

FROM IMPUNITY TO JUSTICE

DOMESTIC LEGAL REMEDIES FOR CASES OF TECHNOLOGY-RELATED VIOLENCE AGAINST WOMEN

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A SUMMARY

INTRODUCTION

The present report seeks to examine existing domestic legal remedies for survivors of technology-related violence against women (VAW)¹ to access justice. The research was carried out across seven countries: Bosnia and Herzegovina, Colombia, the Democratic Republic of Congo (DRC), Kenya, Mexico, Pakistan and the Philippines.

The present research aims to (a) identify available domestic remedies in cases of technology-related VAW, (b) analyse the strengths and limitations of available domestic legal remedies in relation to wom-

en's experiences, (c) highlight the voices and experiences of survivors who have sought legal remedy and to identify insights from their experiences, and (d) develop recommendations for both ICT and VAW policies based on the research findings. An examination of the remedies for technology-related VAW focused on three elements: their adequacy and effectiveness, the culture of impunity, and survivors' own agency and power.²

1 This report draws from the access to justice framework previously developed by the Women's Legal and Human Rights Bureau (WLB) which posits that women's access to justice is influenced not only by the legal system, but also by the interplay of politics, economics and culture. The framework is intersectional in its approach to discrimination.

2 The UN Declaration on the Elimination of All Forms of Violence Against Women (DEVAW) defines violence against women as: "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 in private life" (see the full text at www.un.org/documents/ga/res/48/a48r104.htm). Technology-related VAW encompasses acts of gender-based violence that are committed, abetted or aggravated, in part or fully, by the use of information communication technologies (ICTs).

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The two central research activities were:

- Mapping domestic legal remedies through desk reviews/interviews
- Conducting in-depth interviews to gather women's and girls' experiences of accessing justice and compiling case studies.

A total of 24 case studies were documented across the seven countries, and each country's domestic legal remedies were mapped.

The research was limited by two factors. The first was that all the laws and interviews reviewed were analysed in English after being translated from their original languages. The research was conducted under the assumption that the English translations were faithfully made from the original languages. The second limitation of the research was that survivors were not always available for interviews. In these instances, social workers, relatives or legal counsel mediate their voices.

UNDERSTANDING TECHNOLOGY-RELATED VAW

Technology-related VAW as mapped by the case studies includes taking, uploading or distributing photos and videos without consent; altering and uploading photos and videos; harassment; stalking; blackmail or threats; accessing or disseminating private data; creating fake profiles or other forms of identity theft; hate speech; child pornography; and sexual assault or rape.

Contrary to popular belief, such violence is not deviant and episodic, but an everyday event in the lives of women and girls all over the world. In fact, *if the range of violence that women experience is seen on a continuum that arises from deep-seated misogyny and gender inequality, technology-related VAW exists on the same continuum as "offline" violence.*

This being said, technology-related VAW is characterised as a distinctive phenomenon on the basis of (a) its mode of perpetration, since ICTs allow for rapid dissemination of content, making technology-related VAW harder to contain, and (b) the possibility of anonymity afforded by digital media and the corresponding fear felt by women who did not know their abusers.

The most significant harms of technology-related VAW are psychological, as a result of which women suf-

fered from depression, fear, anxiety, sleeping difficulties, and a sense of powerlessness. In some cases, the violence resulted in economic loss because survivors were forced to quit their jobs, and in the case of students, it deeply affected their education. Because of the stigma associated with several aspects of technology-related VAW (especially in cases of sexual content or slander), the violence often left survivors isolated and alienated from their communities.

Technology-related VAW can be situated within a culture of impunity, which is characterised by a failure in the application of legal processes, and the perception that acts of VAW will remain unpunished. *The research found that a culture of impunity in cases of technology-related VAW was present across all seven countries.* This was often further aggravated by corruption within the legal system and a lack of political will to address VAW.

ADEQUACY AND EFFECTIVENESS OF WOMEN'S ACCESS TO JUSTICE

The research outlines how women approached various and multiple agencies in pursuit of remedies for technology-related VAW. The following were common steps that women took:

- Reporting the incidents to government agencies nearest to them, most often to the police station or municipal hall.
- In instances where the survivor and perpetrator were both students and belonged to the same university, the survivor sought help from school authorities.
- Survivors approached the public prosecutor's office for investigation and prosecution of their cases.

In order to assess the adequacy and effectiveness of these strategies, the legal and policy landscapes of the seven countries were examined in reference to their efficacy in protecting women's rights. All seven countries are signatories to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and have specific clauses on gender equality in their constitutions. However, *only five countries had enacted a gender equality law (mandated by CEDAW) and only three had provided a comprehensive definition for VAW encompassing psychological and financial harms, to name a few.*

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In most national gender laws, VAW was closely tied to morality and limited to sexual offences against women, thereby failing to recognise the continuum of violence that women experience.

Insofar as legal protection against ICT-mediated violence was concerned, *only two countries – Kenya and the Philippines – recognised ICT offences in their laws*. However, these are cyber crime laws with very limited recognition and understanding of VAW within them. A third form of legal remedy – civil laws – was rendered *largely inaccessible due to the payment of filing fees*.

Despite the existence of laws in all seven countries that can be used in cases of technology-related VAW, *the incompetence of duty bearers* presented a significant barrier to women's access to justice. *Law enforcement typically trivialised technology-related VAW and victim blaming was common* among police personnel across countries. This attitude resulted in a culture of silence, where survivors were inhibited from speaking out for fear of being blamed for the violence they had experienced. Moreover, *authorities failed to make use of available laws*, either due to indifference or a lack of awareness around the existence of relevant legislation. In particular, *cyber crime units dealt only with technical or commercially motivated crimes*, and did not specialise in technology-related VAW.

Law enforcement officers often *discriminated against poor and marginalised women*, and were less likely to record their cases without support from influential community members. Moreover, in the case of poorer women, *the costs of litigation and the distance of available legal services* prevented survivors from pursuing cases.

Overall, women's access to justice was therefore negated by:

- The complexities in the law itself.
- The structural or systemic failure of the law to address technology-related VAW and to respond to women seeking access to remedies in cases of violence.
- The prevailing attitudes in society and of the duty bearers characterised by gender bias and discrimination.
- A culture of impunity whereby the legal system was perceived as unable to address VAW, and

the assumption that perpetrators would not be punished.

An important factor in women's access to justice, therefore, was *the presence of social support from families, friends, counsellors and women's organisations*. In cases of domestic violence, the availability of a shelter where survivors could stay free from danger was crucial to women being able to access justice. A gender-sensitive or feminist lawyer was also found to be a clear advantage. The presence of such support systems overall strengthened a survivor's resolve: first, in deciding to file the case, and second, in pursuing the case until the end.

Overall, a lack of capacity on the part of state agencies responsible for handling technology-related VAW meant that the women interviewed were resourceful in seeking other avenues to access justice.

AGENCY, PARTICIPATION AND WOMEN'S POWER

The case studies highlight stories of women exercising and accessing agency, first and foremost *by taking control of the situation*. Being able to meet with counsellors and developing a support system allowed survivors to regain their sense of trust and work on their self-confidence.

Notably, even though the women interviewed came from a range of socioeconomic backgrounds and diverse geographical locations, they were all aware that a crime had been committed against them and that they were entitled to some form of redress. By reporting the violence to the government agencies nearest to them – and later to others whom they believed might be more responsive – women *attempted to make the legal system work despite its weaknesses*. In some cases, women sought to better understand the law and their rights, which enabled them to advocate for their cases better. If or when the legal system failed, survivors took matters into their own hands, either *by approaching the media or publicly protesting and making the violence visible*.

An important means for women to exercise empowerment was *the use of ICTs – and in particular the internet – which enabled survivors to claim, construct and express themselves*, as well as advocate for their rights, without relying on the state. Women also benefited from *collective empowerment and joint actions*

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between survivors, activists and women's groups. The report concludes this section by emphasising that while women have taken actions on their own, the state remains the primary duty bearer in upholding women's rights.

STRATEGIES AND RECOMMENDATIONS

Here the report maps various strategies for states to eliminate technology-related VAW, including improving legislation, allocating budgets and resources, and capacity building. This entails addressing the root causes of the problem, reviewing the development agenda vis-à-vis women: focusing not only on reactionary measures but also protective and pre-

ventive ones, and at the same time contextualising the varying experiences of women and the manner in which these experiences interconnect and intersect along a wider continuum of violence.

Apart from state actions, the report emphasises the importance of strengthening women's networks and transforming the gender-unequal ICT arena. This includes developing good ICT infrastructure for women, capacity building and training on ICTs, and the creation of relevant applications and digital content for women. The report concludes by highlighting the need for structural changes required to address the entire continuum of violence that women across the world face.



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