



# **Domestic legal remedies for technology-related violence against women: Review of related studies and literature**

Prepared by the Women's Legal and Human Rights Bureau for  
the End violence: Women's rights and safety online  
(EndVAW) project

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This review of related studies and literature forms part of the legal remedy research which falls under the **End violence: Women's rights and safety online (EndVAW)** flagship project of the Association for Progressive Communications (APC). The project is to be implemented from 2012 to 2015 with support from the Dutch government's Funding Leadership and Opportunities for Women (FLOW) programme.

The review will present different perspectives on the interrelatedness and interconnectedness between ICT and VAW. It will cover the existing laws, prevailing policy frameworks and mechanisms in cases of technology-related VAW, and identify gaps and emerging issues from seven countries, namely Bosnia and Herzegovina, Colombia, Democratic Republic of Congo, Kenya, Mexico, Pakistan and the Philippines. The review particularly aims to contribute to the realisation of the objectives of the legal remedy research:

- To get recognition of technology-related VAW as constituting violence against women.
- To encourage reporting of technology-related VAW to obtain redress for survivors.
- To identify and propose remedies either through existing mechanisms or through the establishment of new ones.
- To provide positive recommendations that support women's access to justice and ability to exercise their full range of rights, online and offline.

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## 1. Introduction

Information and communications technology (ICT) has transformed and revolutionised society. It has transformed not only political and economic systems and social interactions, but also culture. It has permeated and transcended public and private spaces and has drastically changed the manner by which states, business sectors and peoples conduct their operations and interact. The vast, intractable and borderless nature of ICT has become an indispensable aspect of human life.

However, with the proliferation and increasing use of ICT, there have been growing bodies of evidence and studies showing the increasing violence against women (VAW) involving the use of ICTs such as computers, the internet and mobile phones. This calls for serious attention and discussion, as despite the evidence, there is very little corresponding recognition of ICT-related forms of violence against women by states, intergovernmental institutions and other actors responsible for ending violence against women. As expressed by the Association for Progressive Communications (APC) in their statement to the 57th session of the Commission on the Status of Women, ICT-related violence against women is not prioritised in prevention and response strategies, budgeting and evidence-based policy making, and women who experience these violations have little or no redress.<sup>1</sup>

On the other hand, we cannot discount the fact that ICTs have brought to the fore new frontiers of women's participation, expression and empowerment. ICTs have provided an alternative space to assert rights and identities. They have shown their potential as tools to bring about substantial changes in modes of citizen participation for political and social reforms, as exhibited by the Arab Spring and the Occupy Movement, as well as by online campaigns and petitions supporting various causes with many of them for women. Online social networks may provide a supportive community comprised of others with similar experiences, values and beliefs that may be difficult to establish in a physical space.

Therefore, violence against women perpetrated through ICT calls for and necessitates an empowerment approach to tackle it. We must avoid sweeping statements that say all women are static victims and look into different situations of women in different contexts and how they exercise and negotiate their agency in these contexts. We have to acknowledge that women react, women respond and women can choose to respond by empowering themselves. As voiced by the UN Special Rapporteur on Violence Against Women (SRVAW) Yakin Ertürk:

Empowerment discourse – through interventions ranging from education, skills, training, legal literacy, access to productive resources, among others – aims to enhance women's self-awareness, self-esteem, self-confidence, and self-reliance. This enables women to understand that subordination and violence are not fate; to resist internalizing oppression,

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<sup>1</sup>Association for Progressive Communications. (2011). Statement to the 57th Session of the CSW: Violence against women and information and communications technology. [www.apc.org/en/system/files/CSW%20APC%20statement%20FINAL%20VERSION.pdf](http://www.apc.org/en/system/files/CSW%20APC%20statement%20FINAL%20VERSION.pdf)

to develop their capabilities as autonomous beings; and constantly negotiate the terms of their existence in public and private spaces.<sup>2</sup>

It is against this backdrop that women's experiences in accessing justice for violations perpetrated through the use of ICTs need to be addressed.

## **2. Framing technology-related VAW<sup>3</sup>**

One of the crucial areas and challenges for women and for gender equality in the age of ICT is that of violence against women.

### **2.1 VAW under international instruments**

Discourse on violence against women, inclusive of sexual violence, is fairly established. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits all forms of discrimination against women. General Recommendation 19 establishes that the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

The Declaration on the Elimination of Violence Against Women (DEVAW) provides a more comprehensive definition of VAW in terms of definition, scope, obligations of the state, and the role of the United Nations. It defines VAW to mean “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” DEVAW further outlines the scope of private and public to include violence in the family, violence in the community, and violence perpetrated or condoned by the state, wherever it occurs.

In a critical review of the UN Special Rapporteur on VAW entitled *15 Years of the UN Special Rapporteur on VAW, Its Causes and Consequences*, further substantiation of the term violence against women as well as emerging issues and concerns around VAW were discussed.

In the reports of the Special Rapporteurs, different forms of violence have been further elaborated to include violence in the family, violence in the community, and violence perpetrated or condoned by the state.

In addition to the forms listed above, Yakin Ertürk, Special Rapporteur until 2009, suggested the inclusion of violence against women in the “transnational arena” – a recognition of globalisation and the increase of transnational processes within which women encounter new and emerging forms of vulnerabilities.

The review also discusses the conceptual shifts/gains of the SRVAW within the 15-year period analysed, which include: a) moving beyond law and order; b) the path from victimisation to

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<sup>2</sup>United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (UN SRVAW). (2009). *15 years of the UN Special Rapporteur on VAW, Its Causes and Consequences (1994-2009): A critical review*. [www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Publications.aspx](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Publications.aspx)

<sup>3</sup>This section is culled from the Women's Legal and Human Rights Bureau unpublished paper, *Study on ICT, VAW and Sexuality: A Policy Advocacy*, 2011.

empowerment; c) sexuality and violence; d) demystifying discourses; and e) intersectionality of discrimination and continuum of violence.

The first of these conceptual shifts/gains implies moving from the narrow conception of treating VAW largely within a welfare/humanitarian paradigm, with women as “poor victims in need of protection,” to an expansion of human rights scrutiny “past symptoms of gender inequality that become manifest as distinct forms of violence to look at structural and ideological causes that underlie the problem beyond the injury caused.”<sup>4</sup> Instead then of merely criminalising acts falling within the definition of VAW and the traditional notions of state responsibility, this conceptual shift “views VAW as an outcome of gender discrimination that shapes social, economic, cultural, and political structures, rather than being independent of them.” Therefore, as a consequence, the state is obligated “not merely to protect against violence, but rather to eliminate its ‘causes’ – that is, gender discrimination at structural, ideological and operational levels – as well as to bear the responsibility for addressing its consequences.”<sup>5</sup>

Closely related to the concept of moving beyond law and order in addressing VAW is the shift from victimisation towards empowerment in the VAW discourse, in recognition of the fact that victimisation does not address the root of the problem and only reinforces existing stereotypes. Ertürk thus stresses the recognition that “violence is not an isolated incident targeting vulnerable women but a systematically used tool of patriarchal control to ensure that ‘women stay in their place’ and that the agenda for the elimination of VAW is not about victimization but rather about the empowerment of women to overcome and eventually change patriarchal hierarchies.”<sup>6</sup>

The next conceptual shift highlighted in the SRVAW review pertains to sexuality and violence. In this regard, the review reiterates the mandate’s consistent view that the root cause of VAW is the unequal power relations between men and women founded upon differential gender-based norms. It stresses that these unequal gender relations derive from “the dominant notions of women’s sexuality and of masculinity that establish dual moral standards for women and men.” The review links the ways by which female sexuality is controlled in the family (e.g. focus on/giving premium to chastity), in the community (e.g. protectionist laws on rape and sexual assault laws which focus on chastity), and in armed conflict (e.g. wars of men waged through women’s bodies), and the different forms of VAW.

The discussion on sexuality and violence in the review, despite the focus on violations, also endorses rights for women pertaining to sexuality, such as: a) the inclusion of same sex unions within the expanded definition of sexuality; b) reaffirmation of reproductive and sexual rights; c) reiteration of the Cairo statement that “all human beings have a right to a safe and satisfying sex life.”

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<sup>4</sup>Ertürk, Y. (2008). Violence Against Women: From victimization to empowerment. Paper presented at the ESCAP forum “Where’s the Power in Women’s Empowerment?”, Bangkok, Thailand, 4 August. Cited in UN SRVAW. (2009). Op. cit., p. 33.

<sup>5</sup>UN SRVAW. (2009). Op. cit., p. 34.

<sup>6</sup>UN SRVAW. (2009). Op. cit., p. 35.

The last two conceptual shifts – demystifying cultural discourse and intersectionality and the continuum of violence – may be discussed together, for like previous concepts, they are inevitably intertwined and interconnected.

The review acknowledges that cultural identity has posed a serious challenge in carrying out the SRVAW mandate. Justifications of VAW in the name of culture and traditional practices have often been invoked. The conceptual shift in responses to this cultural discourse involves two levels: first, the rejection of the term “harmful traditional practices” and instead the adoption of the term “harmful practices” in relation to cultural practices in the family that violate women; and second, “debunking the monolithic static representations of culture (...) to call for state participation in validating alternative and non-hegemonic interpretations of culture by women and encouraging cultural negotiation.”<sup>7</sup> Special Rapporteur Ertürk recommends the public denouncement of violence and dialogues by women with traditional authorities to secure their rights under the constitution and international laws.

In terms of the final conceptual shift addressed in the review, namely the adoption of an intersectional framework, the report explains that intersectionality “aims to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups.”<sup>8</sup> The review notes that the adoption and integration of an intersectional approach to gender analysis enhances the analytical capacity of gender analysis in better identifying the multiple forms of discrimination. It likewise makes visible the continuum of violence and discrimination that captures more fully the consequences of intersectional discrimination.<sup>9</sup>

The UN SRVAW review did not include the vulnerabilities to VAW which women face in the arena of ICT. However, as a whole, the review is very relevant to this research as it greatly aids in framing violence against women and provides direction on how VAW is situated in the context of ICT. Clearly the review sees VAW as rooted in discrimination and structural inequalities: acts of VAW are not isolated, and their intersectionalities and their continuum are manifestations of the underlying discrimination and structural inequalities. It is then in this context that this review proceeds to the examination of VAW perpetrated through and vis-à-vis ICT and the various forms thereof.

## **2.2 VAW through ICT and the forms thereof**

That violence against women is being perpetrated and committed through the use of ICTs, and particularly the internet, has already been the subject of numerous studies and articles. Although a definition of such violence has yet to be developed, several studies have made a listing of what is considered to constitute VAW committed through ICTs.

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<sup>7</sup>Ibid., p. 39.

<sup>8</sup>Ibid., p. 42.

<sup>9</sup>Ibid., p. 44.

One of these is APC's Take Back the Tech project, which documented technology-related VAW between 2009 and 2012 across countries and continents. APC found that technology-related forms of VAW can be classified into the following broad categories: harassment and stalking, intimate partner violence, "culturally justified" violence against women, rape and sexual assault, and violence targeting communities.<sup>10</sup>

In an overview of gender and ICTs, Anita Gurumurthy notes that "the internet has emerged as the premier forum of the international sex trade and has facilitated, accelerated, and normalised the sexual exploitation of women and girls."<sup>11</sup> New technologies, she observes, have enabled the creation of online communities free from interference or standards, "where any and every type of violence goes and where women-hating is the norm."<sup>12</sup> Kathambi Kinoti, in her article "ICTs and Violence Against Women",<sup>13</sup> mentions the difficulty of prosecuting "virtual trafficking" and the problem posed by the borderlessness of the internet in pursuing redress in cases of VAW committed through or facilitated by the internet. In one case, in order to evade Japan's strict pornography laws, Japanese women were taken to Hawaii and performed live strip shows that were broadcast via the internet back to Japan.

"Essentially, the internet is a microcosm of society, where oppression of women is replicated and perpetuated," says Jenn Jones in her article "Internet sexual harassment".<sup>14</sup> Seen in this manner, the structural inequality and the deeply embedded gender inequality prevalent in society and socio-cultural practices necessarily permeate the ICT field. ICTs are far from neutral and are in fact informed by the power relations of the society from which they come, and this includes the context of globalisation, capitalism and patriarchy. Katerina Fialova and Flavia Fascendini, in the APC WNSP research report *Voices from Digital Spaces: Technology-related violence against women*, stress that "ICTs are used to disseminate representations of 'culture' and social relations. These images reinforce notions of 'difference' between men and women by normalising stereotypes of gender roles as reality."<sup>15</sup>

In "Beijing's Legacy for Gender and Media",<sup>16</sup> Margaret Gallagher challenges the assumption that media and other information systems exist beyond the realm and beyond the influence of gender relations. This supports what has been maintained by feminist scholars, that is, the deeply embedded nature of gender-based judgements and assumptions which permeate not only the media, whether in their old or new forms, but all economic, social and political institutions. This in turn echoes the view of Judy Wajcman, who stresses that technology and society are inextricably bound, which means that "power, contestation, inequality and hierarchy inscribe new

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<sup>10</sup>For an overview report on the findings of the MDG3: Take Back the Tech project (2009-2012), see [www.genderit.org/node/3539](http://www.genderit.org/node/3539). For country-specific reports, see [www.apc.org/en/node/10360/](http://www.apc.org/en/node/10360/).

<sup>11</sup>Gurumurthy, A. (2004). *Gender and ICTs: Overview Report*. Brighton: BRIDGE, p. 27. [www.bridge.ids.ac.uk/reports/cep-icts-or.pdf](http://www.bridge.ids.ac.uk/reports/cep-icts-or.pdf)

<sup>12</sup>Ibid., p. 26.

<sup>13</sup>Kinoti, K. (2007). *ICTs and Violence Against Women*. [www.awid.org/layout/set/print/Library/ICTs-and-Violence-against-Women](http://www.awid.org/layout/set/print/Library/ICTs-and-Violence-against-Women)

<sup>14</sup>Jones, J. (2009). Internet sexual harassment. *Muse Feminist Magazine*, 7. [musemagazine.org.nz/61/](http://musemagazine.org.nz/61/)

<sup>15</sup>Fascendini, F., & Fialová, K. (2011). *Voices from Digital Spaces: Technology-related violence against women*. Johannesburg: APC WNSP. [www.genderit.org/node/3539](http://www.genderit.org/node/3539)

<sup>16</sup>Gallagher, M. (2005). Beijing's Legacy for Gender and Media. *Media Development*, 52(3).

technologies.” Thus, although ICTs can indeed be constitutive of new social dynamics, they can also be derivative of older conditions.<sup>17</sup>

Dale Spender has noted that “for every feminist issue in the real world, the same issues apply in the cyberworld,”<sup>18</sup> and this includes the victimisation of women.

However, in the APC issue paper *The World Wide Web of Desire: Content regulation on the internet*, Namita Malhotra insists that the internet is too varied to be described only in these terms. For example, she maintains, there are more complex meanings embedded in pornography that do not allow it to be easily dismissed as violence and subordination of women.<sup>19</sup> This view is similarly shared by the APC Women's Rights Programme's EROTICS project, which stresses the role of the internet as a space that makes it possible to explore and express alternative sexualities and women's desires.<sup>20</sup>

### ***Technology-related VAW: Same roots, different mode/medium of commission***

Technology-related VAW is no different from VAW in terms of origin and root causes: the historically unequal power relations between women and men in public and private life, patriarchy, and men's desire to control women's sexuality.

However, what makes technology-related VAW distinct is the medium and the mode by which the violence is committed: through virtual and digital spaces, through cyberspace, through ICT. It is this particular characteristic of technology-related VAW that sets it apart from other forms of VAW. Although ICT-related VAW springs from the same structural inequality and system of patriarchy in society, which makes it fundamentally the same as offline VAW, the manner of its commission – through virtual and digital spaces – has made technology-related VAW a distinct phenomenon.

### ***Difficulties in ICT-related VAW: Borderlessness, intractability, fluidity of digital personhood***

The borderlessness brought on by ICT, the nature of virtual and digital spaces, and the anonymity offered by digital personhood have totally changed not only the manner by which VAW is being perpetrated, but also its effects and consequences and its consequent prosecution or non-prosecution.

In the ICT arena, the rules on the territorial jurisdictions of states are difficult to delineate. In VAW perpetrated online, the abuser/s may be in one country's jurisdiction, while the abused woman or women may be in another country's jurisdiction. This has given rise to transborder crimes, which are often syndicated and profit oriented, including pornography, child abuse, human trafficking and sexual exploitation. This likewise affects issues of territoriality and jurisdiction in the prosecution of the offences – in online offences, where exactly is the offence committed? Who has jurisdiction

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<sup>17</sup>Wajcman, J. (2006). The Feminization of Work in the Information Age. In M. Frank Fox et al. (eds.), *Women, Gender and Technology*. Chicago: University of Illinois Press.

<sup>18</sup>Cited in Hawthorne, S., & Klein, R. (1999). *Cyberfeminism: Connectivity, Critique and Creativity*. Melbourne: Spinifex Press.

<sup>19</sup>Malhotra, N. (2007). *The World Wide Web of Desire: Content regulation on the internet*. Association for Progressive Communications. [www.genderit.org/content/world-wide-web-desire-content-regulation-internet](http://www.genderit.org/content/world-wide-web-desire-content-regulation-internet)

<sup>20</sup>[erotics.apc.org](http://erotics.apc.org)

over it? These are valid questions which have made the prosecution of online offences, not necessarily limited to VAW, difficult to pursue. Here it is pertinent to cite Gurumurthy's overview of gender and ICTs, in which she notes that criminal syndicates violate laws prohibiting sexual exploitation and violence by locating their servers in host countries with less restrictive laws, to avoid regulation.<sup>21</sup>

In the meantime, the manner in which ICT transcends both time and space has accelerated the effects of ICT-related VAW and made it more vicious. As ICT allows the rapid dissemination of information and content, and since it provides for multiple platforms for posting and reposting, involving a vast number of networked computers and other devices, it becomes very difficult for states and even ICT companies to contain and regulate. As the APC study *Voices from Digital Spaces* explains, in cyberspace settings, abuse can happen every day, all year round, so that the continuous traffic of harassing text and images makes it hard if not impossible to track down and stop further circulation.<sup>22</sup>

A simple example of this is the way in which an uploaded YouTube video circulates on the worldwide web, or when a nude picture of a woman is uploaded on a social network account created by a disgruntled boyfriend or even a stranger. Since the companies which run and control sites such as Facebook and YouTube are located outside of the country, it is difficult, even if possible, to request that content be removed from these sites. In this sense, the violence perpetrated online remains visible for others to see, a constant reminder of the violence committed against the woman that exacerbates the effects of the abuse. In certain cases, one may not even know that one's picture/image has already been morphed or used to create fictitious accounts. This, once again, has been made possible by the nature of ICT and of digital and virtual spaces: their broadness and the immensity of their content.

The anonymity offered by digital and virtual spaces has made ICT-related VAW intractable; it has effectively exacerbated the effects of VAW and increased the difficulty of prosecuting the same. Identity has become very difficult to establish in online spaces. Digital personhood, the identity taken on by people when they go online, which may include their age or their gender, may be totally different from their real identity. This anonymity afforded by virtual and digital spaces and by the internet environment plays a key factor in making ICT-related VAW distinct from offline VAW. In offline VAW, the perpetrator, through his physical presence/appearance, is readily seen, whereas in virtual and digital spaces, this is not so. There exists an intractability of identity in digital spaces, such that a woman may become a victim of cyber pornography, cyber stalking or blackmail without necessarily seeing or knowing who the perpetrator is. This makes the prosecution of ICT-related VAW more difficult.

As described by Megan Boler, there is a fluidity of online identity, as online spaces including both text-based and visual spaces permit users to construct "virtual 'fictional' identities that allow them to move beyond the usual social markers of ethnicity, class, gender, age and ability."<sup>23</sup> One

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<sup>21</sup>Gurumurthy, A. (2004). Op. cit.

<sup>22</sup>Fialova, K., & Fascendini, F. (2011). Op. cit.

<sup>23</sup>Boler, M. (2007). Hypes, Hopes and Actualities: New Digital Cartesianism and Bodies in Cyberspace. *New Media and Society*, 9(1),139-168. Cited in Williams, R. (2009). Gender, Bodies and Cyberstalking: Embodying

manifestation of this fluidity is gender-switching, whereby users can select avatars, personas or user names of the opposite sex or choose to be gender neutral.

With regard to the effects of digital/virtual spaces and of the internet on the commission of cyber crimes such as cyber obscenity, cyber violence and cyber stalking, Rachel Williams observes:

Cyber crimes are distinctive in several ways. Firstly, they have no definable boundaries and are unrestrained by concepts of time, space and location. As Yar argues, "cyberspace variously 'transcends', 'explodes', 'compresses', or 'collapses' the constraints of space and time that limit interactions in the 'real world'."<sup>24</sup> This also means [cyber crimes] are inter-jurisdictional, which has consequences for prosecution. They also lack a "core set of values"<sup>25</sup> and there does not exist a consensus, legal or otherwise, as to what constitutes a cyber crime.<sup>26</sup>

Although Williams' study acknowledges that cyber crimes are distinct by virtue of the mode or medium of their commission and posits that cyber crimes are a gendered offence, it is difficult to make a sweeping statement as to who the perpetrators are by virtue of the fluidity of digital personhood.

### ***What is harm in online spaces?***

Another issue within the context of ICT is the notion of disembodiment or the absence of physicality. What is violated in online spaces when there is no physical body to speak of? The absence of physicality raises questions on what constitutes bodily integrity: a woman's fundamental rights to control her body, identity and sexuality, including the freedom to decide on her body and on matters related to her sexuality. Feminist researchers argue that when engaging with online spaces, the body transcends the physical as it includes representations and subjective understanding of the self. In analysing how sexual harassment is committed online, researchers explain that in the absence of the physical body, it is language that constitutes the body in online spaces, and it is also through language – by way of flaming, hate speech, harassment – that the virtual body is or may be diminished. As Williams observes:

If "being" can be constituted through language then online abuse and harassment via language contributes to an individual's ontological precariousness. The ways in which speech can harm in a face-to-face situation are equally plausible in an online environment to the extent where the environment itself may contribute to the increased severity of a

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theory, developing methodology. Thesis submitted to Victoria University of Wellington in fulfilment of the requirements for the degree of Master of Arts in Criminology.  
[researcharchive.vuw.ac.nz/bitstream/handle/10063/1171/thesis.pdf](https://researcharchive.vuw.ac.nz/bitstream/handle/10063/1171/thesis.pdf)

<sup>24</sup>Yar, M. (2006). *Cybercrime and Society*. Thousand Oaks: Sage Publications Ltd. Cited in Williams, R. (2009). Op. cit., p. 27.

<sup>25</sup>Wall, D. S. (1999). Cybercrimes: New wine, no bottles? In P. Davies et al. (Eds.), *Invisible Crimes: Their Victims and their Regulation*. London: MacMillan. Cited in Williams, R. (2009). Op. cit., p. 27.

<sup>26</sup>Williams, R. (2009). Op. cit., p. 27.

verbal attack that is not tempered by the restrictions of embodiment or physical presence.<sup>27</sup>

APC's Jac sm Kee argues:

The sexed body in a networked context is also a body that is at the same time material, discursive and digitised. If a partner takes a picture of me in an act of sexual intimacy, then puts it in another space without my permission – it shifts both the context and the productive encounter. This is a violation not just of my privacy, but of my bodily integrity and dignity.<sup>28</sup>

The above discussion is closely related to the concept of the continuum of violence in technology-related VAW. The idea of continuum does not mean hierarchy of seriousness or severity. Rather it reflects the continuum of complex and interlinked experiences of harassment, violation, abuse and assault in the lives of individual women. As Liz Kelly has suggested, a definition of VAW might include the notion of a “continuous series of elements or events that pass into one another and cannot be readily distinguished.”<sup>29</sup> Women who experience violence in different contexts may variously be characterised as victims, casualties, survivors and also perpetrators/colluders, she notes. VAW is not fragmented, it is a continuum. In ICT-related VAW, VAW is not necessarily deviant and episodic but rather an everyday context in the lives and experiences of women and girls all over the world. Online VAW is a continuation of offline VAW.

The digital and online space is a site of power. ICT is a realm not confined to technology users, but an important site of power that requires a feminist intervention. To reiterate, structures and mechanisms of power and patriarchy are embedded, enmeshed and strongly connected in all spaces of society and all its institutions. Gender power relations already existent in society are being reproduced in the informational economy. In many instances, offline VAW continues in online spaces. Thus, the underlying root of VAW, that of structural inequality between men and women in society, is the same root cause that informs the VAW committed online.

This can be illustrated by cases such as intimate pictures or videos of women uploaded on the internet by disgruntled former partners, or a woman getting raped by a stranger due to fake ads posted, or the distribution of the rape through social media. These sexual assaults against women are crimes of power and dominance, and distributing images of sexual assaults through social media or other internet platforms is a way of asserting power and dominance. It is a way to hurt the woman over and over again. The distinctiveness of ICT-related VAW – the manner in which ICT transcends time and space, the multiple platforms provided by it for collecting and sharing information – raises questions on what constitutes harm in online spaces, its gravity and viciousness.

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<sup>27</sup>Ibid., p. 35.

<sup>28</sup>Kee, J. (2009, November 17). The privacy puzzle – part 1. *GenderIT.org*. [www.genderit.org/content/privacy-puzzle-part-i](http://www.genderit.org/content/privacy-puzzle-part-i)

<sup>29</sup>Kelly, L. (1988). *Surviving Sexual Violence*. Minneapolis: University of Minnesota Press.

### **3. Perspectives on legal remedies<sup>30</sup>**

There is a growing body of evidence which suggests that emerging forms of ICT-related VAW are in need of serious attention and legal recognition from state actors. While the discourse on VAW is fairly established, as well as the availability of legal remedies, the same is not true with ICT-related VAW and its many forms. The distinctness of ICT-related VAW as presented in the above discussion brings into question the adequacy of the current laws and of the whole legal system to render justice for such cases.

Manifestations of VAW depend on the specific social, economic, cultural and political context. New forms of VAW may arise when societies undergo demographic, political, economic and cultural shifts/changes, as well as technological changes, such as when ICT enters the scene.

This section presents perspectives on access to justice in the context of ICT-related VAW and the challenges posed by the distinct and inherent nature of ICT in the fight to end violence against women.

#### **3.1 Access to justice as viewed by international human rights instruments**

Access to justice is a fundamental right guaranteed under Article 8 of the Universal Declaration of Human Rights: "Everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The right to access to justice is established and guaranteed as well by other international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Particularly for women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), together with its Optional Protocol and General Recommendations 19 and 25, assures the right to access to justice. CEDAW mandates states parties to condemn all forms of discrimination against women and to this end to pursue by all appropriate means and without delay a policy of eliminating all forms of discrimination against women. These include, among others, embodying the principle of equality between men and women in the states parties' constitutions; the adoption of legislative measures prohibiting and penalising all forms of discrimination against women; the establishment of the legal protection of the rights of women on an equal basis with men through competent national tribunals and other public institutions; the effective protection of women against any act of discrimination; and the repeal of national penal provisions which constitute discrimination against women.

#### **3.1 Standards and frameworks on access to justice**

Standards and frameworks on access to justice have been developed by the United Nations Development Programme (UNDP) as part of its efforts to eradicate poverty and to advance human development.<sup>31</sup> UNDP defines access to justice as the "ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice

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<sup>30</sup>This section is culled from the Women's Legal and Human Rights Bureau unpublished paper, *Study on ICT, VAW and Sexuality: A Policy Advocacy*, 2011.

<sup>31</sup>[www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus\\_areas/focus\\_justice\\_law/](http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law/)

system, for grievances in accordance with human rights principles and standards.”<sup>32</sup> Its framework reveals three major development areas which must be addressed to ensure access to justice: protection in the form of laws providing remedies; the capacity to seek remedies, which includes legal awareness and legal aid; and the capacity to provide effective remedies, which includes effective adjudication and implementation.<sup>33</sup> This definition of access to justice was later expounded in the UNDP Practice Note on Access to Justice,<sup>34</sup> which stresses that access to justice is a basic human right as well as an indispensable means to combat poverty and prevent and resolve conflicts. The Inter-American System of Human Rights has likewise developed standards and frameworks on access to justice as a guarantee of social, economic and cultural rights, laying emphasis on the removal of economic obstacles to justice, the standards of due process in administrative as well as judicial proceedings, and the right to pursue individual and collective actions.<sup>35</sup>

### **3.2 Standards and frameworks on women’s access to justice and ICT-related VAW**

The frameworks and standards mentioned above provide for a general view on access to justice and may not be sufficient to address the specific experiences of women. The human rights delineated by the Universal Declaration are to be understood as applying to women; it remains, however, that “tradition, prejudice, social, economic and political interests have combined to exclude women from prevailing definitions of 'general' human rights and to relegate women to secondary and/or 'special interest' status within human rights considerations.”<sup>36</sup> The marginalisation of women in the world of human rights has been a reflection of gender inequity in the world at large and has also had a formidable impact on women's lives. Therefore, it was seen as necessary to include a feminist approach to access to justice and discourses on women’s human rights in the frameworks and standards of access to justice.

Access to justice for women victims of violence is an issue which is not confined to a single territory, country or region. It is in fact a global issue. The experiences and the barriers women from all over the globe face and encounter may differ but they have underlying similarities. VAW has been repeatedly discussed as rooted in the historically unequal power relations between women and men in public and private life, patriarchy, and men’s desire to control women’s sexuality. However, without knowledge and critique of the context in which VAW manifests, its meaning and consequences cannot be fully understood. ICT-related VAW may be similar to other

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<sup>32</sup>Ibid.

<sup>33</sup>Sudarshan, R. (2003). Rule of Law and Access to Justice. Paper presented to the European Commission Expert Seminar on Rule of Law and the Administration of Justice as Part of Good Governance, Brussels, Belgium, 3-4 July. [www.unrol.org/files/Rule%20of%20Law%20and%20Access%20to%20Justice\\_Perspectives%20from%20UNDP%20experience1.doc](http://www.unrol.org/files/Rule%20of%20Law%20and%20Access%20to%20Justice_Perspectives%20from%20UNDP%20experience1.doc)

<sup>34</sup>UNDP. (2004). Access to Justice Practice Note. [www.unrol.org/files/Access%20to%20Justice\\_Practice%20Note.pdf](http://www.unrol.org/files/Access%20to%20Justice_Practice%20Note.pdf)

<sup>35</sup>Inter-American Commission on Human Rights. (2007). *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights.* [www.cidh.oas.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf](http://www.cidh.oas.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf)

<sup>36</sup>Bunch, C., & Frost, S. (2000). Women’s Human Rights: An Introduction. In *Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge.* [www.cwgl.rutgers.edu/component/docman/doc\\_download/190-whrintro-bunch-frost?Itemid=](http://www.cwgl.rutgers.edu/component/docman/doc_download/190-whrintro-bunch-frost?Itemid=)

forms of VAW, but the medium, mode and place of its commission make it a distinct phenomenon, and this has implications for women's access to justice.

APC's Take Back the Tech<sup>37</sup> campaign has documented the struggle that victims/survivors of technology-related violence experience in seeking justice and claiming their rights. Legal and regulatory mechanisms and law enforcement bodies are often uncertain of what laws to apply in these cases. Most often women refer to anti-VAW laws, cyber crime bills, hate speech laws and laws on privacy rights. These laws may be flexible enough to be applied to cases of ICT-related VAW; however, whether the applicability of these laws has been significantly tested remains in question. These laws present possibilities as well as limitations in providing redress for victims/survivors of ICT-related VAW.

As generally recognised in available legal studies on the subject, the difficulty in prosecuting ICT-related VAW largely lies in applying existing norms to a technology that did not exist at the time the laws were drafted. Here begin the problems in prosecuting cases.

As discussed above, the borderless nature of ICT, one of its distinct characteristics, makes it possible for the victim and perpetrator to be in different geographical locations, thus making it more difficult to ascertain the incidence of violence and determine the commission of a crime which is in turn a determinant of jurisdiction. There are also difficulties in defining and proving the injury caused (question of evidence). If these problems are not addressed, there is practically no prosecution to speak of. In addition, the anonymity provided by ICTs further makes violators difficult to prosecute, as one can freely assume multiple false identities in cyberspace. There is as yet no foolproof way of tracing a digital or cyber act to a real person.

The complexity of ICT-related VAW is further compounded by the lived realities of women who face discrimination on a daily basis due to existing structural inequalities and to society's construction of women and of women's issues. For instance, the linking of VAW with freedom of expression is particularly problematic in countries with a poor record of respecting freedom of expression and women's human rights. As pointed out by the research done by the CITIGEN-Asia network,<sup>38</sup> there are people who control their own internet access and enjoy essentially unrestricted access to information. On the other hand, there are those who are dependent on others and whose access is either heavily controlled and filtered by governments or limited by technical issues such as low-speed connectivity or no access to broadband. The research provided as an example the case of migrant women domestic workers whose access to a SIM card and to the use of the mobile phone is constrained both by regulatory regimes and coercive force exercised by agents and employers.

The existence of a development gap in terms of a widening digital divide across countries and within countries also has implications for women's access to justice. For instance, there are cases when law enforcement agencies do not have the technological skills and resources to monitor internet traffic, investigate complaints, collect evidence, prosecute perpetrators, or invoke any other intervention that may be warranted. This presents major difficulties for law enforcement

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<sup>37</sup>[www.takebackthetech.net/know-more/more-resources](http://www.takebackthetech.net/know-more/more-resources)

<sup>38</sup>[www.gender-is-citizenship.net/citigen/Research\\_Reports](http://www.gender-is-citizenship.net/citigen/Research_Reports)

agencies when conducting searches. Outdated and disharmonious legal regimes across the world contribute to the inadequacies and ineffectiveness of law enforcement.

This highlights the need to create, implement and monitor laws and policies that respond to ICT-related VAW. At its 57th session in 2013, the UN Commission on the Status of Women set a milestone by including a paragraph on ICT-related VAW in its conclusions, calling for the development of mechanisms to combat the use of ICT and social media to perpetrate violence against women and girls.<sup>39</sup>

### ***The need for a global governance framework***

It is worth stressing once again that ICT-related VAW, or acts of violence perpetrated through ICTs, *are not new* in the sense that they form part of the continuum of violence experienced by women as a consequence of unequal power relations and structural inequalities prevalent in society. However, as pointed out earlier, it is also to be conceded that by virtue of the use of ICT in the perpetration of ICT-related VAW, the nature and characteristics of ICT, particularly its borderless nature and its offer of anonymity, make the prosecution of acts of ICT-related VAW under existing judicial systems and practices largely problematic. Challenges exist in terms of identifying and defining ICT-related VAW within national legislations, in clarifying issues of jurisdiction and in terms of affording/providing protection for women against these forms of violence. These should be considered especially in terms of approaches and policies concerning ICT and ICT-related VAW.

Gurumurthy and Menon attribute the difficulties in pursuing these forms of violence to the inherent terrain of ICTs, where the absence of a global governance framework in relation to ICT often works to the disadvantage of women and where newer technologies are themselves used not only to create more violent forms of pornographic material, but also to actively circumvent the law.<sup>40</sup> This is coupled with the fact that little attention is given to the rights of women, as well as the significant gender gap in terms of participation at internet governance forums where principles and frameworks underpinning internet governance are debated upon.<sup>41</sup>

ICT creates new possibilities and scenarios. It opens up new and alternative ways for people to live, and these may have profound implications for human rights on various levels. In the APC issue paper *Internet Rights are Human Rights. Freedom of Expression, Freedom of Association and Democracy: New issues and threats*, Joy Liddicoat explores the links between ICTs, human rights and democratisation. The advent of new ICTs, she notes, has created new opportunities for advancing democracy, not only in states that are not democratic, but in all states, where diverse forms of democracy continue to evolve. At the same time, however, new challenges have emerged.<sup>42</sup> ICTs are presenting new ways to more fully realise human rights as well as providing

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<sup>39</sup>APC. (2013, March 22). Agreed conclusions in CSW 57th include violence against women and ICT. *GenderIT.org*. [www.genderit.org/node/3778](http://www.genderit.org/node/3778)

<sup>40</sup>Gurumurthy, A., & Menon, N. (2009). Violence against women via cyberspace. *Economic & Political Weekly*, XLIV(4).

<sup>41</sup>APC WNSP, Alternative Law Forum, & APC EROTICS project partners. (2010). Internet governance issues on sexuality and women's rights. *GenderIT.org*. [www.genderit.org/articles/internet-governance-issues-sexuality-and-womens-rights](http://www.genderit.org/articles/internet-governance-issues-sexuality-and-womens-rights)

<sup>42</sup>Liddicoat, J. (2012). *Internet Rights are Human Rights. Freedom of Expression, Freedom of Association and Democracy: New issues and threats*. APC.

new tools for defending human rights, but, as pointed out by the European Parliament study *Information and Communications Technology and Human Rights*, ICTs also present a series of serious challenges including “direct threats to human rights, such as the development of increasingly sophisticated censorship and surveillance mechanisms. They also include deeper, structural problems such as the persistence of digital divides in access to communications infrastructure and capacities along geographical, gender and social lines.”<sup>43</sup>

These considerations raise questions on how we balance protection from violence on one hand and the fulfilment of the rights of a diversity of people on the other hand in the ICT arena, particularly on the internet, as well as how to deal with rights that might appear to conflict with one another.

ICT-related VAW violates a range of women’s rights, including a woman’s right to bodily integrity. Furthermore, technology-related violence affects women’s freedom to express themselves, their freedom to move freely online and enjoy online communities, and their access to information. However, as the APC Women’s Rights Programme stresses in the briefing paper *Going Visible: Women’s rights on the internet*, “Debates on internet content regulation, surveillance and privacy are rarely informed by the hard lessons learnt from feminist movements. These include the conceptual complexities of private/public in the criminalisation of domestic violence; and the policing of sexual behaviour and identity on the basis of public morality and national order.”<sup>44</sup>

This is especially relevant with regard to current approaches to content regulation in relation to sexuality. As APC and the Alternative Law Forum explain in “Internet governance issues on sexuality and women’s rights”, concerns about gender and sexuality are often at the heart of public debates around the need to limit the rights to freedom of expression, information and privacy on the internet. “In many different contexts, the preservation of gender norms and order is used as a pretext to mobilise state and non-state actors to call for restrictions on access to the internet and the control and elimination of specific content that is viewed as against traditional values, particularly related to the family and women’s roles.”<sup>45</sup>

The study recognises the complexities of policy and legal debates related to new and developing technologies and calls for all actors engaged to recognise that competing rights must always be properly balanced. For its part, the Gender Dynamic Coalition stressed at the Sixth UN Internet Governance Forum that the right to privacy and the right to know must be managed “not through retrograde, patronising and patriarchal visions of women’s needs and rights, but with strong commitment to human rights, equality and social justice.”<sup>46</sup>

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[www.apc.org/fr/system/files/APC\\_IRHR\\_FOEandFOAissuepaper\\_2012\\_web\\_EN.pdf](http://www.apc.org/fr/system/files/APC_IRHR_FOEandFOAissuepaper_2012_web_EN.pdf)

<sup>43</sup>European Parliament. (2010). *Information and Communications Technology and Human Rights*. [www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=31731](http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=31731)

<sup>44</sup>APC Women’s Rights Programme. (2012). *Going Visible: Women’s rights on the internet*. Paper developed as part of the global thematic consultation “Addressing Inequalities: The Heart of the Post-2015 Development Agenda and the Future We Want for All”. [www.apc.org/en/pubs/going-visible-women%E2%80%99s-rights-internet](http://www.apc.org/en/pubs/going-visible-women%E2%80%99s-rights-internet)

<sup>45</sup>APC WNSP, Alternative Law Forum, and APC EROTICS project partners. (2010). Op. cit.

<sup>46</sup>Gender Dynamic Coalition. (2011). Statement to the Sixth Internet Governance Forum, Nairobi, Kenya, 27-30 September. [www.genderit.org/resources/6th-un-igf-statement-gender-dynamic-coalition-gender-equality-and-womens-rights](http://www.genderit.org/resources/6th-un-igf-statement-gender-dynamic-coalition-gender-equality-and-womens-rights)

Institutions, organisations and governments are establishing their own principles that can be used to frame national policy making and public-interest internet policy. But as APC has noted, what the meaning of these principles are, how they will be applied, and how they relate to existing global agreements and standards is still not clear. One also has to ask how policy is to be made in the rapidly evolving digital world where ICT has made it hard to delineate authority between and within states and nations. There are also considerable challenges in policy making since relevant institutions may not generally be well prepared for the dynamism required to deal with the new and growing phenomenon of ICT from a policy perspective. Who are the policy makers in the ICT arena when authority, borders, space, time and people become fuzzier?

Gurumurthy warns about this lack of cognisance of the contours of the network age and its contested territories. As she explains, the absence of transnational governance of the internet and of a normative global framework on internet rights points to a serious vacuum in global democracy. She adds that "the voices calling for 'mobiles or social media for women's empowerment' may therefore willy nilly be doing what feminists have always warned us against – mainstreaming right into the male corporate stream, lock, stock and barrel."<sup>47</sup> The current global framework and structure are biased toward corporations – those who have dominant control over technology. This results in the further empowerment of corporations instead of the empowerment of citizens.

With regard to public life in the network age, Gurumurthy notes that "democratic processes – in their legal, policy and institutional frameworks – need to account for emerging, internet-mediated architectures. Publics in the network age seem to make way for voice and solidarity, but to be effective counter-publics, they need to garner attention and penetrate the fabric of mainstream politics."<sup>48</sup>

She further adds:

Technology has tended to be seen as an issue for economic policy and for criminal law. The institutions of justice and democracy in the contemporary context will therefore need to be revamped to legitimise emerging public political spaces as spaces for progressive politics. Currently, network publics, by virtue of their proprietisation and corporatisation and dislocation from conceptions and guarantees of freedoms, are unhinged from the notions of democracy and justice. This is most significant for the everyday life of women and to protect their rights as citizens who have complete and unrestrained access to public life. Instances where women are penalised for exercising their basic right to communicate online are increasing – both due to abuse of authority and cultural policing. The absence of rights based frameworks in relation to the Internet and digital spaces strengthens the

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<sup>47</sup>Gurumurthy, A. (2012). Public Participation in the network age: A critical feminist perspective. Paper presented at the Asia Pacific Regional Consultation "Women's Public and Political Life in Asia Pacific", 19-20 September, Dhulikhel, Kavre, Nepal. [itforchange.net/sites/default/files/ITfC/Public%20participation%20in](http://itforchange.net/sites/default/files/ITfC/Public%20participation%20in)

<sup>48</sup>Gurumurthy, A. (2012). How public and political participation may need to be recast in the network society context. Input submitted to the UN Working Group on Discrimination Against Women for its report on the issue of discrimination against women in law and in practice in public and political life. [www.itforchange.net/sites/default/files/ITfC/Input%20for%20the%20Working%20Group%20on%20Discrimination%20against%20Women%20-%202012%20-%20IT%20for%20Change.pdf](http://www.itforchange.net/sites/default/files/ITfC/Input%20for%20the%20Working%20Group%20on%20Discrimination%20against%20Women%20-%202012%20-%20IT%20for%20Change.pdf)

misogynist, patriarchal state to use its increasing panopticon powers for ad-hoc and repressive authority.<sup>49</sup>

Despite the identified gaps and limitations in policies on ICT and ICT-related VAW, however, ICTs and particularly the internet offer spaces for empowerment for marginalised groups and sectors. As pointed out by APC's Jac sm Kee in her introduction to *EROTICS: Exploratory research on sexuality and the internet*:

The internet has been a key space to facilitate the exercise of fundamental rights and freedoms, especially to access critical information build knowledge, express thoughts and beliefs, form networks and communities and mobilise for change. For people who have little access to other kinds of publics due to multiple forms of discrimination that they face – including their gender, age, class, or sexuality – the internet can be a particularly important space to negotiate and claim for the realisation of their rights.<sup>50</sup>

For his part, Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, stressed the importance of internet access and its relation to the enjoyment of other human rights in a report dated 16 May 2011, in which he stated: “Given that the internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all states.”<sup>51</sup>

These considerations thus expand the discussion of ICT beyond the existence of a gender-based digital divide and the inequalities arising therefrom, into a discussion of how ICT, and particularly the internet – as pointed out by APC and Special Rapporteur Frank La Rue – can also provide spaces of empowerment and the exercise of fundamental rights.

Thus, there is a global call for the initiation of multi-stakeholder processes towards an international framework on internet rights and freedoms, which should involve the full range of implicated negative as well as positive rights, stressing the principle of indivisibility of rights. Moreover, as stressed by Gurumurthy, democratic global governance of the internet is needed not only to affirm freedoms but also to safeguard the publicness of the network.

However, this call should not be limited to the recognition of the role of ICT for women's empowerment in policy. Instead, it should also look at the various possible answers to the question of women's access to justice. Women's reality is compounded and cannot be captured wholly by laws and legal procedures that are static and rigid. There may be varying factors that occur simultaneously, requiring a strategy that recognises the interrelatedness of situations that may affect women's access or lack of access to justice. As such, there should also be a call for the engagement of the rest of society in this process and in action.

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<sup>49</sup>Ibid.

<sup>50</sup>Kee, J. (2011). *EROTICS: Exploratory research on sexuality and the internet*. APC. [www.apc.org/en/system/files/Erotics\\_Exec\\_Summary.pdf](http://www.apc.org/en/system/files/Erotics_Exec_Summary.pdf)

<sup>51</sup>Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011. A/HRC/17/27. [www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

## **4. Domestic responses of selected countries to ICT-related VAW**

This section presents some of the domestic responses of seven countries to ICT-related VAW, namely Bosnia and Herzegovina, Colombia, the Democratic Republic of Congo (DRC), Kenya, Mexico, Pakistan and the Philippines. It looks at how these countries provide remedies for ICT-related VAW by examining their constitutions and substantive and procedural laws.

### **4.1 Recognition of human rights and women's rights**

All of the countries analysed have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). All have explicitly stated in their constitutions the equality of women and men before the law and the prohibition of discrimination on the grounds of sex. All guarantee the fundamental rights to privacy and to freedom of expression.

Several of these countries, namely Bosnia and Herzegovina, Colombia, Kenya, Mexico and the Philippines, have enacted laws on gender equality and have established accompanying commissions with a mandate to specifically promote and protect women's human rights. Some have investigative functions on matters regarding violation of the principles of equality and freedom from discrimination.

### **4.2 Violence against women as defined in the law**

Each of the countries has legislation that makes reference to VAW. Colombia, Mexico and the Philippines provide for the broadest definition of VAW and make direct reference to it. However, the rest of the countries' interpretation of VAW is not consistent with CEDAW's definition. In Bosnia and Herzegovina, provisions relating to VAW can be found in the Penal Code under criminal offences against sexual freedom and morality. Pakistan and the DRC make similar references in their Penal Codes, which look at VAW as a violation against a woman's modesty and a violation against good morals and public morals, respectively. In Kenya and the DRC, VAW can be found in laws on sexual offences. Under these laws, VAW is limited to sexual offences against women, which means that they fail to recognise the different forms of violence that women experience.

The implementation and enforcement of the rights guaranteed by the constitution largely depend on the political, economic and social context of each country. Specific contexts present different challenges and opportunities for how VAW laws impact on women, for example, in reinforcing existing stereotypes or in providing a space where women can collaborate and network against violence. As illustrated by the above-mentioned VAW laws, most countries have a narrow conception of VAW, which largely looks at women as victims in need of protection. The perception of VAW as a morality issue rather than as discrimination against women reinforces control of female sexual behaviour and punishes women that transgress sexual norms. In addition, VAW is often justified in the name of culture. For instance, in the DRC and Kenya, customs or cultural traditions and particularly cultural practices in the family take precedence over women's human rights. The sexual violence laws in these two countries do not recognise sexual violence within marriage or domestic violence as an offence. This affects women victims/survivors of violence by

their intimate partners in seeking redress, as data have shown that intimate-partner sexual violence is the most pervasive form of violence.

Even in cases where domestic violence is recognised, women still face barriers when those laws, such as in the case of Colombia, grant supremacy to the protection of the family as a fundamental unit of society. A woman seeking a protection order can be denied on the grounds of avoiding the break-up of families.

The same holds true in countries with a strong presence of religious fundamentalists, such as Pakistan and the Philippines. Pakistan limits freedom of speech in the name of morality and “the glory of Islam”. Islamic principles and religious opinions carry authoritative weight and are used as justification in both offline and online surveillance and censorship, undermining freedom of expression and affecting the promotion of women’s rights.

In some cases the legislation and the ability to implement laws on VAW are inadequate to deal with the violence that women face in countries with difficult and hostile physical environments, such as those emerging from post-conflict situations. In the DRC, Bosnia and Herzegovina and Colombia, women have suffered from mass rapes during internal armed conflicts, and impunity remains a problem. The full realisation of women’s rights is also often impaired by the structure of the country’s political institutions, a high level of fragmentation in legislative standards and a lack of coherence among implementing authorities. In Mexico, for instance, the current fight against drugs, the extreme violence around the country and the general context of insecurity have resulted in making the murders of women invisible.

It can be said that the issue of VAW and its elimination cannot be separated from the bigger political, cultural and economic context of each country. Addressing VAW has become even more challenging as each country moves toward digitisation and becomes enamoured with information and communications technology.

### **4.3 ICT-related VAW**

The proliferation of ICT-related VAW poses a challenge on how VAW is understood and raises the question of whether existing laws are sufficient to address the problem, considering its distinct characteristics.

In the seven countries studied, there are available substantive laws which can be invoked or explored in cases of ICT-related VAW. Those laws can be found in the penal codes, VAW and sexual violence laws, and ICT-related laws.

The penal codes of all countries do not explicitly mention ICT or ICT-related VAW; rather, they provide definitions of traditional forms of VAW such as rape, pornography, prostitution, pandering, sex trafficking and sexual harassment in which the elements of these offences may be produced, brought about or accomplished by using ICT. For instance, rape and sexual harassment can now result from threat, intimidation, false pretence, fraudulent machination or deceit effected through mobile communication or the internet. In cases of pornography and prostitution, ICT has become the means and mode of commission of the crime, e.g. inducing, inciting and luring a person to participate in pornography and prostitution; the recording, production, circulation, display,

promotion, importation and exportation of obscene materials; and the recruitment, buying and selling of women and children.

However, it should be noted that in certain countries such as Bosnia and Herzegovina, criminal offences related to pornography and prostitution apply only when children are involved. Similarly, in Mexico, pandering as a crime applies only to the pandering of minors.

Bosnia and Herzegovina is the sole country in which the penal code contains provisions related to unauthorised recording, photographing or filming of another person in his/her personal premises without that person's consent, and to directly passing on or displaying such a photograph to a third person or enabling the third person in some other way to have direct access to the photograph.

As mentioned, all seven countries have legislation that makes reference to VAW. The value of VAW laws as far as ICT-related VAW is concerned lies in the inclusion of alternative forms of violence such as psychological violence, which includes intimidation, blackmail, verbal attack, insult, profanity, humiliation and threat, all of which could happen on the internet or could be committed with the aid of ICT.

#### **4.4 Issues and challenges with existing VAW and ICT-related laws**

VAW laws have limits, however, since not all countries provide a comprehensive definition of VAW in the related legislation. Of the countries analysed, only Colombia, Mexico and the Philippines expressly recognise psychological violence in their laws. Bosnia and Herzegovina recognises psychological violence within the context of the family and as such discounts the law's applicability to cases where VAW is committed by/against those in dating relationships or by/against strangers.

ICT policies and laws do exist, but for the most part, they lack a human rights perspective and are gender blind, and do not account for technology-related VAW. ICT policy is largely concerned with attacks on the integrity of computer systems, computer networks and computer data, rather than the dignity of the person, as reflected in laws and codes. Only Kenya and Pakistan have laws on ICT that are relevant to cases of ICT-related VAW. The Kenya Information and Communication Act, Cap 411A recognises improper use of a computer system which includes sending a message that is grossly offensive or of an indecent, obscene or menacing nature; or sending a message that one knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person. It also recognises the publication and transmission in electronic form of obscene information or material. Pakistan's Telegraph Act has a provision on causing annoyance or intimidation to persons, intercepting or disclosing messages, and sending fabricated or obscene messages.

The role as well as the liability of internet intermediaries in cases of ICT-related VAW, though not expressly stated, can be found under the penal codes, data privacy laws, ICT laws, and e-commerce or e-transaction laws of the countries under study. There are also institutions relevant to intermediaries in some countries, such as communications commissions or national telecommunication commissions. Intermediaries are responsible for filtering, removing and blocking content that is considered illegal, but there are no regulatory frameworks that require

them to either police online behaviour or monitor content/traffic data on their networks. Also evident is the absence of clear legislation defining where intermediaries are liable.

Among the countries studied, the Philippines has the most laws that expressly acknowledge the role of ICT with regards to violence against women. The Anti-Photo and Video Voyeurism Act of 2009 specifically recognises ICTs such as VCDs/DVDs, the internet, mobile phones and similar means or devices as integral to the commission of the crime of *photo and video voyeurism*. The Anti-Child Pornography Act of 2009 considers computer-generated, digitally crafted images or graphics representing a child or made to appear to be a child. The Anti-Trafficking in Persons Act covers cyber trafficking and cyber sex dens, while the law on sexual harassment includes sending obscene jokes through text messages, email or other similar means.

The availability of legal remedies among the countries varies. This could be attributed to the uneven recognition of women's rights in each country as well as the uneven development of ICT. Based on reports and statistics, violence against women among the countries ranges from low incidence of violence to extreme violence. On the other hand, the diffusion, use and enjoyment of ICT have not been equal. It should be noted that the countries analysed are not industrialised nations, thus the lack of infrastructure and networks to support the development of the ICT sector is not surprising. Internet service providers are underdeveloped and access costs are unaffordable for most. Access to the internet and broadband services remains confined to those living in urban areas. Monopoly control, either by the government or the private sector, plays a part in the kind of access and services afforded to the people. There is also an apparent digital gender divide in all the countries. In terms of ICT regulation, it can be observed that commercial interests, national security and cultural preservation shape this regulation.

For instance, in Pakistan, the government has justified censorship of the internet by citing Section 99 of the Penal Code, which allows the government to restrict access to information that might be "prejudicial to the national interest". In all of the countries, content censorship regulations include pornography and hateful or derogatory speech. Business interests have always played a part in determining regulation. ICT policy is largely driven by e-commerce and e-governance issues with a focus on phishing scams, identity theft, hacking and copyright infringement, and not on the violation of women's rights.

To summarise, there are existing substantive laws that are flexible enough to be applied in prosecuting ICT-related VAW. However, it remains to be seen how these laws are being used to address ICT-related VAW amidst the gaps and challenges identified. At the same time, it was observed that internet governance is a concern that needs to be examined along with the definition of "harm" in online spaces and the relationship of each country's culture to the perpetuation of VAW.