognise that same drive in many people across the world.



About ICJ Kenya

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental, non-profit and a member based organization. ICJ Kenya is the only African national section. It is affiliated with International Commission of Jurists (ICJ), Geneva, but operates autonomously. Founded in 1959, it is the oldest human rights organization in Kenya and is registered as a Society under the Societies Act, Chapter 108, Laws of Kenya. Its membership is drawn from the Bar as well as the Bench and currently constitutes of over 500 jurists as members.

ICJ Kenya is dedicated to the legal protection of human rights in Kenya, and the African region in terms of the general mandate for national sections defined by Article 4 of the ICJ Statute. ICJ Kenya has observer status with the African Commission on Human and Peoples' rights. It is governed under a constitution through an elected Council of 7 members that serves for two-year fixed terms.

At ICJ Kenya, we focus our efforts in serving people around the African continent whose problems our interventions are capable of addressing, with a special focus on the people of Kenya both at the national and county level. For the purpose of exchanging knowledge, information and best practices, we will identify and develop opportunities for engaging with stakeholders at the national, regional and international levels.

***Our vision:** A premier human rights organization promoting a just, free and equitable society.*

***Our mission:** To promote human rights, justice and democracy in Kenya and around Africa through the application of legal expertise and international best practices.*





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