



Digital violence: an insight study on violence against women and girls online and the legal and institutional frameworks in Lesotho.

BY: SIBONGILE MOKAPANE (201403962)

SUPERVISOR: DR. MATS'EPO KULEHILE

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
MASTERS OF LAW (LL.M) IN HUMAN RIGHTS



FACULTY OF LAW
SCHOOL OF POSTGRADUATE STUDIES



Standard Wording for LL.M Mini Dissertation Declaration:

I, **SIBONGILE MOKAPANE**, solemnly declare that this mini dissertation has not been submitted for a qualification in any other institution of higher learning, nor published in any journal, textbook or other media. The contents of this dissertation entirely reflect my own original research, save for where the work or contributions of others has been accordingly acknowledged.

Name: **SIBONGILE MOKAPANE**

Signature:

Date: 16/07/2022

Place: MASERU, LESOTHO

Acknowledgements

The Grace of God has kept and sustained me throughout this journey. *Gloire a Dieu!*

To my partner, Hao, thank you for letting my God use you as a pillar and support and everything synonymous in my academic journey and this life.

To my family, Apple and Pepper- my children, Mme Mabereng, Ntate Mantata and Tabz, My Mmane and Nthabeleng- for being my cheerleaders to complete this journey, thank you.

My friends- Georgina, Bokang, Clara and Rethabile, I am highly indebted to you for the emotional support, prayers and conversations that inspired this paper.

Thank you to my supervisor, Dr. Kulehile, for her insightful guidance and her utmost patience with my academic work.

Abstract

Violence Against Women and Girls (VAWG) is one of the dominating factors that threaten the aspiration of democracy and development. VAWG is a form of Gender Based Violence (GBV) that has proven itself to be an epidemic that requires urgent addressing. It is also crosscutting against cultures, geography, age, and spaces. One of these spaces, since the COVID 19 is the digital space. All women are prone to online violence; girl children, adolescent girls, young women, and older women alike. Women and girls who have access to the internet are even more vulnerable to further violence such as online violence. Similar to other forms of violence, online violence has its adversity. Women and girls subjected to online violence have some of their fundamental rights and freedoms violated by online violence. These rights are inclusive of their right to participation, their right to expression, to hold an opinion and view, and their right to integrity and bodily autonomy among others. It is therefore imperative to inquire into how these rights are violated, and how these rights may be protected by existing legal and institutional frameworks attempt to combat online violence in Lesotho.

The study or inquiry to understanding the abovementioned has been done through a qualitative method of a desk-based research. The data collected was to enquire into legal frameworks of other jurisdictions such as the Republic of South Africa and the United Kingdom and at various levels such as international, regional, and nation. A comparative analysis of the legislative measures of these jurisdictions has been used as a measure of comparison in order to determine what standards the frameworks have established. The major findings of the study are that there is a need to establish normative frameworks at international and regional levels specific to online violence against women and girls. Further, at the national level, that legislative measures intended to combat online violence should be revised to be intentional in their objectives by making provisions for such misconduct as offences with reasonable punishment. Additionally, by imposing responsibilities on state institutions, non-state actors and users of the internet which will guarantee the safety of individuals at risk of violence online. Therefore, in the context of Lesotho, there is a need to revise the Computer crimes and Cybercrimes Bill, 2022 to include the aforementioned considerations as standards and guidelines.

Contents

Acknowledgements	4
Abstract	5
Abbreviations	9
1. Chapter one: Definition, Illustration and Scope of Online Violence	10
1.1 Introduction	10
1.2 Research Questions	13
1.3 Statement of the research problem	13
1.4 Significance of Research Problem	14
1.5 Aims and Objectives of the study	15
1.6 Literature Review	16
1.7 Hypothesis	22
1.8 Methodology and Research Design	23
1.9 Summary of Chapters	24
2. Chapter two: Definition and Characteristics of online violence	25
2.1 Introduction	25
2.2 What is Online Violence?	25
<i>2.2.1 Image-Based Online Violence</i>	26
<i>2.2.2 Other forms of Online Violence</i>	27
2.3 Characteristics of Online Violence	28
<i>2.3.1 The Villain of the Setting</i>	29
<i>2.3.2 The Girl that cried wolf? In the Setting</i>	31
2.4 Conclusion	33
3. Chapter three: The Impact of Online Violence Against Women and Girls	34
3.1 Introduction	34

3.2 The Adverse Impact of Online Violence on Development	35
3.2.1 <i>Online Violence and the Right to Freedom of Expression</i>	37
3.2.2 <i>Online violence and the Right to Participation</i>	38
3.2.3 <i>Online violence and the right to bodily integrity and life with dignity</i>	39
3.3 Emotional and Psychological Impact	42
3.4 Conclusion	43
4. Chapter four: Analysis of existing legal and institutional frameworks at International, Regional and National levels on online violence against women and girls.	44
4.1 Introduction	44
4.2 International Frameworks and Mechanisms	47
4.2.1 <i>Background</i>	47
4.2.2 <i>De Jure vs De Facto elimination of violence against women in the digital space.</i>	48
4.3 Frameworks and Mechanisms in Africa	53
4.4 The Lesotho Legal and Institutional frameworks	59
4.4.1 <i>Institutional Frameworks and mechanisms that may contribute to the elimination of online violence.</i>	60
4.4.2 <i>Legal Frameworks with the potential to combat online violence</i>	62
4.5 Conclusion	65
5. Chapter five: Comparative analysis of legal measures and mechanisms of the Republic of South Africa, the United Kingdom, and Lesotho	67
5.1 Introduction	67
5.2 Legal frameworks in South Africa that can address violence against women and girls	68
5.3 Legal framework in the United Kingdom that addresses the safety of women and girls online	75
5.4 Conclusion	77

6. Chapter six: Findings, conclusion, and recommendations.....	79
6.1 Introduction.....	79
6.2 The grey areas in the legal frameworks of Lesotho.....	79
6.3 Conclusion.....	80
6.4 Recommendations.....	80

Abbreviations

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
GBV	Gender Based Violence
LGBTI+	Lesbian, Gay, Bisexual, Transgender and Intersex
NCIID	Non-Consensual Intimate Image Distribution
PTSD	Post Traumatic Stress Disorder
TFGBV	Technology Facilitated Gender Based Violence
UDHR	Universal Declaration on Human Rights
UN	United Nations
VAWG	Violence Against Women and Girls
WCT	WIPO Copyright Treaty

1. Chapter one: Definition, Illustration and Scope of Online Violence.

1.1 Introduction

The definition of Human Rights has been attempted by numerous authorities from different perspectives. Human rights have been defined as "...entitlements that belong to all human beings simply because they are human..."¹ There has been another school of thought on whether rights are in fact, inherent and not state artifacts. That is, the existence of rights is contingent on their recognition by the state for the citizenry.² This ideology implies that rights are given consciousness by the state and that, in the same breathe, the state has the power to revoke such rights it has given. Nonetheless, it can be agreed that, however the definition goes, these are entitlements of a human person. The definition of what is human certainly introduces the redundant use of words such as human race, humankind, and human being. The definition of what is human can also simply be described by enlisting words such as man, woman, child, us, them, and so on. It can therefore be reasonably inferred that women's rights are human rights. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which was adopted by the United Nations (UN) General Assembly in 1979, is the first international instrument to expressly concede to the need for respect, protection and promotion of the rights of women. Regionally, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) which was adopted by the Assembly of Head of States in 2003 is another instrument that concedes to the respect, protection and promotion of the rights of women. In its preamble, it gives express recognition to the need by member states to take necessary steps to eliminate all forms of gender-based violence against women.

The Committee on the Elimination of Discrimination Against Women (CEDAW) defined Gender Based Violence (GBV) in relation to women, to mean any form of discrimination that significantly impedes the enjoyment of their rights and freedoms.³ Para 6 of General Recommendation No. 19 states that GBV "...includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations." GBV is an epidemic,⁴ and the region of Southern

¹ Martha C. Nussbaum, "Capabilities and Human Rights" *Fordham L Rev* (1997) 273.

² *Ibid.* 274.

³ UN CEDAW General Recommendation No. 19: Violence Against Women. The Committee of the Elimination of Discrimination of Women. A/47/38. Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination of Women (1992).

⁴ Neil Andersson, et.al. "Gender-based violence and HIV: Relevance for HIV prevention in Hyperendemic Countries of Southern Africa" *AIDS* (2008). Vol. 22. 75.

Africa is no exception to it. The fight for the complete elimination and eradication of GBV has been ongoing.⁵ The COVID-19 pandemic only exacerbated the GBV issue.⁶ With the imposition of lockdowns across the globe, family units were confined to their homes, and social and other human interactions migrated online. The surge of online interaction⁷ highlighted and put in the limelight another type of violence; Online Violence. Violence Against Women and Girls (VAWG) online brings a different perspective of GBV that differs from its conventional definition as it is quite broad in its scope. Digital Violence has the same effect as GBV in the real world. It adversely affects the array of rights of its victims. Violation of any human right, including the rights of women, has a significant impact on the overall development of the individual, their community, and the country as a whole.

The cyber-world is one of the greatest innovations of the 21st century. It hosts a plethora of platforms that facilitate all kinds of human interaction; social, professional, and anything in between and beyond.⁸ The use of the internet by women and girls has contributed immensely to their right to education, their right to access to information, their right to freedom of expression, and their participation in economic activities and other development activities. Most social media platforms are used as a medium to share various forms of art, such as music, dance, and graphics.⁹ These platforms also have marketing features to connect sellers and buyers and, most importantly, the ability to disseminate information swiftly.¹⁰ Other platforms have also been developed to facilitate online classes and other interactions.¹¹ These platforms, unfortunately, also harbour pervasive behaviour that causes harm to women and girls.

Women have always been subjected to discrimination and violence in varying forms since time immemorial. Non-physical violence that women and girls experience in the real world is also

⁵ Moeketsi Kali "Women Empowerment in Lesotho: Reality and/or myth?" *International Journal of Scientific Research and Management* 6.03 (2018).

⁶ Nobuhle J. Dlamini. "Gender-Based Violence, Twin Pandemic to COVID-19." *Critical Sociology* (2021) Vol. 47, no 4-5. 585.

⁷ Glitch UK and End Violence Against Women Coalition, "The Ripple Effect: COVID-19 and the Epidemic of Online Abuse" *A Creative Commons Licence*. (2020) 5.

⁸ These are inclusive of social media platforms such as Facebook, Twitter, Instagram, Tiktok, and Smiggle.

⁹ Christopher M. Belkofer and Jill V. McNutt. "Understanding social media culture and its ethical challenges for art therapists." *Art Therapy*. (2011) 162.

¹⁰ Gil Appell, et al. "The future of social media in marketing" *Journal of the Academy of Marketing Science*. (2020) Iss. 48.1, 80-81.

¹¹ Platforms such as Google Classroom. Microsoft Teams and Zoom are some of the commonly used for webinars and conferences.

perpetuated online. This violence has been associated to some extent with their social identities. Social identities, in this instance, mean, and are limited to, race, ethnicity, sexual orientation, gender identity and expression, religion, and culture.¹² Women are a vulnerable group, and women from minority groups are further subjected to discrimination and violence based on their social identities. The intersectionality¹³ of these identities has shown a disparity in the discrimination and violence experienced by women with multiple identities as compared to those with fewer.¹⁴ This means that women whose identity is a combination of different social identities are more susceptible to violence as compared to one with less. For example, a Black Muslim Trans-woman is likely to be ridiculed and harassed as compared to a White Cis-woman. Various authors have attempted to define this phenomenon with terms such as Technology Facilitated Gender Based Violence (TFGBV), Digital Violence and Online Violence/ Abuse, as no standard term has been adopted. Nonetheless, it has been defined as a form of GBV which uses technology as a medium in order to cause harm.¹⁵ Drivers and indicators of digital violence are often characterized at times by “...offensive or discriminatory comments and insults, threats of physical or sexual violence, stalking, harassment, bullying, defamation, [and] online impersonation”. More specific examples of Digital Violence include “doxing”,¹⁶ “revenge porn”,¹⁷ “deepfakes”,¹⁸ cyberbullying,¹⁹ unsolicited pornographic content, and hate speech²⁰.

¹² Glitch UK and End Violence Against Women Coalition (n 7) 13.

¹³ Glitch UK and End Violence Against Women Coalition (n 7) 11 defines Intersectionality as a framework which intends to show how various factors of a person’s identity contributes to their extrinsic individual experience.

¹⁴ Ibid. 20.

¹⁵ Suzie Dunn, “Technology Facilitated Gender Based Violence” *An Overview*. Supporting a Safer Internet Paper No. 1. (2020) 2.

¹⁶ According to Gender Based Violence AoR. “Learning Brief 1: Understanding Technology Facilitated Gender Based Violence” *Learning Series on Technology Facilitated Gender Based Violence*. Gender Protection Cluster. (2021). 5. Doxing is defined as the sharing of personal information such phone numbers and home addresses on social media without the consent of their owners.

¹⁷ Ibid. 4. This includes the sharing of images which are intimate in nature without the consent of those partaking in such content. It has mostly been perpetuated by previous partners and some strangers with a motive to extort their victims.

¹⁸ Ibid. 4. This includes fake pornographic content where a face or identifier of a victim is attached or photo-shopped onto a pornographic picture or video and disseminated across platforms.

¹⁹ Ibid. 3. It entails different types of harassment done towards an individual/ group of individuals based on one or number of their social identities.

²⁰ Ibid. 4. This can manifest as sexism or misogyny toward a woman/ group of women with multiple and intersectional social identities.

Digital Violence is not *per se* a new occurrence as it has been documented as early as 2005.²¹ With the surge in the use of online social platforms, digital violence has also made a significant increase.²² Online abuse propagates and encourages sexism and misogynistic behaviour and fosters the unreasonable belief that women are lesser humans. It goes further to violate the right to integrity and dignity of its victims.²³ Violation of the right to bodily integrity undermines the right to bodily autonomy and the notion of consent. The lack of understanding and appreciation of consent is causal to the commission of sexual offences, both online and offline. The use of threats online toward women fosters self-censorship and, therefore, militates against exercising their right to freedom of expression.²⁴

1.2 Research Questions

1. What constitutes online violence, and how is it facilitated by social media platforms?
2. How does online violence affect women (and girls) both online and offline?
3. How do the existing legal frameworks address online violence?

1.3 Statement of the research problem

Human rights are an imperative tenet of development. , The advancement of women’s rights, does not seek nor attempt to create ‘new’ rights under the human rights paradigm. Therefore, women’s rights are key to global and national development. VAWG is one of the dominating factors that threaten this aspiration. VAWG online is a continuum of GBV from the real world. It possesses similar characteristics that include coercion, extortion, harassment, threats and stalking. This violence violates various rights of women, such as their right to dignity and integrity, and their right to bodily autonomy. Additionally, the adverse psychological impact of violence online is that survivors “... experience a pervasive sense of paranoia and fear linked to the inescapability, perpetuity, permanence and public nature of the abuse.”²⁵

²¹ Gender Based Violence AoR. “Learning Brief 1” (n16) 1.

²² Glitch UK and End Violence Against Women Coalition (n 7). 20 states that 27% of online abuse experienced increased during the COVID pandemic.

²³ Gender Based Violence AoR. “Learning Brief 1” (n 16) 5.

²⁴ Gender Based Violence AoR. “Learning Brief 3: Implications of technology facilitated gender-based violence and actions for humanitarian agencies, donors and online industries” *Learning Series on Technology Facilitated Gender Based Violence*. Gender Protection Cluster. (2021) 3.

²⁵ Gender Based Violence AoR. “Learning Brief 1” (n 16) 11.

Digital violence is indiscriminate. All women are prone to online violence; girl children, adolescent girls, young women and older women alike. Women and girls who have access to the internet are even more vulnerable.²⁶ Social media platforms such as Facebook only require an age limit of thirteen years or older to sign up for an account. This means young girls are given unrestricted access to content which may not be suitable for a younger audience such as them. They are more likely to be sexually abused, threatened and extorted on such platforms. Their unmonitored interaction with strangers makes them susceptible to being coaxed into trafficking.²⁷ These platforms, to an extent harbour and facilitate pedophile behaviour.

Women of a greater age range have also suffered digital violence from strangers and intimate partners. Some women have experienced intimate pictures of themselves, produced with their consent, being shared by previous partners without their consent with the intention to embarrass, harass, threaten and instill fear in them.²⁸ Women in Politics, Journalists and Women's Rights Activists have also been subjected to the same by individuals or organized individuals who hold contrary political views to them.²⁹ Such violence is characterized by threats which are sexual in nature, and threats against their families and jobs.³⁰ This adversely affects their right to participation, their right to expression, to hold an opinion and view. Because digital violence is a continuum of GBV in the real world, it also has the power to inversely persuade the commission of these threats physically to the victims.

1.4 Significance of Research Problem

The use of the internet is universal and the issues within it are likely to have a universal spread. Unlike other global issues facing women which are a connexion of various factors such as culture, demography and geopolitics, online violence is mostly based on the social identities of its victims.³¹ It is worth noting that culture and demography are sometimes a basis of argument or a

²⁶ Ibid. 9.

²⁷ Ibid.10.

²⁸ Ibid.

²⁹ Ibid. 4.

³⁰ Ibid.

³¹ Gender equality is a global issue which at often times is justified with the cultural relativism argument. In pursuit of this, countries such as Lesotho have made reservation of Article 2 of the Convention on the Elimination against all forms of Discrimination Against Women (CEDAW). Article 2(f) imposes an obligation on member states to abolish and repel existing national laws which have a discriminatory effect on women. The reservation by Lesotho is based on Section 18(4) (c) of the Constitution, 1993. This Section is a proviso that states a law inconsistent with the custom

source of understanding and justification to commit online violence against women and girls.³² A contextualized insight into this phenomenon is necessary in terms of Lesotho. Basotho women who utilize the internet are similarly prone to online violence like women in other territories. Studies and research are undertaken on this issue in the global North, and African and Asian countries seem to be deficient in literature on digital violence.³³

The contextualized study of this phenomenon exposes the inadequacies in the legal system of Lesotho. The outline of these inadequacies dictates informed action to recommend how to fill the present *lacuna*, challenges, inconsistencies, and coherences within our legal system. Alternatively, the research findings can potentially inform policy priorities and objectives of development into a more conscious trajectory.

1.5 Aims and Objectives of the study

The objective of this research is to study online violence, which is an evolving form of GBV. It intends to bring to the fore the broadened definition and scope of GBV. The study is made to understand this phenomenon in the context of how it affects women. The research seeks to look into the sufficiency of the legal system of Lesotho in addressing digital violence. The study is on what constitutes violence in the modern day world of the internet. It will delve into what constitutes digital violence on social media platforms and how it affects individuals subjected to it. The study will focus on women and girls who use these social media platforms. It will look into how this violence translates to the violation of some fundamental rights and freedoms of women which are imperative for their development.

The research will look into existing legal frameworks that could potentially curb and/or eliminate online violence against women and girls. It will attempt to analyze digital violence legal frameworks of other jurisdictions such as South Africa and the United Kingdom in comparative

and traditions of Basotho shall be null and void. Similar to other African customs, customary law of Basotho is patriarchal in nature and imposes a minority, if not inferiority, status on women in society.

³² An illustration of this is the Islamophobia culture which has manifested bigotry towards Arabs and other persons of Arabic descent as terrorists. See. Imran Awan, "Islamophobia and Twitter: A typology of online hate against Muslims on social media" *Policy & Internet* 6.2 (2014).

³³ Gender Based Violence AoR. "Learning Brief 1" (n 16) 6.

terms. Finally, recommendations will be made on how to address any presented grey areas and/or any inconsistencies in the legal system of Lesotho.

1.6 Literature Review

Online violence dates back as far as 2005 but literature that looks into this phenomenon seems to have developed significantly in the last four to five years. In particular, there has been more literature produced since the COVID 19 pandemic as it has catalysed the perpetuation of online violence. Anastacia Powell and Nicola Henry are some of the prominent scholars on the study of online violence. Their research however mainly focuses on the western countries and their populations. In 2018, the pair published a paper titled Image-Based Sexual Abuse.³⁴ The study sought to look into the victimization and perpetration of online violence and the dynamics of image-based abuse. In the same year, they later published another paper titled Policing image based sexual abuse: stakeholder perspectives.³⁵ This paper was made to assess law enforcement response in relation to image-based sexual abuse in Australia. Both articles and other subsequent articles³⁶ which address issues on different forms of online violence such as the types of image based sexual abuse.

The Chilling: Global Trends in Online Violence against Women Journalist research paper studied online violence.³⁷ The study was intended to promote discussion and elicit information about effective legislative initiatives which are founded on international standards for freedom of expression, and protection of the rights of women journalists. The study had 901 journalists as their subjects of study. These journalists were from a total of 125 countries. The study states that women journalists are in most cases first responders to online violence.³⁸ Interestingly, the study also states that women journalists are also primary targets of online violence. The study affirms

³⁴ Anastacia Powell, Nicola Henry and Asher Flynn (eds), "Image-based sexual abuse" *Routledge handbook of critical criminology*, (2018) 2.

³⁵ Anastacia Powell, Nicola Henry and Asher Flynn (eds), "Policing image-based sexual abuse: stakeholder perspectives" *An International Journal. Responding to Cybercrime: Current Trends* (2018) 1.

³⁶ These include, Anastacia Powell, Nicola Henry and Asher Flynn (eds) "Image-based sexual abuse" (n34); Nicola Henry et. al. *A study on the Causes and Consequenses of non-consensual nude or Sexual Imagery*. (Routledge 2020); Clare McGlynn, "It's torture for the soul': The harms of image-based sexual abuse" *Social and Legal Studies* (2020).

³⁷ J. Possetti et. al. "The Chilling: Global Trends on Online Violence against Women Journalists" *A Research Dicussion Paper*. UNESCO. (2021) 1.

³⁸ Ibid 8.

that online violence against women increased during the COVID 19 pandemic.³⁹ It further states that social media, which is where most of this violence occurs, fails to respond effectively to the said violence.⁴⁰ The study found that seventy three percent of their respondents who identify as women have experienced online violence which were threats of physical violence such as death, and sexual violence.⁴¹ The study found that a number of victims of online violence had Post Traumatic Stress Disorder (PTSD) and twelve percent of them had sought psychological or medical intervention from the effects of online violence.⁴²

The study further highlighted on the disparity on violence online experienced by women with intersectional multiple identities. The study enlists that gender is a key theme associated with violence online and most prevalent with forty nine percent. Second on the list was politics and elections at forty four percent and, thirdly human rights and social policy at thirty one percent. It found that women who were of a certain professional background, such as journalism, who are of unorthodox sexual orientation and/or gender identity or expression, and are of an ethnic or minority group such as Black or Indigenous, experienced higher and more severe bearings of online violence.⁴³ It notes the rates of online violence perpetuated against white journalist women have been sixty one percent while black journalist women was at eighty one percent. It goes further to show that the rate with regard to heterosexual women journalists to be seventy two percent while bisexual and lesbian women journalists to be at eighty five and eighty eight percent respectively. The aforementioned static give a clear outline on how online violence is mostly perpetuated against women, and even more so towards women with multiple social identities.

Social media is one of the platforms which foster online violence. The study found Facebook to be the most used platform by the respondents who have experienced weaponized misogyny.⁴⁴ The respondents agreed that the platform attracted higher rates of violence compared to other platforms such as Twitter.⁴⁵ The study went on to state that the technical design and business model of these platforms enable online violence; and further lack human centric solutions and gender sensitive

³⁹ Ibid 7.

⁴⁰ Ibid. 9.

⁴¹ Ibid. 12.

⁴² Ibid.

⁴³ Ibid.13.

⁴⁴ Ibid. 14. The study showed that seventy seven percent of the respondents were users of Facebook.

⁴⁵ Ibid. Facebook incident report rates at thirty nine percent while Twitter rates at twenty six percent.

approaches to online violence against women and girls. The study illustrates how there is a need for improved legal and judicial intervention to address online violence. The study states that only eight percent of the respondent had pursued the matter criminally with the police but lacked assurance in the prosecution of the matter.⁴⁶ Those that did not report the matter refrained because of a similar belief. Finally, the study states that only two out of the respondents had opted to pursue the matter through civil litigation although they had not been brought to finality at the time of print.⁴⁷

Suzie Dunn is another author that undertook research on online violence which it termed as Technology Facilitated Gender Based Violence (TFGBV). TFGBV is defined as any form of GBV that involves the use of digital technologies. To reiterate, the research enlists what constitutes TFGBV to include forms of harassment, image-based sexual abuse, the public disclosure of private information, defamation, stalking, impersonation, and threats and hate speech.⁴⁸ It defines and gives the scope of online harassment. It is said, at times, it is inclusive of a brief single targeted sexist comment(s) while in some instances it can be a continual attack. It goes on to reiterate that online harassment is in most cases perpetuated towards women and the most common mediums for such abuse or violence is on social media platforms.⁴⁹ The research states that women have stated that most of their experience of online violence was perpetuated by strangers but this has also been a practice with partners and former partners of the victims.⁵⁰

Dunn defines image-based sexual abuse, also known as “revenge porn”, as “...the non-consensual distribution of intimate images by ex-partners”. It is said that this form of violence entails the distribution of images and/or videos which were taken with consent but their distribution was not consented to.⁵¹ Similarly, voyeurism falls within the scope of image based violence. It is defined as the “...surreptitious taking photos or recording a video of another person for a sexual purpose using hidden camera” “intended for an unwanted audience” without their knowledge and/or consent. A subcategory of this includes “up-skirting” and “down-blousing” which entails taking

⁴⁶ Ibid. 15.

⁴⁷ Ibid.

⁴⁸ Suzie Dunn (n 15) 5.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid. 8.

pictures of a women up her skirt or down her shirt without her knowledge and/or consent.⁵² This illustrates how the lack of appreciation of consent is causal to most sexual offences. Unfortunately, these have a wide-spread ripple effect and consequences for the victim.

According to Dunn, these acts bear unwanted consequences of “sextortion” and “sexploitation” to the victim. Sexploitation is defined as a commercial exploitation of these images or videos by making profit from websites that disseminate content of this nature. Sextortion, entails the coercion or threats made towards the victim in these images or videos to commit or not to do something; in which if there is noncompliance with the requests made, such content is threatened to be disseminated to an unwanted audience such as family, colleagues or their communities.⁵³ Dunn confirms that women, transgender individuals and gender nonconforming people across all spectra of race, sexual orientation, ability and class can be targets of TFGBV.⁵⁴ This statement attests to the view that the issue such as online violence and poverty are the intersectionality of social identities of these minority and vulnerable groups.

It is said that online harassment regularly focuses on a person’s political views, physical appearance, race and gender.⁵⁵ In addressing the disparity of intersectionality of multiple social identities, it said that “...a person’s intersecting identity factors will alter the experiences they have online, influencing the qualitative ways they are attacked and the level of violence geared toward them.” Dunn also addresses online violence perpetuated against women in politics, journalism and other leadership roles and how it plays into gender development and equality. It is said that “...there is a critical need for greater gender diversity in politics, journalism and other leadership positions; however, this need is stifled when women leaders experience harassment online”. It goes on to say “Online attacks against women in leadership roles cause harms to the women targeted, but they also have the systemic effect of keeping women out of leadership roles because they fear being attacked online.” This assertion alludes to the right of participation of women and their development. Online violence fosters self-censorship. That is, the right to freedom of expression, view and opinion of women is impeded on. This not only adversely affects their individual development but sets a precedent for younger girls to believe that expressing one’s self to be

⁵² Ibid. 10.

⁵³ Ibid. 12.

⁵⁴ Ibid. 16.

⁵⁵ Ibid.17.

inappropriate and unacceptable. Further, regressing any progress made through efforts of gender equality and inversely encouraging misogynistic behaviour.

The Ripple Effect: COVID-19 and the Epidemic of Online Abuse Report by Glitch UK and End Violence Against Women Coalition confirms the existence of online violence towards women and girls on social media. The report found that there was a surge of online violence during the COVID pandemic.⁵⁶ The report also confirms that women, girls and people with intersecting identities are disproportionately affected by online violence.⁵⁷ The report also delves into the legislative interventions on online violence and key findings from its survey of 484 respondents.

The findings in the report state that forty six percent of the respondents confirmed to have experienced online violence since the beginning of the pandemic.⁵⁸ The report further states that the number increased to fifty percent of the respondents who are Black or non-binary.⁵⁹ This significant increase attests to the assertions made by Dunn and other previously mentioned authors on the disparity of the ramifications of online violence pertaining to some individuals, that is, women with multiple social identities. It makes it a fact that race, gender and sexual orientation are contributing factors to discrimination and attacks directed towards women online. Additionally, that social media platforms are ungoverned spaces where discrimination based on such factors is treated with great impunity.

The survey found that the abuse mostly happened on mainstream social media and the abuse was geared by strangers in most instances.⁶⁰ As an intervention, the report suggests three possible approaches to curb online violence against women. These suggestions are interventions that can be implemented by non-state actors, the government and the social media platforms. The report recommends that employer take positive acts to ensure the safety of their workers online by providing training on online violence and how to stay safe.⁶¹ It goes further to suggest that

⁵⁶ The Glitch UK and End Violence Against Women Coalition (n 7) 5.

⁵⁷ Ibid.

⁵⁸ Ibid. 7.

⁵⁹ Ibid.

⁶⁰ Ibid. 8-9.

⁶¹ Ibid. 10.

government should promulgate expert and civil society responses for legislation promulgation and to pressure tech companies to safeguard online activity which is violent and discriminatory.⁶²

Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective was presented by the Human Rights Council before the General Assembly on the July 2018.⁶³ The introduction of the report states that “online and ICT-facilitated forms of violence against women have become increasingly common, particularly with the use, every day and everywhere, of social media platforms and other technical applications”. At para 13. The report states that existing core international treaties of human rights, including those of women’s rights, provide for a global protection of women from violence. The report states that one in ten women have experienced online violence at least once in their lifetime.⁶⁴ The report further states the harm caused by online violence is that it carries on to victimize women through negative gender stereotypes.⁶⁵ This is to reiterate that online violence emboldens discriminatory and misogynistic behaviour.

The report notes that the harm caused by online violence can be physical, psychological, sexual or economical. It goes on to explain that this violence causes anxiety, depression and other psychological harm to its victims; and in some instances it has even lead to physical harm such as suicides.⁶⁶ This report brings to light the unfortunate impacts of this practice. That is, the effect is neither immediate nor short lived. It not only affects the victim then and thereafter but those within close proximity indirectly as well.

For emphasis, the report also acknowledges the disproportionate violence targeted at women with multiple social identities and states “[w]omen who have multiple identities are often targeted online on the basis of a combination of these factors, including racial discrimination and hate speech”. Further that “Women human rights defenders, journalists and politicians are directly targeted, threatened, harassed or even killed for their work.” This brings to the fore other issues which could be possibly be faced by Black, and in particular African women online. With most

⁶² Ibid.

⁶³ Special Rapporteur report on Violence Against Women, its causes and consequences on online violence against women and girls from a human rights perspective.

⁶⁴ Ibid, para 16.

⁶⁵ Ibid. para 25.

⁶⁶ Ibid. para 27.

African societies being patriarchal, the impunity of online violence negatively affects efforts to empower African women. However, it can be considered that such behaviour can be considered to measure the impact and effectiveness of sensitization initiatives aimed at achieving gender equality. Miscellaneously, online violence is a great conundrum because it facilitates the dissemination of disinformation.

In addressing these issues the report made several recommendations. It suggests the implementation of frameworks that prevent, protect, prosecute, punish and other measures of redress such as compensation, reparations, and satisfaction amongst others as state obligations.⁶⁷

It further recommends that states should include the private sector in efforts to combat online violence which is inclusive of strengthening mechanisms focused of eliminating violence online.⁶⁸

With reference to public international law and its instruments, both at international and regional level, such redress needs first be sought domestically. That is, through exhausting local remedies. Exhaustion of local remedies is inclusive of pursuing matters either criminally or civilly. Nonetheless, which ever route one takes, there is a need for an existing national law or regulation that governs the conduct complained of. This poses another issue where there are no enacted laws that address the harms and discriminations experienced.

1.7 Hypothesis

In terms of legal frameworks that govern online violence, one might argue that existing legal frameworks on GBV would suffice in addressing the same. However, the first issue with this argument is that Lesotho has not passed the Counter Domestic Violence Bill of 2021, which has been amended several times over a period of twenty years. Therefore, acts that constitute GBV have only been recognized as common law offences contained in various legislations such as the Penal Code of 2010 and the Sexual Offences No. 3 of 2003. These statutes leave a grey area on issues of GBV such as psychological and economical abuse. Therefore, the psychological aspect of online violence poses an enigma to existing legal frameworks.

The legal problem of this research paper is that online violence, similarly to GBV, has adverse effects on the development of women and girls and attaining gender equality. The assumption in this instance is that online violence harbours and encourages sexism and misogyny. Further that

⁶⁷ Ibid. para 65-70.

⁶⁸ Ibid. para 64.

misogynistic and sexist behaviour nurtures toxic masculinities which are influencers of GBV. Because online violence is a continuum of GBV, if online violence is curbed through legislative and institutional mechanisms and measures, there will be a significant decline of GBV in all its forms. Gender equality will be viable if spaces are made safer for the participation of women; regardless of whether they are in politics or any other profession. Further that, if there is enforced mutual respect for polarized political opinions amongst users, other rights such as the right to freedom of expression will enable the dissemination of factual information without fear. Realizing these rights of women is essential for a democratic state and the development thereof.

1.8 Methodology and Research Design

The study seeks to understand the definition and scope of online violence against women, to highlight the harms caused by this practice and to further analyse existing frameworks on how they prevent online violence and protect women from online violence. The research will employ a qualitative method of collecting data and a great portion of it will be undertaken as desk based. This means non-numerical data will be used to inform the research.

The research seeks to solve a socio-legal problem. This means literature from the social sciences and legal scholarship will be considered as sources of data for this study. The research will utilize literature that defines online violence and the scope of its definitions within its sub categories or forms. The study will also look into the effects of online violence on its victims from existing literature. Finally, the research will delve into analysing existing legal and institutional frameworks at international, regional and national levels in Lesotho. International and regional treaties and soft law will be considered. Reference will be made to case law where applicable. National legislation will be analyzed to assess their adequacy to both prevent online violence and how they protect women from online violence.

The study will further make a comparative analysis of national measures taken by the United Kingdom (UK) and the Republic of South Africa (South Africa) to curb the violence. These two jurisdictions have been considered for the following reasons. The UK is thus far the only territory to have made a Draft Online Safety Bill, 2021 which seeks to address online violence. The draft Bill was published in May 2021 and is yet to be passed into law. South Africa has been a jurisdiction for consideration by reason of similar legal system to that of Lesotho. However, it has

not made any positive efforts in trying to address online violence in its entirety but has passed the Film and Publications Amendment Act, 2019 which addresses some subcategories of online violence. The analysis will look at other legislations within its legal system that may cover subcategories of online violence not governed by the 2019 Act. From the aforementioned, the study will be able to submit recommendations to Lesotho on what measures to implement to protect Basotho women and girls from online violence, and how to best prevent it from occurring by drawing inference from other legal systems.

1.9 Summary of Chapters

Chapter one will introduce the research work and attempt to illustrate and define the scope of online violence in the context of violence against women and girls. Chapter two will highlight the impact of online violence against women and girls with regard to their individual fundamental rights and freedoms and how it collectively affects society by negatively affecting development. The third chapter will delve into analyzing existing legal and institutional frameworks at international, regional and national levels. A comparative analysis will be made of the legal frameworks of South Africa and the United Kingdom in Chapter four. The fifth and final chapter will be on the findings of the study and recommendations on how to address online violence against women and girls.

2. Chapter two: Definition and Characteristics of online violence.

2.1 Introduction

The Committee on the Elimination on all forms of Discrimination against Women on its eleventh session adopted General Comment No. 19. The Committee defines gender-based violence as acts that include threats, inflict physical, mental or sexual harm or suffering.⁶⁹ Further, that such as acts may be characterized by coercion or deprivation of necessities.⁷⁰ In a similar way, online violence is characterized by threats and other acts intended to inflict harm or suffering to the victim.

2.2 What is Online Violence?

Online violence is a contemporary occurrence of the twenty-first century⁷¹ and has not been given a standard term of use. Terms such as online abuse, technology-facilitated abuse or Technology Facilitated Gender-Based Violence have been used to refer to this phenomenon.⁷² It is a broader term used to define violence facilitated through the internet and its various platforms. The term may be categorized based on the characteristics or traits it presents. These categories are contingent on the manner the violence was perpetuated and the effect the violence has on the victim; that is whether the violence is image-based or not image-based, and how it has infringed on the rights and freedoms of the victim. Image-based violence, also known as Non-Consensual Intimate Image Distribution (NCIID), has been defined as “...the non-consensual distribution of photos or videos depicting nudity, partial nudity or sexually explicit acts.”⁷³ A distinguishing factor in this regard is the element of distribution. That is, the distribution is primarily facilitated through internet platforms. Another category of online violence is the non-image based violence. This can broadly be defined as harassment facilitated online.⁷⁴ The harassment may take a form of a threat of/or degradation of the person’s integrity, dignity or personhood.⁷⁵ Similarly, such harassment is not

⁶⁹ UN CEDAW General Recommendation No. 19: Violence Against Women. The Committee of the Elimination of Discrimination of Women. A/47/38. Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination of Women (1992). Para 6.

⁷⁰ Ibid.

⁷¹ Suzie Dunn (n 15) 5.

⁷² Suzie Dunn (n 15) refers to it as technology facilitated gender based violence; Anastacia Powell, Nicola Henry and Asher Flynn (eds) Image-based sexual abuse. (n 34) refer to it as technology facilitated abuse.

⁷³ Centre for International Governance Innovation (CIGI), “Non-Consensual Intimate image Distribution” *The legal Landscape in Kenya, Chile and South Africa*. Supporting a Safer Internet Paper No.2 (2021) 1.

⁷⁴ Anastacia Powell, Sophie Hinds and Asher Flynn “Technology Facilitated Abuse” *A survey of support services stakeholders*. ANROWS (2021). 6.

⁷⁵ Ibid. 12-14 gives instances where various courts in different jurisdictions mentioned that the threat to disseminate or the actual act of distributing intimate images of an individual without their consent violates their right to dignity and integrity amongst others.

perpetuated physically but through some online platform. The message may at times not solely be graphical in nature, but a combination of auditory and/or visual graphics and written expression, or solely remarks in written form. Of course, the two categories are not entirely separate and some instances may create overlap.⁷⁶ The distinction between the two has been made to allude to how online violence can be presented. That is, the existence of it in a certain form does not invalidate its existence in another form. Notably, any form of violence, facilitated through the use of technology, the internet or other digital or information and telecommunications technology, and is likely to cause harm, constitutes online violence.

2.2.1 Image-Based Online Violence

Image-based online violence is a continuum of sexual violence. This experience of sexual violence is on the spectrum of sexual violence and not per se collated in a certain hierarchy with other experiences which constitute sexual offences.⁷⁷ This is because in attempting to establish when the violence was initiated, it could either have happened physically or online. Image based sexual violence begins in the physical realm where the taking of the sexual images in question was done without consent; and somehow as a way of it completing its “predestined” natural cause, the images are further distributed online without the proper authority or consent. This illustration has been termed as “up skirting” or “down blousing”. The term up skirting has been defined as the act of “...surreptitiously taking photographs or videos up a female’s skirt or dress.”⁷⁸ Likewise, down blousing would entail taking a photograph down a woman’s shirt or blouse. These two have a common element of these images being taken without their knowledge and/or consent. Therefore, this practice does not only grossly violate the notion of consent, but also violates rights such as the right to privacy and bodily integrity and dignity of the person. Some jurisdictions within the United Kingdom have recognized this conduct as a crime and have made it an offence of voyeurism in the Sexual Offences Act, 2003 as of April 2019.⁷⁷

There are other instances where intimate photograph/s were taken with consent and then later distributed without the consent of the victim. This conduct is formally known as NCIID or

⁷⁶ An example of this would be where an intimate image has been disseminated without consent, and other forms of violence, such as harassment and/or threats, emerge as a result thereof.

⁷⁷ Clare Mc Glynn, Erika Rackley and Ruth Houghton, “Beyond ‘Revenge Porn’: The Continuum of Image Based Sexual Violence” (2017) 29.

⁷⁸ Matthew Hall, Jeff Hearn and Ruth Lewis, “Upskirting. Homosociality and Craftmanship: A thematic Analysis of Perpetrator and Viewer Interactions” (2022) *Violence Against Women*. 1. ⁷⁷ Ibid.

“revenge porn”.⁷⁹ Revenge porn can also be in a form of “deepfakes”. Deepfakes “...refer to faceswapping technologies that enable quick creation of fake images or videos which appear incredibly realistic”⁸⁰ That is a person’s face can be edited into another image which is sexual in nature made with the intention to represent the part and whole of the other image. The resultant image is a sexual or indecent image which is then distributed online. This is a threat to further violation of the rights of the victim, as such images may be used to impersonate the victim. This conduct of online impersonation is informally known as ‘catfishing’. Catfishing may entail “... [t]he use of digital technology to assume the identity of a person or someone else to access private information, exploit, embarrass, discredit or shame a woman or girl, contact or mislead them, or create fraudulent documents”⁸¹ This definition confirms as aforementioned the motivation of this form of online violence which often at times is to exploit, embarrass or shame the victim

2.2.2 Other forms of Online Violence

There are other forms of online violence which are not image based. At times these may be expressed on the basis of an existence of a photograph of the victim, which may or may not be sexual, and/or on the social identit(ies) of the victim. At times, the source of the violence is divergent political opinions and views.⁸² This type of digital violence can be termed harassment that may take different forms depending on why and/or how it is communicated. This is often characterized by threats and insulting comments, cyberbullying and defamation, ‘doxing’, and hate speech.⁸³ The threats and insults are “... violent, aggressive or threatening speech or content that expresses an intention to harm a [person] or her family or friends”⁸⁴ It is this use of language and the messages capsulated in it that brings about the adverse impact such as the materialization of harm physically in the real world. Cyberbullying and defamation are characterized by malicious and sometimes anonymous internet speech.⁸⁵ The publication made about the victim on online platforms may not have truth in them, are unfounded or perpetuate disinformation. It is the harm

⁷⁹ CIGI (n 71) 1.

⁸⁰ Edvinas Meskys, Aidan Liaudanskas and Julija Kalpokiene “Regulating Deep-Fakes; Legal and Ethical Considerations” (2019) Vol.15, Issue 1. *Journal for Intellectual Property Law & Practice* 1.

⁸¹ Gender Based Violence AoR. “Learning Brief 1” (n 16) 5.

⁸² Ibid. 3.

⁸³ Ibid. 3-5.

⁸⁴ Ibid. 3.

⁸⁵ Fernando L. Diaz, “Trolling & the First Amendment: Protecting Internet Speech in the Era of Cyberbullies & Internet Defamation” *U Ill JL Tech & P* (2016) 155.

that is resultant from such disseminated information. The character and public image of the victim are then called into disrepute.

Doxing entails "... publication of private information and involves sharing personal information such as address and phone number on the Internet without a woman or girls' consent."⁸⁶ It is done with the intention to encourage further harassment of the individual offline.⁸⁷ This harassment may migrate from online to offline and manifest physically. How it manifests can range from the threats being acted upon to disturb the peace and privacy. Either possibility of these instances, the victim is subjected to a sense of insecurity and an anticipation of some great calamity to befall them.

Digital violence at times manifests in a form of hate speech.⁸⁸ The hate speech can range from homophobic, transphobic, and racist speech to misogynistic propaganda. As aforementioned, there has been a recognition that there is a type of nexus between online violence and the social identity of the victim. That is, the violence is rooted or emanates from the social status such as their race, gender, religion, colour, and sexual orientation, among others. From this alone, an inference may be drawn that online violence furthers and encourages discrimination which violates some fundamental rights and freedoms.

2.3 Characteristics of Online Violence

Gender Based Violence as a social issue is characterized by certain features. That is, what constitutes Gender Based Violence in its various forms, who perpetuates it, and whom it affects and how it affects them? Similarly, online violence has some identifying characteristics.⁸⁹ The characteristics mentioned below do not intend to create constitutive elements of this type of violence. They are features which intend to outline who the perpetrators of online violence may be, how it may take place or present itself in observation and who it may affect. Other features will be dealt with and elaborated on further in this research work.

⁸⁶ Gender Based Violence AoR. "Learning Brief 1" (n 16) 5.

⁸⁷ Ibid.

⁸⁸ Suzie Dunn (n15) 16.

⁸⁹ Gender Based Violence AoR. "Learning Brief 1" (n 16). 10-11.

2.3.1 *The Villain of the Setting*

Where harm has been identified or perceived, the matter may have a (potential) villain and victim. The question of who may cause harm regarding online violence is quite imperative in understanding this phenomenon. Firstly, because online violence is a gamut of GBV, the perpetrators in the context of online violence will be discussed. GBV may be in the form of intimate partner violence or non-intimate partner violence.⁹⁰ Depending on the nature of the violence, it can either be one, or a combination of physical violence, sexual violence, emotional violence,⁹⁰ psychological and economic violence. In the same light, online violence may be perpetuated by an intimate partner or a non-intimate partner such as a friend, acquaintance, family member, or a complete stranger. The Centre for International Governance Innovation identifies ex-partners as perpetrators of NCIID by reason that such partners seek revenge in a bitter anger.⁹¹ It goes on to enlist that relationships of “...spouses, cohabiting partners and non-cohabiting partners...” are also inclusive in this regard.⁹²

The Kenyan case of *Roshanara Ebrahim v. Ashleys Kenya Limited and others*⁹³ illustrates this phenomenon. The facts of the case are as follows; the petitioner was crowned Miss Kenya in 2015 set to represent Kenya in the Miss World beauty pageant the following year. The petitioner’s former boyfriend (third respondent) gave the organizers (first and second respondent) via email, intimate pictures of the petitioner. By this reason, the petitioner was dethroned as Miss Kenya and the fourth respondent inaugurated instead. The third respondent justified his actions in that it was in the public interest. However, the court found that he had portrayed the petitioner as an alcoholic and drug addict in his affidavit.⁹⁴ At para 29, the court stated that even though the photographs were taken with the consent of the petitioner, the existence of the relationship between the petitioner and the third respondent did not include the authority of publication of such. The court further confirmed malice in the conduct of the third respondent reasoning that this ordeal occurred following the termination of his relations with the petitioner, and therefore, that it was not in the interest of the public.⁹⁵ In conclusion, the court found that the third respondent has violated the

⁹⁰ Muleken Mulunch and Others, “Gender Based Violence against Women in Sub Saharan Africa: A Systematic Review and Meta-Analysis of Cross- Sectional Studies” (2020) *Int. J. Environ. Res. Public Health*. 1.

⁹¹ CIGI (n71) 1.

⁹² *Ibid.* 9.

⁹³

⁹⁴ *Ibid.* Para 4.

⁹⁵ *Ibid.* para 33.

right to privacy of the petitioner under the constitution of Kenya⁹⁶ and the right to privacy of information of the petitioner.⁹⁷ The third respondent was ordered to pay one million Kenya shillings to the petitioner.⁹⁸

There are instances where online violence has also been perpetuated by non- intimate partner violence. As aforementioned, these may be friends, family, acquaintances and/or strangers.⁹⁹ This group of individuals may often participate in the violence down the dissemination chain.¹⁰⁰ They may act individually or with a similar intention as a group. The intention or motivation of this conduct is identified here to include “...a desire to humiliate the other person or harm their reputation, to gain status, to bond with peers, to make a profit or for sexual purposes.”¹⁰¹ In terms of the profit aspect to it, the initial perpetrator, or other participants down the distribution chain, view the occurrence as an opportunity to gain something. The perpetrator may coerce, silence, extort and/or exploit the victim.¹⁰² At times, the victim is extorted to pay certain amounts or commit certain acts and threatened that their non-compliance would result in the distribution of such images. In other instances, the victims are pressured to refrain from doing certain acts, at home or in the workplace with a similar threat directed at them.

An interesting aspect of image-based online violence perpetuated by non-intimate partners is the stealthy manner in which the pictures of the victims are procured. Unlike in intimate partner relations where ,often times, the pictures were taken with consent but distributed without consent, the non-intimate partner online violence utilizes unethical methods such as hacking into the accounts of victims to procure these images..¹⁰³ In some instances, perpetrators have taken up skirt or down shirt photographs of victims without their knowledge or awareness in public spaces.¹⁰⁴ A survey on technology-based abuse found that a greater number of their respondents agreed that the perpetrators of online violence are non- intimate partners such as family, friends, acquaintances

⁹⁶ Ibid. para 37.

⁹⁷ Ibid. para 39.

⁹⁸ Ibid. para 44.

⁹⁹ Suzie Dunn (n 15) 9.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid. 6-9.

¹⁰³ Ibid.

¹⁰⁴ Suzie Dunn (n 15) 10.

and colleagues.¹⁰⁵ About six percent of the participants agreed that the perpetrators are often strangers or unknown persons.¹⁰⁶

Even so, online violence is often perpetuated under anonymous guises. This is regardless of whether it has been perpetuated by a current or former intimate partner, family, friend, colleague or unknown person. The element of it being anonymous means it can easily be perpetuated from anywhere, by one or a number of individuals.¹⁰⁷ Diaz, in terms of online anonymity, states,¹⁰⁸

Internet speaker's ability to hide or misrepresent his identity poses a significant ...obstacle for a defamed, harassed, threatened, or otherwise injured party. The party may be unable to confront or hold an anonymous speaker accountable without going through extensive efforts to "unmask" the speaker's identity. The instances are countless in which an individual has been targeted for abuse by anonymous Internet speech.

It is common to have a perpetrator disguise their true identity. This is another challenge posed in relation to the issue at hand. Not only does the process of identifying them take time but may be financially costly. The lack of legal frameworks makes the process of identifying the perpetrator more burdensome for the victim.

2.3.2 The Girl that cried wolf? In the Setting

Literature on technology facilitated gender based violence points out that online violence has a likelihood to affect more women and girls in comparison to men. A great number of women and girls are primary targets of violence on the basis of their gender.¹⁰⁸ If online violence consists of harm being perpetuated by a certain individual or group of individuals on one end, then the harm thereof ought to be received by someone on the other end; input-output rule. The person who is being subjected to any harm would under normal circumstances be referred to as the victim. Nonetheless, because of a number of factors such as online violence not being recognized largely as a criminal offence and that the experience or harm caused by it is not per se perceived as 'actual',

¹⁰⁵ Anastacia Powell, Sophie Hindes and Asher Flynn (n 72) 28.

¹⁰⁶ Ibid.

¹⁰⁷ Gender Based Violence AoR "Learning Brief 1" (n 16) 10-11. ¹⁰⁸ Fernando L. Diaz (n 83) 136.

¹⁰⁸ Suzie Dunn (n 15) 3.

some people have a dilemma in acknowledging women and girls as victims where there is online violence. Therefore, because currently this issue seems more social than legal, the weight of its consequences does not instill a need for caution in engaging in such behaviour online by others.

Technology facilitated gender-based violence is a continuum of gender based violence.¹⁰⁹ It is reasonable to suppose that women and girls may be primary targets of online violence. The question of who this violence affects seems to be cut crossing with regard to individuals that constitute this vulnerable group. The degree of impact of course differs from individual to the other. This is dependent on the nexus between the individuals social identi(ties); intersectionality.¹¹⁰ Gender has been identified as one of the most prominent subjects which online violence is based on. A study relating to women journalists and online violence found that the chances of attacks were at forty nine percent if they reported on gender issues.¹¹² In affirmation, a separate survey by the Glitch UK reports that gender was the most prominent reason for online violence, with forty eight percent of the respondents reporting that they have experienced violence based on their gender.¹¹¹ Other aspects which were submitted as basis for the violence include gender identity and gender expression, ethnic background, religion and disabilities, amongst others.¹¹²

Social identities are among the prominent reasons why online violence is perpetuated toward women and girls. There has been a discovery in how these identities interrelate with the said attacks. It has been further proven that there is a disproportion in the violence and the select identity.¹¹³ That is minorities are subjected more to violence online, and a combination of a number of these social identities can imply the possibility of being subjected to greater violence and/or discrimination online. The Ripple Effect survey found that, black women and those in a minority, 42 percent of them the violence was based on their race or colour, while 8 percent of their counterparts have experienced the same.¹¹⁴ 22 percent of the black and minoritised women were attacked on their religion while only 6 percent of white women have had a similar experience.¹¹⁵

¹⁰⁹ Gender Based Violence AoR. “Learning Brief 3” (n 24) 1.

¹¹⁰ Glitch UK and End Violence Against Women Coalition (n 7) 22. ¹¹² Gender Based Violence AoR. “Learning Brief 1” (n 16) 5.

¹¹¹ Glitch UK and End Violence Against Women Coalition (n 7) 22.

¹¹² Ibid. 22-23.

¹¹³ Anastacia Powell, Sophie Hindes and Asher Flynn (n72). 13.

¹¹⁴ Glitch UK and End Violence Against Women Coalition (n 7) 22.

¹¹⁵ Ibid.

This data not only confirms the assertion that women's social identities are utilized in these attacks, but that being a minority and with several social identities makes one susceptible to unwarranted harassment and abuse online.

Another factor of consideration of intersectionality is the women whose careers or professions have immersed them within the internet space. These include journalists, women in politics, and activists in particular those advocating for women's rights and gender issues, human rights, and social justice.¹¹⁶ These online platforms are imperative in the furtherance of their objectives and development. This development is fostered by the ability to fully enjoy their rights to freedom of expression, view, and opinion, their right to participate in public discussions and key decision making, and their right to information. Any frustration of their activity on such platforms inevitably results in the infringement of these fundamental rights and freedoms.

2.4 Conclusion

Online violence is quite prevalent. The abuse of it is not only discriminatory but adversely violates a number of rights and freedoms of women and girls. The violation of these rights further has a negative impact on the development of those affected and, ultimately, the development of the world. Therefore, it is important to address this phenomenon and the issues thereof. The phenomenon is broad and has proven that it requires to be governed to a great extent. The perpetrators of online violence act with impunity on a greater scale as compared to those who commit similar violence in the real world. The victims, even so, continue to experience the harm and its adverse effects, which are similar to those affected by violence in real life. This violence fosters sexual violence, and to an extent, may encourage the perpetuation of these acts physically. This is a matter of concern as it highlights the possibility that the existing efforts on GBV are insufficient and that there is a dire need for further safeguarding of women and girls.

¹¹⁶ Ibid. 15.

3. Chapter three: The Impact of Online Violence Against Women and Girls

3.1 Introduction

Universally, with regard to any civil society, violence is objectively viewed as a “big bad.”¹¹⁷ The perpetrator of the violence is greatly frowned upon because of their actions' impact on the victim. The consequential effect of any form of violence is inevitably more of adversity than good. The adversity of violence seems to project into perspective the dynamic that there is an imbalance of power and inequity in the act of violence.¹¹⁸ That is, there is a “taker” and a “loser” on unjust grounds. The taker takes the ability of the victim to fully enjoy their most fundamental and basic rights and freedoms, while the victim unjustly loses their inherent rights. The loss often translates to inequity. Likewise, in this instance, a loss is synonymous with harm or injury.

Cohen and others describe violence as “... the use of force with the **intent to inflict injury** or death upon ... another individual or group[s] and includes the **threat of force** to control another individual or group.”¹¹⁹ Further, violence can be characterized as “...**aggressive human behaviour** involving the use of physical, psychological or emotional force with the intent to cause harm to others.”¹²⁰ Therefore, it is worth noting that violence can be characterized either by threats, harassment or the use of force, and that it is resultant in injury or harm of some sort. The reasoning behind the violence is usually to assert, to have or to take control over another or others which may be in opposition or with lesser power.

The United Nations Human Rights Council in 2016 made a resolution on the interrelatedness of the internet and human rights. In the preamble, the resolution acknowledges the need for internet governance to be founded on human rights and that the rights enjoyed offline ought to be protected and promoted online.¹²¹ That is, the threats and violence women experience online ought to be a

¹¹⁷ Paragraph 9 of UN CEDAW General Recommendation No. 19: Violence Against Women. The Committee of the Elimination of Discrimination of Women. A/47/38. Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination of Women (1992); Charles Atkin, “Effects of Realistic TV Violence vs. Fictional Violence on Aggression.” *Journalism Quarterly*, vol. 60, no. 4.(1983) 615– 617, illustrates how victims of violence and those exposed to the violence are adversely affected by such violence emotionally and psychologically and how it can be resultant in aggressive behaviour which further fuels other types of violence.

¹¹⁸ Preamble of the United Nations General Assembly Resolution 48/104 of 20 December 1993.

¹¹⁹ Larry Cohen, Rachel Davis and Manal Aboelata. “Conflict Resolution and Violence Prevention: From Misunderstanding to Understanding” (1998) *The Fourth R. National Institute for Dispute Resolution*. 4.

¹²⁰ United Nations Human Rights Council Resolution A/HRC/32/L.20 on The promotion, protection and enjoyment of human rights on the Internet (2016).

¹²¹ *Ibid.* 2.

concern in the same way that violent acts are in the real world. The resolution expresses concern for the digital divide between women and men, boys and girls, and the need to close such a rift.¹²² The digital gender gap disproportionately affects women more than their male counterparts, as illustrated in the previous chapter. The rights to freedom of expression, the right to integrity, the right to bodily autonomy and the right to participation of women in the digital space are not properly realized or appreciated and therefore, adversely affected. As a result, the resolution expresses that there is a need to empower women in the digital era.¹²³ Empowering women in this aspect will substantially contribute to the achievement of the Sustainable Development Goals (SDGs).¹²⁴

With regard to the above mentioned, this chapter will delve into discussing the impact the aggressive behaviour, threats and harm pronounced in online violence has on the victims. It will further look into the indirect impact it has on others, and the development of the community as a whole. The psychological impact of this practice will be an aspect of consideration. The intention is to fully understand the multiplier effect of online violence on people and development.

3.2 The Adverse Impact of Online Violence on Development

The gender identity of women in many societies has come with a number of stereotypes of what and who a woman is or ought to be.¹²⁵ The non-conformity with these expected roles or identity is often a factor in discrimination or violence. The social gender role of women has been communal while men have been assigned a role of agency.¹²⁶ The communal role of women essentially entails nurturing while making contribution for the welfare and wellbeing of others. Men on the other hand, are socialized to lead and act on behalf of others. The shift in this practice has witnessed the evolving dynamics of society. Women, young and old alike, now aspire to partake in less orthodox roles and more roles to self-determine in the context of community; such as to have a stake in

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Shahra Razavi, "The 2030 Agenda: challenges of implementation to attain gender equality and women's rights." *Gender & Development* 24.1 (2016). 25.

¹²⁵ Selma Korlat, et al "Gender role identity and gender intensification: Agency and communion in adolescents' spontaneous self-descriptions" *European Journal of Developmental Psychology* (2021).64.

¹²⁶ Ibid.

leadership and development; and rightfully so. The right to self-determination is a human right and the rights of women are human rights.

The advancement of the rights of women is crucial for their empowerment. The empowerment of women is quite imperative in development.¹²⁷ It has been stated that the autonomy of women promises other long-term benefits such as "... better educational and health outcomes for children, and a stronger female political voice."¹²⁸ This promises that the advancement of the rights of women extends beyond to other vulnerable and/or minority groups. As illustrated in Chapter two, there is further disproportional violence with regard to the intersectionality of multiple social identities of women; this is inclusive of race, colour, religion, and disability.¹²⁹ Therefore, the protection afforded online will not only extend to women of colour, or various religions as these social identities are not exclusive to women but also extend to other genders, sexes, religious communities, and so on. Advancing the rights of women has an inevitable impact on the rights of children, both girls and boys alike, and other marginalised or vulnerable groups such as women with disabilities,¹³⁰ women within the Lesbian, Gay, Bisexual, Transgender, and Intersex community (LGBTI+ community) and women in ethnic or indigenous groups. The question to follow would then be, how do we foster this empowerment and development? In addressing this question, the first point of consideration in the approach would be through the promotion and protection of the rights of women; which are inherent human rights.

There are a number of actions being implemented for the protection and promotion of the rights of women in the real world. Similarly, in the digital space, all rights and freedoms need to be equally guaranteed. However, in the context of online violence, there are rights and freedoms which have manifested to be more susceptible to violation than others. The violations have proven to be treated with impunity due to a lack of legal frameworks and other safeguards. These are inclusive of the rights to freedom of expression and opinion, the right to integrity and bodily autonomy, and the right to participation. Due to the nature of the interrelatedness and interdependency of rights, in most cases, the violation of one right may simultaneously have an impact on another right. The

¹²⁷ Siwan Anderson et. al. "Towards Gender Equity in Development" *UNU-WIDER OUP*. (2018). 2.

¹²⁸ Ibid.

¹²⁹ See Chapter two. Part 2.3.2.

¹³⁰ Rangita de Silva de Alwis, "Mining the Intersections: Advancing the Rights of Women and Children with Disabilities within an Interrelated Web of Human Rights." (2009) 18 *Pac Rim L & Pol'y J.* 309-10.

impact of the violation of these rights is detrimental both to the victims and the development of society as a whole. At this juncture, the right to freedom of expression will be dealt with as the first right to be discussed. The right to integrity and bodily autonomy, and the right to participation will then follow.

3.2.1 Online Violence and the Right to Freedom of Expression

Article 19 [1] and [2] of the International Covenant on Civil and Political Rights (ICCPR)¹³¹ provides that everyone shall have a right to hold an opinion without interference, to express themselves, to seek, receive and impart information and ideas regardless of frontiers either orally, in writing, print, art or any other media house.¹³² The same right is reiterated by section 14 of the Lesotho Constitution, 1993, under Chapter II. This provision enunciates the inherent right of every individual, inclusive of women and girls, to partake and contribute ideas through various means without any extrinsic intrusion. The intrusion or interference can take various forms such as threats, harassment and discrimination. Threats and harassment facilitated online violates the right to freedom of expression. Women and girls on online platforms who experience online violence tend to self-censor and participate less on such platforms.¹³³ Censorship negatively affects the ability to fully express oneself, their ideas, views and opinions. Full and uninterrupted expression is required to engage in discussions of all issues; this is inclusive of social and legal issues that affect women.

The violation of the right to freedom of expression online does not only cause self-censorship. It also invalidates the voice and political opinions of women. Suzie Dunn illustrates this phenomenon by describing it as “chill[ing] the speech of women.”¹³⁴ This brings the progress in advancing the rights of women into disruption and poses an additional impediment. The infringement and violation of the right to freedom of expression of women adversely affect the opinion of women in public forums. The weight and credibility of the information disseminated by women are put into question. Dunn goes on to enlist that women in journalism, women in politics, and women’s rights defenders are amongst some of the women whose right to freedom of expression is grossly

¹³¹ United Nations International Covenant on Civil and political Rights (ICCPR), (1966).

¹³² Article 60 and 61 of the African Charter on Human and Peoples’ Rights (ACHPR) (1981) echoes the same words on the right to freedom of expression.

¹³³ Gender Based Violence AoR. “Learning Brief 3” (n24). 3.

¹³⁴ Suzie Dunn (n15). 19.

violated.¹³⁵ This right is imperative in creating awareness of issues that women face in their target audience. It is a fundamental tool in disseminating factual information and combating misogynistic disinformation. Additionally, it is also important in order to further and thrive in their respective professions. The professional development of these women and others is limited by the violation of their right to freely express their opinions and views.

3.2.2 Online violence and the Right to Participation

The ability to express oneself is a requirement in participation in any forum. The right to participation is provided for under Chapter II, section 20 of the Constitution of Lesotho, 1993. The right to participation can be defined as the right to participate in public affairs and the right to stand for elections among others.¹³⁶ To an extent, the right to participation is contingent on the right to voice out views and opinions. It has been a global concern and issue of interest that women are underrepresented in leadership roles.¹³⁷ In particular, women in journalism, politics, and human rights activism.¹³⁸ It has been stated that online violence disproportionately affects women in journalism, politics, and activists in instances where the theme, topic, or sector in question involves roles that had traditionally been dominated by men.¹³⁹ Women within the LGBTI+ community, women of colour or ethnic groups, or any other women of a minority are even more disproportionately affected in these professions as compared to women in majority groups.¹⁴⁰ These traditional roles are usually leadership roles.

Leadership roles are fundamental in key decision-making for development. Any individual who aspires to the role ought to be "... a skillful communicator, a motivator, one who translates visions into reality, one who provides direction in times of change and someone who is well informed."¹⁴¹ This definition encapsulates the true essence and prerequisites of what a leader ought to possess. As an observation, it has been interesting to realize that neither of these qualities requires genital

¹³⁵ Ibid.

¹³⁶ Section 20 (1) (a) and (b) of the Constitution of Lesotho, 1993.

¹³⁷ Suzie Dunn (n15). 18

¹³⁸ Ibid. 19.

¹³⁹ Ibid.

¹⁴⁰ Glitch UK and End Violence Against Women Coalition (n 7). 15,

¹⁴¹ Jennifer Porterfield and Brian H. Kleiner, "A new era: Women and leadership", *Equal Opportunities International*, (2005). 49.

autonomy. That is, the enlisted qualities are skills that are not per se inherent but may be learned. Therefore, women from an early age may be socialized to be leaders.

However, in many jurisdictions, the lack of access or discrimination against women from leadership is both systematic and institutional. An example is how Iranian women are excluded from key leadership roles such as the head of the judiciary, Supreme leader, or a member of the Guardian Council because, as a prerequisite, the roles require a religious training which is inaccessible to women.¹⁴² Violation of the right to participation in leadership roles can be rooted in digital violence. Internet platforms facilitate and harbour misogynistic behaviour facilitated through threats, and harassment. Dunn says digital violence "... cause[s] harm to the women targeted, but [it] also h[as] the systemic effect of keeping women out of leadership roles because they fear being attacked online."¹⁴³ Women who aspire to be in leadership positions are subjected to online attacks but lack support to ward off these attacks. They are therefore left with the option to either retrieve or tolerate the unwarranted attacks. Nonetheless, their right to fully partake in leadership roles is not easily realized as compared to their counterparts. It can therefore be anticipated that a possible effect of online violence is a decline in the numbers of women in key leadership roles, or the progress in increasing the number of women in this role may be delayed.

3.2.3 Online violence and the right to bodily integrity and life with dignity

Article 6 of the ICCPR makes provision for the right to life as a fundamental and basic human right. Chapter II section 5 of the Constitution of Lesotho, 1993 makes a similar provision for the right to life as a fundamental human right and liberty. The right to life has been interpreted to entail a number of other rights. The right to life is inclusive of the right to human dignity.¹⁴⁴ The right to dignity is what distinguishes human rights from other rights, such as those of animals. It is a yardstick for the standard of life and respect, and such standards and respect are afforded solely on the basis that one is human-nothing more, nothing less. McCrudden reinforces this argument by stating that, "... *dignitas* refer[s]... to the dignity of human beings as human beings, not

¹⁴² Mehrangiz Kar, "'Iranian Law and Women's Rights' The Transnational Muslim World, Human Rights, and the Rights of Women and Sexual Minorities." *Muslim World Journal of Human Rights*, (2007). 8.

¹⁴³ Suzie Dunn (n15). 18.

¹⁴⁴ General comment No. 36 (2018) on article 6 of ICCPR, on the right to life, para 3.

dependent on any particular additional status”¹⁴⁵ Further, under Roman-Dutch law, violation of the *dignitas* of another attracted delictual liability and compensation under the *actio injuriarum*.¹⁴⁶ Under public international law, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is founded on the recognition that “... rights derive from an inherent dignity of a human person.”¹⁴⁷ The essence of this convention is to set guidelines and standards for practices such as detention and torture, whose ambit tend to be inhumane. Therefore, states have an obligation to put in place necessary safeguards and frameworks to address social conditions that threaten or violate the right to life with dignity.¹⁴⁸ Conditions of the society, experienced virtually or digitally, require solutions from the state for the welfare of its people. Online violence is an occurring social condition that requires urgent governance through varying frameworks.

The right to bodily integrity is not expressly defined in the Universal Declaration on Human Rights (UDHR)¹⁴⁹, the ICCPR or the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁵⁰ However, it has been recognized as a cornerstone in the right to personal security of an individual.¹⁵¹ The narrow definition of the right to bodily integrity entails autonomy and authority over one’s body. That is the right not to have one’s body interfered with without their consent.¹⁵² In the context of medical law, the right to bodily integrity is often illustrated by the right of a patient to refuse medical treatment even in life-threatening situations.¹⁵³ That is, a person has a right to give or hold consent to the treatment being offered. An in-depth analysis of the right to bodily integrity, highlights the interdependency of the right and the notion of consent.

Perhaps discussing consent is ideal at this juncture in order to outline and highlight the relation between the right to bodily integrity and consent. Literature seems to suggest that, depending on

¹⁴⁵ Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights” *The European Journal of International Law*. (2008) Vol. 19 no. 4 .657.

¹⁴⁶ *Ibid*

¹⁴⁷ Preamble of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984).

¹⁴⁸ *Ibid*. para 23.

¹⁴⁹ United Nations General Assembly Universal Declaration on Human Rights (UDHR), (1948).

¹⁵⁰ United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), (1966).

¹⁵¹ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (2019). A/74/48053. Para 19.

¹⁵² Jonathan Herring and Jesse Wall “The Nature and Significance of the Right to Bodily Integrity” *Cambridge Law Journal*, (2017). 3.

¹⁵³ *Ibid*. 2-5.

the context, consent can manifest in different ways. That is, it can be informed, voluntary, or competent.¹⁵⁴ Informed consent has been defined to be consent given voluntarily based on some disclosure of information that brings to the fore the risks involved.¹⁵⁵ Voluntary consent entails the intrinsic willingness to voluntarily engage without interference such as coercion or undue influence.¹⁵⁶ Competent consent is characterized by the sound ability to give such consent.¹⁵⁷ Either way, the essential elements of consent are understanding and voluntariness. Consent must be given willingly and with a full understanding. The absence of either of the two elements implies the consent is void. Further, that consent may be withdrawn at any given time.

The internal aspect of consent builds on the notion of autonomy. Autonomy in consent, therefore, entails the ability to have control over one's body and what takes place over it. In the case of *Mitchell v the State of Wisconsin* in the United States (US), where the petitioner had their blood drawn by police officers of the respondent state while intoxicated. One of the arguments submitted was that invasion of the right to bodily integrity violates one's right to privacy.¹⁵⁸ Therefore, violating one's right to privacy may include violating their bodily integrity and autonomy. Acts of online violence that are imaged based violate the right to bodily integrity, the right to privacy, and the right to life with dignity. Image-based violence, in particular revenge pornography and other ancillary acts, is a practice that simultaneously violates these rights. The publication of such intimate photographs or videos of women has the impact of violating their right to bodily autonomy.

The impact of violating the right to bodily autonomy is that, amongst others, women lose control over their bodies to an extent. The woman might have consented to the taking of the content and sharing with only a certain individual. Where the sharing of the said content goes beyond the intended recipient, then such an act is a violation. The treatment as a reaction to the shared content is often unwelcomed and unsettling. This is inclusive of harassment and insults online.¹⁵⁹

¹⁵⁴ Priscilla Alderson and Christopher Goodey, "Theories of Consent" *Theories in Health Care and Research* (1998). 2.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.* 2-3.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Gerald P. Mitchell v State of Wisconsin* USSC.7.

¹⁵⁹ Gender Based Violence AoR. "Learning Brief 1" (n16). 5.

Unfortunately, the harassment, in some instances, migrates offline.¹⁶⁰ This means women are further subjected to harassment in different spaces within their community. This makes them further susceptible to physical attacks and sexual assault.

3.3 Emotional and Psychological Impact

Being a subject of any type of violence has its impact on the victims. In the same way, online violence, either in the form of threats, harassment, or otherwise, adversely affects the victims. Victims of technology-facilitated violence suffer harm. Victims of online violence have been said to have shown psychological distress and low self-esteem as a result.¹⁶¹ This phenomenon is better illustrated by the case of *Patel v Hussain* in the US.¹⁶² The brief facts of this case are the parties were long-term lovers throughout their high school years. On different occasions during the subsistence of the relationship, Hussain shared intimate pictures of herself with Patel. In a separate instance, the two had engaged in a virtual call where Hussain was intimate with herself, and Patel recorded the happening without Hussain's consent. When relations soured, and Hussain sought to end it, Patel began harassing and threatening her, and ultimately publishing Hussain's video online and with mutual friends. Justice McCalley of the court of appeal recognized the finding of the lower court. The court a quo had found in favour of Hussain's claim for intentional infliction of emotional distress (IIED), intrusion on seclusion, public disclosure of private facts, and defamation and awarded her damages amounting to half a million dollars (\$500 000).

Over time the video was viewed more than 2000 times. At the court of appeal, Hussain testified to the mental anguish the ordeal had caused to herself and her family.¹⁶³ As a result, Hussain stated that she moved to a new apartment and felt the need to fortify her residence with extra locks and finish to close windows to prevent viewing access from outside.¹⁶⁴ Hussain felt unsafe in her own home and relocated; even in a new space, she still felt unsafe due to the experience. The harassment was further extended to Hussain's mother when Patel also began sending emails and calling the house. As a result, the home line had to be disconnected. This instance shows how harassment online has the ability to transcend offline; and how it further affects others around the victim

¹⁶⁰ Ibid.

¹⁶¹ Glitch UK and End Violence Against Women Coalition, (n 7). 28.

¹⁶² *Patel v Hussain* 485 S.W.3d 153 (2016).

¹⁶³ Ibid. 169.

¹⁶⁴ Ibid.

adversely. The mental health of Hussain, her mother, and her grandparents were affected by this ordeal. Their means and channels of communication with others were also affected. This case is an example of the adverse impact of online violence and why it needs to be addressed.

The survey by Glitch UK enquired into the emotional wellness of women who have experienced online violence. The respondents agreed with the following; 69 percent of the respondents agreed to having anxiety due to the ordeal, 53 percent agreed that they did not feel safe, 41 percent agreed that they felt humiliated and ashamed, and 46 percent agreed that they felt unsupported by both the police and parties that own platforms that facilitated the instance.¹⁶⁵ These statistics clearly articulate the emotional and psychological impact online violence has on the victims. Their mental health and emotional wellbeing are greatly affected. The delictual liability online violence carries is clearly not enough to deter individuals from engaging in such inhumane acts, and bring appropriate redress for the harm caused.

3.4 Conclusion

Online violence in all its different forms has an adverse impact on the victims, and the society they live in. Victims of online violence are hindered from enjoying the most basic and fundamental rights. Online violence affects the progress of getting women to participate in key decision-making discussions and roles. The exclusion of women in civic participation is against the tenets of democracy and good governance. Where women are forced into silence by online violence, the development progress is compromised. Efforts to achieve gender equality become futile. The development of society becomes stifled and stagnant. Achieving other social priorities, such as reducing inequalities and eliminating poverty, become farfetched aspirations. Global prosperity becomes less of aspiration but a sold dream.

¹⁶⁵ Gender Based Violence AoR. “Learning Brief 1” (n 16). 27.

4. Chapter four: Analysis of existing legal and institutional frameworks at International, Regional and National levels on online violence against women and girls.

4.1 Introduction

Human rights are fundamental artifacts that require special attention from a state. The duty to protect, respect, promote and fulfill these rights is enshrined in the International Bill of Rights.¹⁶⁶ These obligations have been imposed on state members as duty bearers.¹⁶⁷ A state is, therefore, not only given the role and responsibility to ensure and advance these rights, but to have accountability where there are violations. There are a number of mechanisms set pursuant to this mandate. These are inclusive of institutional mechanisms,¹⁶⁸ normative frameworks that consist of both soft law¹⁶⁹ and hard law, such as conventions that impose binding legal obligations on its member states.¹⁷⁰ There are constitutive instruments that have been adopted at various levels which, include international, regional and national levels. Frameworks at international level are based on the United Nations (UN) system. There are nine core international human rights treaties that address different thematic areas.¹⁷¹ In terms of protection of women's rights, the United Nations General Assembly adopted the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1979. This was the first international instrument to be adopted specifically for the protection of the rights of women. In its preamble, CEDAW notes

¹⁶⁶ Both the ICCPR, 1966 and the ICESCR, 1966 call on member states to protect, promote, and respect fundamental rights and liberties in their preambles.

¹⁶⁷ Preamble to the UDHR, 1948.

¹⁶⁸ All nine core international human rights treaties have their respective treaty bodies that act as oversight and hold member states accountable for violations of their respective conventions.

¹⁶⁹ Pierre- Marie Dupuy, "Soft Law and the International Law of the Environment" 12 *Mich. J. Int'l L.* (1990-1991) 420.

¹⁷⁰ Cynthia Crawford Lichtenstein, "Hard Law v. Soft Law: Unnecessary Dichotomy" 35 *Int'l L.* (2001) 1433.

¹⁷¹ The International Convention on the Elimination of Racial Discrimination (ICERD), 1965 focuses on eliminating racial discrimination; The International Covenant on Civil and Political Rights (ICCPR), 1966 focuses on protection of civil and political rights; the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 focuses on socio-economic and cultural rights; The Convention on the Elimination on all forms of Discrimination against Women (CEDAW), 1979 focuses on the elimination of types of discrimination against women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 aims at preventing torture, cruel, inhumane and degrading treatment of people; the Convention on the Rights of the Child (CRC), 1989 has the objective of protecting and promoting the rights and welfare of children; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 1990 aims to protect the rights of migrant workers and their families; the International Convention for the Protection of All Persons from Enforced Disappearance (ICEPD), 2006 seeks to protect all persons from enforced disappearance; the Convention on the Rights of Persons with Disabilities (CRPD), 2006 aims to protect the rights and welfare of persons with disabilities.

that the principle of the inadmissibility of discrimination is enshrined in the UDHR, 1948, which is the founding document of fundamental rights and liberties.¹⁷²

Due to the realization that opportunities for women to attain equality are restricted because of violence against women, the United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women (DEVAW) in 1993. CEDAW did not make express provision for violence against women, and there had been a need to define the phenomenon in order to develop a normative framework for the protection of the rights of women where there is also violence and not *per se* discrimination in its absolute form. In its preamble, the declaration states that "... there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms..." This statement essentially alludes to violence against women, in addition to discrimination, to be an impediment to the development and advancement of the rights of women. Therefore, there is a need for legally binding frameworks within the international human rights law sphere.

There are other subsequent conventions adopted at the international level in relation to the governance of the internet and the dissemination and use of materials through and within the digital environment. The World Intellectual Property Organization (WIPO) adopted the WIPO Copyright Treaty (WCT) in 1996, and it came into effect in 2002. The treaty is based on the Berne Convention of 1886, which deals with the protection of creative and literary works and their use. Article 2 of the WCT defines these creative works as "expressions" and not "ideas". That is, the works must be manifested in some form such as photography, painting, artwork, or graphics. Article 6 makes provision for a creator's right to distribute the content. It states that the creator of such material "... shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works." Article 8 thereof further makes provision for the communication of such work to the public. It provides that the author "... shall enjoy the exclusive right of authorizing any communication to the public of their works." This treaty, amongst others, gives content creators the exclusive right to disseminate their work and the exclusive authority over how such

¹⁷² Preamble to the UDHR, 1948.

work may be availed to the public or third parties. That is, such creativity requires consent and authorization to be shared in any way.

Different regions across the globe have respective instruments that seek to protect and promote women's rights through eliminating discrimination and violence against women. For instance, in the Americas, there is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), 1994. The Inter-American Commission adopted this instrument of Women (CIM) of the Organization of American States at a conference in Brazil. It is the first regional convention to make express provisions for eliminating violence against women globally.¹⁷³ In South Asia, the South Asian Association for Regional Cooperation (SAARC) adopted the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 1997. This convention recognizes trafficking in persons, particularly women and children, as violence that needs urgent addressing. It goes on to call its member states to cooperate in the implementation of efforts to eradicate trafficking as violence against women.¹⁷⁴ In Africa, the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), in 2003. The Protocol seeks to address not only discrimination and violence against women but also other harmful practices that adversely affect women and girls in the African context.¹⁷⁵ The European region was the latest to adopt the Preventing and Combating Violence against Women and Domestic Violence Convention (Istanbul Convention), 2011. This instrument was adopted by the Council of Europe Convention in realization that the legal and practical equality of women and men is imperative and can be achieved by eliminating violence against women and domestic violence.¹⁷⁶ The Council had adopted prior to that Convention, the Convention on Cybercrime (Budapest Convention), 2001, whose objective is to pursue a common policy to protect the European society from cybercrimes.¹⁷⁷

¹⁷³ Subsequent regional instruments were adopted in 1997, 2003 and 2011.

¹⁷⁴ Article 2 of Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution, 1997.

¹⁷⁵ Article 1 and 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003.

¹⁷⁶ Preamble of the Convention on the Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 2011.

¹⁷⁷ Preamble of the Convention on Cybercrimes (Budapest Convention), 2001 adopted by the Council of Europe.

This chapter, therefore, will look into international, regional, and national instruments, frameworks, and norms developed on violence against women, and how they may or may not address online violence against women. Consideration of how these frameworks have influence at national level in the implementation of provisions of both the international and regional treaties to eliminate violence against women and discrimination will also be discussed. The chapter also refers to subsequent treaties that govern the dissemination of information. With regard to regional frameworks, the research will focus on the African context. References may also be made to other regions for comparison purposes.

4.2 International Frameworks and Mechanisms

4.2.1 Background

The CEDAW is one of the nine core international human rights treaties. It is, however, the only legal framework that focuses on the protection and promotion of the rights of women at the international level. Since its adoption in 1979, Lesotho only ratified the treaty in 1995. Lesotho further acceded the Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW Optional Protocol), 1999 in 2004. Lesotho is, therefore, legally bound to implement relevant provisions of the CEDAW and to subject itself to account before the Committee on the Elimination of Discrimination against Women (Committee) where there has been a violation of the CEDAW provisions. The optional protocol recognizes the established Committee¹⁷⁸ and its mandate of oversight over the implementation of the CEDAW by member states through receiving communication with regard to any violations.¹⁷⁹ The Committee, as a mechanism of the CEDAW is further mandated to write an annual report in response to its activities.¹⁸⁰

As a supplement to the CEDAW, in order to address novel social issues faced by women, subsequent normative frameworks have been adopted. These include the Declaration on the Elimination of Violence Against Women (DEVAW), 1993, and the Beijing Declaration and Platform for Action (BDPfA), 1995. Paragraph 29 of the latter calls on its member states to prevent and eliminate violence against women in all its forms. Additionally, the Sustainable development

¹⁷⁸ Article 17 of the CEDAW establishes the Committee.

¹⁷⁹ Article 1-3 of the CEDAW Optional Protocol.

¹⁸⁰ Article 21 of the CEDAW and Article 12 of the CEDAW Optional Protocol.

Goals also contribute to the normative frameworks under Goal 5 on gender equality. Goals 5.1, 5.2, and 5.3 are goals to end discrimination against women, end all forms of violence against women, and eliminate all harmful practices against women and girls.¹⁸¹ All these constitute part of the international frameworks set to protect the rights of women. However, chapter one illustrated that violence against women online continues to be a scourge. The next line of inquiry would then be where and why these frameworks are deficient in addressing the said issue.

4.2.2 De Jure vs De Facto elimination of violence against women in the digital space.

On the face of it, it seems that there is sufficient legal coverage on violence against women in terms of legal and normative frameworks and an oversight mechanism in the context of the protection of human rights, in particular the rights of women. The frameworks, amongst others, consist of the human rights treaties, while the oversight mechanism relates to the treaty bodies responsible for the protection of the provisions of their respective human rights treaties.¹⁸² The protection encapsulates violence against women in the real world¹⁸³ and presumably even extends to violence in the digital realm. The definition of violence against women in article 1 of the DEVAW as acts, threats, and pressures that may be physical, sexual and/or verbal that result in physical, sexual, and psychological harm, is broad enough to cover the essential elements of online violence. This means there has to be some conduct on one end that results in harm on the other end. The scope of online violence is so far cast that it falls to some extent within the definition of torture defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This instrument was adopted by the United Nations General Assembly in 1984.¹⁸⁴ That is, torture is an act of severe suffering, which is inclusive of mental suffering, which results, amongst others, because of the victim's conduct or that of a third party and or based on some discrimination which has been instigated by another.¹⁸⁵ The discrimination

¹⁸¹ Beate Rudolf, "Freedom from Violence, Full Access to Resources, Equal Participation, and Empowerment: The Relevance of CEDAW for the Implementation of the SDGs" in Markus Krajewski, et. al. (eds), *Sustainable Development Goals and Human Rights*, vol. 5 (Springer, 2020) 73.

¹⁸² An example of this is that the CEDAW as a human rights treaty has the Committee on the Elimination of All Forms of Discrimination as its treaty body which has the mandate to adjudicate and review disputes that arise from the specific treaty.

¹⁸³ Article 1 of the DEVAW defines violence against women to be inclusive of acts that cause physical suffering amongst others. Objectively, such physical suffering would require physical contact to occur under normal circumstances.

¹⁸⁴ Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.

¹⁸⁵ See Chapter one, Part 1.1 above.

and intolerance of the social identity of the victim or their affiliation with another third person who is a minority may be an underlying reason to perpetuate online violence. These international human rights treaties, to a certain extent, have the ability to eliminate online violence *de jure*. There has been the development of other soft laws which contribute to developing the normative framework that could eliminate online violence.

The United Nations has attempted to combat hate speech as a cause of online violence. On the 21st of July 2021, the United Nations General Assembly adopted a Resolution on Promoting interreligious and intercultural dialogue and tolerance in countering hate speech.¹⁸⁶ Hate Speech has been, to an extent, part of the conduct that facilitates the discrimination, harassment, and threats delivered through digital platforms.¹⁸⁷ The Resolution proclaims the 18th of June as the International Day for Countering Hate Speech.¹⁸⁸ The resolution further condemns the advocacy of hatred that institutes hate speech through the use of the digital platform at social media.¹⁸⁹ In paragraph 16, the Resolution states that member states have the primary responsibility to combat discrimination and hate speech and calls on such members to act on their responsibility. This is a call to member states to act, through mechanisms and strategies in order to end discrimination and violence based on cultural and/or religious status or identity.¹⁹⁰ This call affirms that such redress should be inclusive of violence perpetuated online through social media platforms which consist of threats and harassment as they are likely to result in atrocities. It can therefore be presumed that efforts implemented to combat hate speech on a religious basis may address hate speech and harassment online based on other social identities such as gender, and sexual orientation.

In recognition of the plague of online violence, the United Nations Population Fund (UNFPA), an implementing agency of the United Nations, launched an advocacy initiative on online violence on the 2nd December, 2021.¹⁹¹ The campaign was launched during the 16 days of activism against gender-based violence. The heart and signifier of this campaign is the “bodyright” symbol, which exhibits itself as a copyright for human bodies. The reasoning behind the campaign is that, “...

¹⁸⁶ United Nations General Assembly Resolution on Promoting interreligious and intercultural dialogue and tolerance in countering hate speech. A/RES/75/309. (2021).

¹⁸⁷ Suzie Dunn (n 15). 2.

¹⁸⁸ Ibid. Para 2.

¹⁸⁹ Ibid. Para 5.

¹⁹⁰ Ibid. Para 14.

¹⁹¹ United Nations Population Fund, “UNFPA launches bodyright, a new ‘copyright’ symbol to demand protection from online violence” (2nd December 2021).

corporate logos and copyrighted Intellectual Property (IP) are more highly valued and better protected than images of people's bodies are online."¹⁹² Further, as a result, it "... drives the message that women, girls, racial and ethnic minorities, the LGBTQ+ community, and other marginalized groups are undervalued, exploited, and violated online."¹⁹³ The campaign, amongst others, makes a call for action through a petition to policymakers, companies, and digital platforms to contribute to the elimination of online violence in all its forms.

This initiative on online violence has been a sensitization and awareness creating initiative that online violence against women, is a gender based violence variant that requires urgent addressing by all relevant stakeholders. The argument is therefore if the WCT makes provisions to protect content by individuals and acknowledges creators' exclusive rights to authorize the distribution and to who and how such distribution is made, then why are the same principles not a benchmark to image-based online violence? That is, such conduct should attract some liability depending on the nature of the misconduct. Whether there should be a further definition such conduct and penalization of the conduct they attract is another question for consideration: whether it attracts imprisonment, a fine, or both.

A submission by the Due Diligence Project to the Office of the High Commissioner for Human Rights has developed a Due Diligence Framework on State Accountability to Eliminate Violence against Women.¹⁹⁴ The submission developed seven principles to form a framework for eliminating violence against women online. The framework seeks to establish obligations for states and internet intermediaries on elimination of online violence against women. It is the first guide to developing principles on freedom of expression and online violence against women. It expresses the obligation by the two entities, state and non-state actors, to ensure and balance the individual rights to express one's self and the obligation to also respect the rights of others while exercising it. The reasoning states:¹⁹⁵

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Due Diligence Project, "Submission by the Due Diligence Project to the Office of the High Commissioner for Human Rights Pursuant to Human Rights Council Resolution 32/13 on Ways to Bridge the Gender Digital Divide from a Human Rights Perspective"(2017) *OHCHR*. 1.

¹⁹⁵ Ibid. 4.

[t]he exercise of these rights under international human rights law is not absolute and may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights of others ... [and] [t]he free exchange of and access to information does not equate to unregulated violence. Freedom of expression or access to information cannot be bought at the expense of women's security and safety.

Another developed principle submitted is the obligation to establish an independent regulating mechanism.¹⁹⁶ The submission states and recommends the creation of a quasi-judicial and regulatory framework. It suggests that the mechanism, as part of its powers, should have the ability to order, through injunctions or otherwise, internet intermediaries to produce information required in adjudicating online violence.¹⁹⁷ The orders would be binding on these institutions even where the misconduct is extra-territorial. It is further suggested that the mechanism be granted power to identify the perpetrators, re-transmitters and digital platforms, and subsequently address the duties and responsibilities and liabilities of contributory parties in order to give an order for an appropriate redress to the victim.¹⁹⁸ This mechanism would have the power to regulate, either through set guidelines and standards, what the roles of each participant or user of a digital platform is and the legal consequences for the violation of the standards or failure to comply or perform their obligations. It is believed that it is through this proposed framework that potential laws on eliminating online violence at lower levels would be developed further to penalize acts of online violence with the set international standards.¹⁹⁹

Lastly, the submission makes a suggestion on the principle of due diligence. The principle essentially prescribes that digital platforms ought to have an obligation to eliminate online violence by exercising reasonable measures to prevent such misconduct from happening.²⁰⁰ It states that internet intermediaries should develop and implement policies on their platforms as a measure to curb and eliminate violence against women online on their platforms.²⁰¹ These platforms may not have direct control over the initial misconduct of online violence, but through their policies and

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid. 5.

²⁰⁰ Ibid.

²⁰¹ Ibid.

community standards, they can have the power to limit such violence from being re-transmitted and causing further harm.²⁰² That is, by ensuring users of digital platforms consent to these policies as a prerequisite to using their services. This would, in turn, establish some boundaries in interactions on such platforms.

The above-mentioned guidelines seek to address the gaps which exist in the legal frameworks at the international level. The domestication and implementation of these instruments into national legislation is a factor for consideration in order to ensure the implementation of legal measures that enforce the provisions of these conventions. It has been a hurdle to administer justice where domestication has not been achieved. In practice, therefore, online violence has been resolved by courts delictually as an *actio injuriarum*.²⁰³

Online violence has been a challenge with regard to law enforcement and the judiciary in their attempt to administer justice. As illustrated in the previous chapter, online violence causes great psychological suffering or harm, although it does not necessarily require physical contact.²⁰⁴ Online violence has posed some enigma to courts as there are no legal sources to define the distinguishing elements to each conduct that constitutes various forms of online violence, nor legislation to criminalize or penalize them. Instead, online violence has been attempted to be remedied as a delictual liability as it causes harm or injury to the psychological wellbeing of the victim.²⁰⁵ This is regardless of whether such violence was constituent of threats and/or harassment, hate speech or image-based, or a combination of all.²⁰⁶ The effort to eliminate online violence has been *de facto*. Where justice is attempted to be served, it seems to be insufficient to either restore the victim's dignity or to deter the misconduct at the national level.

Although courts have attempted to address online violence through the delictual route, due to lack of legislation on the matter, this route has proven insufficient. This is because action under delict does not distinguish between the variants of online violence. Therefore, the remedy ordered is not

²⁰² Zarizana Aziz, "Due diligence and accountability for online violence against women" *Due Diligence Project*. (2017). 17. Remove the full stops you placed between the year and page number in all footnotes,

²⁰³ See *Patel v Hussain* above.

²⁰⁴ See Chapter 3, Part 3.3 above.

²⁰⁵ The US case of *Patel v Hussain* 485 S.W.3d 153 (2016) was decided on a delictual claim and awarded damages for the harm to Hussain of half a million dollars.

²⁰⁶ *Ibid*. The judgement in this case did not distinguish the conduct on the Patel as image based violence together with harassment and threats and afforded damages based on such conduct as uniform.

sufficient to bring justice to the victim. It follows that the existing de jure and de facto elimination of online violence measures are not effective in deterring the misconduct nor giving satisfactory justice to the victims.

4.3 Frameworks and Mechanisms in Africa

The main instrument on the African continent for the protection and promotion of fundamental human rights and freedoms is the African Charter on Human and Peoples' Rights (ACHPR). This instrument was adopted by the African Union in 1981, and came into effect in 1986. Lesotho is a signatory to the Charter²⁰⁷ The Charter is characterized and distinguished from other human rights treaties by its provisions on individual rights (human rights), and collective rights (peoples' rights).²⁰⁸ Article 2 of the Charter makes provision for the non-discrimination of individuals based on their status or social identities. These include race, colour, gender, disability, and ethnicity, and so on. The Charter reiterates that discrimination in any manner is intolerable and unacceptable even within the African community and should therefore be eliminated.

The Maputo Protocol, 2003 is a complementary instrument to the ACHPR with regard to the protection of the rights of women in Africa. In its preamble, the protocol recognises the rights of women as human rights, just as in the other international treaties such as the UDHR and CEDAW. The protocol affirms the provision made by these prior instruments in the protection and promotion of human rights, and in particular those of women. Article 1(j) thereof defines violence against women as acts, including threats, perpetuated against women which cause physical, psychological, sexual, and economic harm. It simply reiterates the words of the DEVAW on what such violence is. The protocol goes on to recognise the rights of women to dignity,²⁰⁹ integrity²¹⁰ and participation.²¹¹ These rights need to be guaranteed for the development and empowerment of African women. Article 25 goes further to impose on state members, the obligation to provide necessary remedies where these rights have been violated. The protocol imposes on states the obligation to take necessary measures to implement the provisions in the instrument, and to additionally avail remedies where there have been violations. These obligations are a guide to

²⁰⁷ Lesotho acceded to the African Charter on Human and Peoples' Rights in 1992.

²⁰⁸ Article 2 -17 of the ACHPR, 1981 is on individual rights while Article 18 – 24 is on collective rights which include families and the community.

²⁰⁹ Ibid. Article 3.

²¹⁰ Ibid. Article 4.

²¹¹ Ibid. Article 9.

establishing relevant frameworks to address issues of violence against women in all its forms. The abovementioned instruments embody the same spirit as the human rights instrument at the international level. The significant difference in this regard is that the regional instruments contextualize these rights to address issues pertinent to the African community. The African human rights instruments apply to issues in Lesotho as an African State. Therefore, as a signatory to the treaties, in the attempt to investigate online violence and existing frameworks at different levels, inquiry into both frameworks at the regional level is necessary.

There are institutional frameworks established for the protection and promotion of human rights in the African continent. First is the African Commission on Human and Peoples' Rights. This is a quasi-judicial body established by Article 30 of the ACHPR. The same article mandates this institution with the duty to protect and promote fundamental human rights in Africa. Article 45 expands and elaborates on this mandate to combat human rights violations. It states that the function of the Commission shall be inclusive of (1) promotion of rights through research, collection of information and dissemination of the same, and establishing legal rules and procedures to guide legal problems on human rights,²¹² and (2) protection of the rights enlisted within the charter.²¹³

The African Commission in its 72nd Ordinary session adopted a Resolution on the Protection of Women Against Digital Violence in Africa.²¹⁴ In its preamble the resolution comments on its mindfulness "...that digital violence is increasingly gendered and disproportionately affects women, through inter alia threats of sexual violence, misogynistic disinformation campaigns and "revenge pornography" Further, that " ... that online violence manifests in different ways to include cyberstalking, unsolicited, sexually explicit content, doxing (sharing of personal information online), cyber-bulling and the non-consensual sharing of intimate images." The Commission therefore makes a call to member states to review and/or adopt laws that combat digital violence and to expand the definition of GBV to include online violence.²¹⁵ Further for such members to undertake research on digital violence against women,²¹⁶ to create awareness on

²¹² Article 45 (1) (a) to (b) of the ACHPR, 1981.

²¹³ Ibid. Article 45(2).

²¹⁴ On the 19th to 2nd August 2022 the African Commission adopted Resolution ACHPR/Res. 522 (LXXII) 2022.

²¹⁵ Article 1 of The African Commission Resolution on the Protection of Women Against Digital Violence in Africa.

²¹⁶ Ibid. Article 2.

the issue,²¹⁷ to take measures to protect women journalists and to repeal and/or review exiting laws on survialence which are vague and too broad.²¹⁸

In addition to the Commission, the African court has been established. The court is a creature of Article 28 of the Protocol on the Establishment of the African Court on Human and Peoples Rights, 1998. Article 2 thereof states that the function of the African Court is to complement that of the Commission in the protection of human rights. The principle of complementarity between the Court and the Commission pertains to their advisory duties on the interpretation of the Charter, in addition to other separate functions. Decisions of the Court are final and binding, unlike those made by the Commission.²¹⁹ However, the impediment with regard to the duties and role of the two institutions in addressing online violence is that it will have to be developed under the definition of violence against women within the Maputo Protocol and not the ACHPR. The reason is that these roles derive from the Banjul charter and the same charter makes provision for such mandate to be with regard to its provisions, which are not inclusive of violence against women. Violence against women is provided for under the Maputo Protocol and exclusive of digital violence. Therefore, the Maputo protocol will have to make specific and express provisions for online violence with regard to women and girls.

Similar to the instance at the international level, violence against women in the real world is guaranteed through set frameworks that impose certain roles and responsibilities to eliminate such violence against women. However, this is not entirely enough to extend to online violence against women and girls. This is because there are no regional treaties that make implicit and express provisions for the protection of women against online violence in its various forms. There is a need to recognize online violence as a social issue that needs urgent redress at all levels, including regionally. The rationale is that the regional framework set would define online violence in the context of Africa. That is, it will consider issues of intersectionality with regard to African women and online violence. As illustrated by the first chapter, African women, women of African descent or those of colour are disproportionately affected by online violence compared to Caucasian women or European descent.²²⁰ Further, women of colour who inhibit other social identities are

²¹⁷ Ibid. Article 3.

²¹⁸ Ibid. Article 9.

²¹⁹ Article 28 of the Protocol on the Establishment of the African Court on Human and Peoples Rights.

²²⁰ See Chapter two, Part 2.2.2.

even further affected by online violence. An African woman whose sexual orientation is not heterosexual is subjected to online violence as a Black woman of the LGBTI+ community and not just as a woman.²²¹

The African Union Convention on Cyber Security and Personal Data Protection, 2000 was adopted by the Heads of State and Governments of the African Union to address the state of cybercrime and to develop the information society in Africa.²²² Section 24 (1) thereof imposes on member states the obligation to develop a cybersecurity policy to protect critical information infrastructure.²²³ The essence of the instrument is to govern both state actors and non-state actors in developing infrastructure and frameworks for governing cyber activity.

However, the African Union has not developed any legal frameworks specific to the issue of online violence, in general, or with regard to women and girls. The African Declaration on Internet Rights and Freedoms Initiative by Global Partners Digital has developed a document called the African Declaration on Internet Rights and Freedoms for the urgent resolution of challenges online and specifically for the protection of fundamental rights and freedom.²²⁴ The document develops key principles and their application for the protection, respect, and promotion of rights online. The Declaration holds a total of thirteen principles which, amongst others, address risks of marginalised groups, due process, gender equality and the right to privacy. The African Commission on human and peoples' rights has not endorsed the Declaration but has given recognition to its principles in its Resolution on the Right to Freedom of Information and Expression on the Internet in Africa.²²⁵ The essence of the resolution is to call on member states to protect citizens by implementing legislative and other governing measures to guarantee the right to freedom of expression online, which aligns with the principles in the Declaration.²²⁶ It further urges the Special Rapporteur of Freedom of Expression and Access to Information in Africa to take note of developments in the Internet age during the revision of the Declaration of Principles on Freedom of Expression in

²²¹ Suzie Dunn (n15). 17.

²²² Preamble to the African Union Convention on Cyber Security and Personal Data Protection, 2000.

²²³ Critical Information Infrastructure is characterized by a computer resource or system such as data, database, communications and network infrastructure which are critical to maintaining and protecting national security, public health and safety.

²²⁴ African Declaration on Internet Rights and Freedoms, 2014.

²²⁵ African Commission of Human and Peoples' Rights Resolution on the Right to Freedom of Information and Expression on the Internet in Africa. (2016).

²²⁶ Ibid. Para 2.

Africa, 2002. However, no report by the Special Rapporteur that reports on online violence has been submitted as part of the given mandate.

Principle 8 of the African Declaration on Internet Rights and Freedom makes provision for the right to privacy and personal data protection. The principle is a guide on how personal data may be used, retained and/or disclosed by non-state actors.²²⁷ It says that the act of collecting, retaining, and disclosing personal information is, to an extent, a violation of the right to privacy and should therefore be governed by clear and transparent laws.²²⁸ Further that states have an obligation to protect individuals from unlawful surveillance.²²⁹ The essence of this principle is to govern unlawful surveillance by the state entities such as security institutions through non-state mediums as this violates privacy of individuals. In terms of non-state actors, the principle only addresses the commercial use of the personal data of individuals. It seems not to address the social aspect of sharing personal data by individuals, such as doxing, which is a form of online violence. Therefore, the principle is deficient in developing a norm for state obligations to address sharing of personal information and protecting the right of privacy relating to individual to individual relations online.

The Declaration under Principle 10 makes provision for marginalised groups and groups at risk. It provides that it is the right of every individual to use the internet as a medium to enjoy and exercise their rights to participate in social and cultural life without discrimination.²³⁰ The principle reiterates that it is the state's obligation to protect the rights of vulnerable groups by paying special attention to the needs of these groups within the digital space.²³¹ The principle highlights that such marginalized groups include women, children, and sexual and religious minorities. The principle, to an extent, alludes to the realization that the experience of women and girls that form part of other minority groups, do not enjoy their rights and liberties to a standard acceptable within the human rights sphere. Therefore, there is a need for both state actors and non-state actors such as internet intermediaries and digital platforms to act by taking necessary measures so that women and girls equally enjoy their fundamental rights and freedoms online without being subjected to violence in any form or discrimination based on their social identity or status.

²²⁷ Ibid. 22.

²²⁸ Ibid.

²²⁹ Ibid. 23.

²³⁰ Ibid. 12.

²³¹ Ibid. 24.

In order to address the social issue of gender inequality and discrimination within the digital environment, Principle 13 on gender equality has been developed in the Declaration. The Principle states that, “[t]o help ensure the elimination of all forms of discrimination on the basis of gender, women and men should have equal access to learn about, define, access, use and shape the Internet.”²³² In order to contribute to closing the digital gender divide, the principle enunciates that there should be the creation and promotion of online content that is also reflective of the women's personas and needs.²³³ Further, that women should be capacitated to combat gender inequality replicated online.²³⁴ Creating gender-sensitive digital content, I believe, is key to combating online violence against women and girls. Not only will the information contained therein combat misinformation and disinformation relating to women issues, but perhaps even to an extent, it will challenge and eliminate misogyny and pervasive behaviour toward women both online and offline.

In order to address issues of violation of fundamental human rights and freedom online, the Declaration has developed the principle of due process under principle 11. The principle essentially prescribes that every individual has the right to due process and that standards of liability both in criminal and civil matters should be developed and adhered to.²³⁵ It goes further to prescribe that defences in such matters “... should take into account the overall public interest in protecting both the expression and the forum in which it is made...”²³⁶ This principle refers to how existing legal system may be insufficient to address issues that manifest in the digital world as the dynamics of the two worlds differ. It suggests that there must be set standards by states that specifically speak to the governance of online activity, which will address issues thereof, such as online violence. Further, even in the adjudication of matters arising from conduct made online, the defences availed to the perpetrator should consider the platform where such conduct took place as most digital platforms are mediums where individuals exercise their right to freedom of expression.²³⁷ Conversely, the principle does not seem to give cognisance to the misconduct itself and the impact it has on the victim or public interest in general. I do agree that the rules of a fair trial ought to be adhered. However, it is also believed that a stricken balance must be struck

²³² Ibid. 13.

²³³ Ibid. 25.

²³⁴ Ibid.

²³⁵ Ibid. 12- 13.

²³⁶ Ibid. 13.

²³⁷ Ibid.

between the rights of all involved; that is, the perpetrator, the victim and the public and how each will be affected by the outcome.

Principle 11 goes on to prescribe a “single publication rule” during litigation. The application of this rule is that, the jurisdiction of the court that adjudicates over a matter that arises as a result of internet content that has aggrieved another, should be limited to states where such matters have “...a real and substantial connection.”²³⁸ The declaration vaguely qualifies or defines what is “real and substantial”. It only goes so far as stating that “...normally because the author is established there, the content is uploaded there” then the jurisdiction ought to be there. The established principle further states that “... [p]rivate parties should only be able to bring a case in a given jurisdiction where they can establish that they have suffered substantial harm in that jurisdiction.”²³⁹ The rationale behind this seems to limit *res judicata* of the matter in other jurisdiction where the misconduct occurred. It therefore focuses on where and to whom the harm has occurred instead of seeking redress to the extent of the impact, as online violence tends to be trans-territorial. That is, the conduct may have been shared in one jurisdiction and the re-transmission in another jurisdiction by another or several individuals. In effect, those who partake in the violence as secondary perpetrators are likely to be treated with impunity. The consideration of how these regional efforts to combat online violence, either through human rights instruments, guidelines, or principles, have influenced the legal frameworks at the national level particularly, in Lesotho, forms the next line of discussion.

4.4 The Lesotho Legal and Institutional frameworks

Lesotho has a dual legal system²⁴⁰ and at the helm of it is the Constitution, 1993.²⁴¹ The effect of Section 2 of the Constitution states that all laws enacted by the legislature must be in alignment with its provisions failing which such law shall be null and void. Lesotho’s approach in relation to international human rights has been to domesticate human rights treaties through Acts of parliament. An example is the enactment of the Children’s Protection and Welfare Act, 2011. Section 2 of the Act states that the objective of the Act is to promote and protect the rights of

²³⁸ Ibid. 24.

²³⁹ Ibid.

²⁴⁰ Itumeleng Shale, “Historical perspective on the place of international human rights treaties in the legal system of Lesotho: Moving beyond the monist-dualist dichotomy” (2019) 19 *African Human Rights Law Journal* 197.

²⁴¹ Section 2 of the Constitution of Lesotho states that the Constitution shall be the supreme law of the land.

children as provided for in the United Nations Convention on the Rights of the Child (CRC), 1989 and the African Charter on the Rights and Welfare of the Child, 1990. However, Lesotho has not domesticated either the CEDAW or the Maputo Protocol. The courts, have had some predicaments in this regard. The institution has been inconsistent in its recognition and application of international and regional instruments provisions due to the lack of direction from the Constitution.²⁴² The Constitution does not give express provision and guidance on how international human rights treaties should be applied by the judiciary where there is no domestication as yet. At times, courts have looked into provisions of these conventions without questioning their domestication.²⁴³ It is believed that the reason for this approach is to rectify unjust and inequitable laws. Laws may exist to address an issue. However, if the effect of the direct application of such a law results in extreme violations of fundamental rights and freedoms, then such law, by the very fact, is bad law.

4.4.1 Institutional Frameworks and mechanisms that may contribute to the elimination of online violence.

There are institutional frameworks that are part of a legal system, such as National Human Rights Institutions and the police. In Lesotho, the establishment of a National Human Rights Institution has been a lengthy and unfruitful process. In 2011, the Parliament passed the sixth amendment to the Constitution, which created the Human Rights Commission.²⁴⁴ The Constitution was amended to include Chapter XIA, Section 133A within the Constitution. Subsequently, the Human Rights Commission Act No.2, 2016, was drafted into a Bill in 2015 and was to be passed by parliament. However, stakeholders within the civic community raised a number of objections regarding the Bill. These included the appointment of Commissioners to the institution, and the procedure of consultation and participation by relevant stakeholders such as the civic community, before the Bill is passed.²⁴⁵ The case of DPE and TRC v Speaker of the National Assembly and Others was lodged and it challenged the latter.²⁴⁶ It challenged whether the Act of Parliament had been passed according to legislative procedure and processes. The merits of this case are not of significance to

²⁴² Itumeleng Shale (n 233) 195.check?

²⁴³ Ibid.

²⁴⁴ Sixth Amendment to the Constitution of Lesotho, 2011.

²⁴⁵ Itumeleng Shale (n 233) 195.

²⁴⁶ Constitutional Case I\0.5/2016.

this discussion, but in conclusion, the court dismissed the petition on the basis that due procedure was followed in passing the law.²⁴⁷

The Commission has not been operational for a number of reasons.²⁴⁸ These include that the Commissioners of the institution have not yet been appointed, and office space for the secretariat has not been procured either.²⁴⁹ Section 7 (a) to (i) of the Human Right Commission Act states that the mandate of the commission shall include monitoring of human rights, investigation and litigation where there are violations of fundamental human rights and liberties, and creating awareness and capacity building of the citizenry on its function. This mandate of the Commission is compliant with the United Nations Paris Principles on Human Rights Institutions, 1993,²⁵⁰ in that it shall be autonomous in its investigative function and that it shall actively create awareness within community on its work and mandate. The institution is set to be autonomous from government, to have investigative power, and to litigate on the same. The set standards rekindle the hope that violations of human rights, either online or offline will be investigated and adjudicated by a competent law, and this is likely in turn to develop the existing law to address online violence.

There are other institutional frameworks established for the protection of human rights in Lesotho. The Lesotho Mounted Police Service (LMPS), as a public service and security institution, derives its mandate under the Police Service Act No. 7, 1998. Part III, sections 24 to 30 thereof outline the powers and duties of the service and its personnel. Section 26, in particular, imposes on the police service, as an organ of government, the duty to protect the rights of individuals in respect of both their persons and property.²⁵¹ The police, therefore, have a duty to protect the right to integrity, bodily autonomy, and privacy of others. Within the Police service is the Child and Gender Police Unit (CGPU). The mandate of this unit, in addition to mediating domestic issues is "... on raising awareness on policing mechanisms that mainstream gender and human rights-based approaches and the strengthening of its role and activities in partnership with key stakeholders."²⁵² The unit, therefore, has the obligation to sensitize people on policing efforts on gender development and the

²⁴⁷ Ibid. Para 63.

²⁴⁸ Itumeleng Shale, "The Lesotho Human Rights Commission" *Chapter 10* (2016) 458.

²⁴⁹ Ibid.

²⁵⁰ Itumeleng Shale (n 241) 471.

²⁵¹ Section 26(a) to (c) of the Police Act No. 7, 1998.

²⁵² Lesotho Government Beijing +25 Review Report, (2020) 49.

protection and promotion of human rights. This mandate is in alignment with the objective of Principle 13 on gender equality in the Declaration of Internet Rights and Freedoms. The role of gender mainstreaming by the Unit is likely to capacitate individuals and other police officers on gender sensitivity in their approaches to assisting victims. However, there are no official records or data by the Unit specific to online violence due to a lack of resources. Clearly, there is an insufficiency with regard to the effectiveness of institutional mechanisms. Enquiring into the legal aspect of existing measures within the legal system is necessary to investigate how online violence may be addressed with existing sources of law.

4.4.2 Legal Frameworks with the potential to combat online violence

Lesotho has not domesticated any provisions on violence against women or discrimination from international and regional human rights treaties.²⁵³ On the one hand, criminal offences, which are common law offences are codified in the Penal Code Act, 2010, which has since been amended into Act No. 6, 2012. Part III of the Act enlists offences against the person, which are inclusive of assault in various degrees. These offences include physical, sexual assault, and threats.²⁵⁴ However, the Penal Code Act, 2010 does not make specific provisions for online violence.

The Sexual Offences Act No. 3, 2003, on the other hand, was enacted to combat sexual violence and to prescribe appropriate punishment for the crimes. The Act enlists acts such as unlawful²⁵⁵ check? and non-consensual sexual acts,²⁵⁶ sexual act with minors²⁵⁷ and disabled persons²⁵⁸ as offences, and prescribes rules of evidence²⁵⁹ in adjudicating such matters. The definition of these sexual offences slightly covers online violence, in particular image-based sexual online violence where content which is sexual in nature is shared of or with another person.²⁶⁰ This is inclusive of

²⁵³ Lesotho has ratified both the CEDAW, 1979 and the Maputo Protocol, 2003 which have provisions of the equal rights of women in marriage, land rights and the protection of women from sexual violence. It has only domesticated part of the provision of the two human rights treaties. These include the Legal Capacity of Marries Persons Act, 2006, the Sexual Offences Act, 2003 and the Land Act, 2010 which seek to protect the rights of women in marriage, from sexual violence and their land rights. However, none of these instruments deal with online violence.

²⁵⁴ Penal Code Act, 2010. Sections 30 and 31 make assault and aggravated assault an offence; Section 42 pertains to threats; Section 48 and 50 are on sexual assault of minors; and Section 51 and 52 are on other forms of sexual assault.

²⁵⁵ Section 3.

²⁵⁶ Section 4.

²⁵⁷ Part III.

²⁵⁸ Part IV.

²⁵⁹ Part VI.

²⁶⁰ Section 10 of the Sexual Offences Act makes provision for sexual exploitation of a child for profit. This section to a certain extent covers child pornography as a form of online violence where the perpetrator procures, aids and abets such content for profit.

both minors and majors as victims of the sexual acts. The Act, amongst others, defines sexual acts, to include both physical and non-physical contact of genitalia, and that exposure and display of such are similarly considered a sexual act.²⁶¹ However, the Act does not cover non-image based online violence such as threats and harassment.

Chapter three illustrated that online violence can manifest as a result of conflict or hostility within domestic relationships,²⁶² which can be fuelled by jealous domestic partners.²⁶³ In order to combat violence against women and girls in the domestic setting, Lesotho has a draft Counter Domestic Violence Bill, 2021. According to the stated objectives, the purpose of the Bill is to protect victims of domestic violence and to prevent the same. The Bill also defines what domestic violence is by stating that it is an act, behaviour or omission which inflicts pain or injury to another physically, sexually, emotionally, and psychologically and that it shall be applicable to people in domestic relationships. These are inclusive of intimate partners, spouses, parent-child relationships, family members, or any other person who shares the same residence.²⁶⁴ Part II of the Bill gives the meaning and scope of domestic violence. Section 3(k) provides that domestic violence is inclusive of acts, behaviour or omission which results in direct or indirect injury to the complainant, and such acts include technology abuse. However, the Bill does not qualify further what constitutes “technology abuse” or define how it manifests or may be characterized.

The Counter Domestic Violence Bill is commended for its recognition of violence facilitated through technology. However, it has failed to clearly define the scope of online violence. The definition would also contribute to determining which variants of the misconduct ought to be criminalized and which would attract delictual liability.

The Computer Crimes and Cyber Security Bill, 2022 is the initial legislative draft that seeks to govern internet activity in Lesotho. It is a domestication of the African Union Convention on Cyber Security and Personal Data Protection, 2000. The Bill addresses aspects of online violence, both image based and non-image based violence. In terms of image based online violence, the Bill makes child pornography, non-consensual distribution of intimate images and identity theft,

²⁶¹ Section 2 on Interpretation.

²⁶² Chapter two, Part 2.2.

²⁶³ Gender Based Violence AoR. “Learning Brief 1”(n 16). 10.

²⁶⁴ Counter Domestic Violence Bill, 2021. Section 2.

offences. Section 32 provides that any person who intentionally produces, distributes, procures, possesses and accesses child pornography commits an offence and is liable to imprisonment for a maximum of twenty years.²⁶⁵ Section 32 (4) further makes it an offence to facilitate the availability of any pornographic material to children. This imposes the responsibility on adults, within the digital space, to be cautious of the type of content they share on public platforms which could reasonably be accessible to children.

Section 33 of the Computer Crimes and Cyber Security Bill makes it an offence to broadcast and distribute, through computer systems, intimate images of an identifiable individual without their consent. It prescribes that upon conviction, the perpetrator may be fined one million maloti and/or imprisoned for a term not exceeding five years. There is a need to reconsider the penalties for the offence. The stipulated fine is quite excessive and does not consider the economic status of a standard user who is likely to be a perpetrator. The court may impose a lesser fine on consideration of mitigating circumstances. However, the lowest amount on reasonable consideration in comparison to the maximum fine. This will result in most offenders defaulting to imprisonment. The recommended sentence of imprisonment of two years is similarly not enough from a subjective point to anticipate that it will deter individuals or bring satisfaction to the victim. Therefore, the punishment within the Bill requires revision. An appropriate term of imprisonment ought to be reflective and cognisant of the possible fine that may be imposed in their alternative.

Section 34 makes identity theft through a computer system an offence. However, it states that such an act is an offence if it was committed with the intention to commit a subsequent crime. That is, a person is criminally liable if they use the identity of another to commit subsequent crimes such as fraud. This section, however, does not accommodate the misconduct of catfishing because the later at times, is not done with the intention to commit a subsequent crime, but merely constitutes impersonation. Impersonation harms victims as they are misrepresented to other parties and this, similarly has an adverse impact on the psychological wellbeing.

The Bill additionally addresses other concerns such as misinformation and disinformation, cyber bullying and harassment, and bigotry behaviour. Its section 43 makes it an offence to publish false information intentionally. It prescribes a criminal liability of imprisonment not exceeding five

²⁶⁵ Computer Crimes and Cyber Security Bill, 2022. Section 32 (1) (a) to (e).

years and/or a fine of half a million maloti maximum for the offence. This section is beneficial to combating disinformation about social issues involving women; particularly women in politics and women journalists are protected. Further, children who are users of digital platforms will not be influenced and coerced into false beliefs from such information.

Section 40 refers to cyberbullying and harassment facilitated through a digital medium. It identifies and prescribes that both the initial perpetrator and re-transmitter of such bullying and harassment be held criminally liable for such unlawful conducts.²⁶⁶ Section 35 and 36 states that acts on digital platforms that incite and perpetuate racism and xenophobia are crimes that attract a maximum of five million maloti and/or imprisonment not exceeding ten years. This provision, however, only covers hate speech based on race and difference of origin. That is, it does not cover hate speech that targets individuals based on other social identities such as their gender, sex, sexual orientation, and gender identity. Therefore, the provision does not expressly protect members of the LGBTI+ community from online violence in Lesotho. As aforementioned, the prescribed penalties for the offences need to be revised and weigh in a number of factors such as the fine and the imprisonment term. The punishment should have the effect to deter users from misconduct online and also bring satisfaction to the victim or at least compensate or reparate the victim for the harm and suffering.

4.5 Conclusion

There are instruments adopted for the protection of women against violence and discrimination at both the international and regional levels. There are other subsequent frameworks developed and mechanisms established to oversee the implementation of these instruments. However, the frameworks and mechanisms seem to be deficient in addressing the full scope of what constitutes online violence. There is a need to develop normative frameworks to guide existing legal frameworks to cover online violence, particularly regarding women and girls. At the national level, the legal framework promises potential superficial protection with regard to violence against women. This is because both bills which offer this promise have not or are yet to be passed into law. Therefore, some forms of online violence, such as -based online violence, are treated with impunity in Lesotho. Some acts of online violence which do not fall within the scope of sexual

²⁶⁶ Ibid. Section 40(1) and (2).

offences require civil judicial intervention against the perpetrators as they cannot be criminally pursued.

5. Chapter five: Comparative analysis of legal measures and mechanisms of the Republic of South Africa, the United Kingdom, and Lesotho

5.1 Introduction

Legal frameworks and institutional mechanisms constitute an essential part of any legal system. Such mechanisms, amongst others, are mandated to protect or promote provisions of certain legal frameworks. For example, at the African regional level, Article 30 of the African Charter on Human and Peoples' Rights (Banjul Charter), 1981 establishes the African Commission on Human and Peoples' Rights. Article 45(2) thereof mandates the commission to ensure the protection of human and peoples' rights enshrined in the charter. Similarly, at the national level, the enactment of any measures by a state entity is subjected to some protection by a certain body, organ, or institution of the state. Law enforcement institutions in their policing have a prescribed mandate to prohibit acts that violate the law.²⁶⁷ These prohibited acts constitute crimes and attract a criminal liability to be sanctioned by a conviction, a fine, and/or imprisonment.²⁶⁸ This means there must be an enacted legislative document that defines such acts as offences and further make a recommendation for the appropriate punishment. Frameworks that protect women and girls are of even greater importance as they constitute a vulnerable group. Other jurisdictions such as India have reiterated this assertion in their case law. The Supreme Court of India in a case that entailed allegations on inhumane living conditions of women inmates stated that,²⁶⁹

“we live in an age when this court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And so, in the discharge of its responsibilities to the people, the state recognizes the need for maintaining establishments for the care of those unfortunates, both women and children, who are castaways of an imperfect social order and for whom, therefore, of necessary provision must be made for their protection and welfare.”

This chapter will examine the legislative measures in selected jurisdictions that pertain to internet governance and the extent to which such statutes address the issue of online violence; in particular

²⁶⁷ Kevin Tomkins, “Police, Law Enforcement and the Environment” *Current Issues in Criminal Justice*. Vol. 16. Issue 3. (2005). 294.

²⁶⁸ *Ibid*.

²⁶⁹ *Vikram Deo Singh Toomar v. State of Bihar* 1988 A.I.R. 1782, 1988 S.C. R. SLP. (1) 755.

violence against women and girls online. The jurisdictions of interest in this regard are the Republic of South Africa (South Africa) and the United Kingdom.

5.2 Legal frameworks in South Africa that can address violence against women and girls

The legal system in the South African context has been defined as dual or plural. This is because the legal system is characterized by Roman-Dutch Law, which influenced by English law in its development and the existence of African customary law.²⁷⁰ At the helm of the legal system is the Constitution of South Africa, 1996.²⁷¹ Chapter II thereof makes provision for the Bill of rights. Section 7 (2) imposes the obligation to respect, protect, promote and fulfill the rights in Chapter II on the state.²⁷² The state is therefore committed to taking positive steps to carry out these obligations. To dispense these duties, the state, through the legislature, may enact laws that guarantee the rights enshrined in the Bill of rights. The rights in the Bill of rights are inclusive of the rights of women and, therefore, ought to be protected on all levels, platforms, and spheres, whether online or offline.

South Africa is no exception to the misconduct of online violence against women and girls. A 2020 survey by Pollicy was undertaken in several African countries, including South Africa, with the objective of understanding the experience of women online in the Sub-Saharan region.²⁷³ The report's survey sampled 536 women and girls aged 18 to 45+ years in the country.²⁷⁴ Thirty-five percent of the respondents stated that they had experienced online violence and that the matter was never resolved.²⁷⁵ The reports acknowledge that South Africa, in terms of its legal framework, has some progressive laws on gender-based violence (GBV) but still has the highest rates of GBV.²⁷⁶ Such laws include the Domestic Violence Act, 1998, amended by the Domestic Violence Amendment Act No. 14, 2021.

²⁷⁰ Philip F. Iya, "The Legal System and Legal Education in Southern Africa: Past Influences and Current Challenges" (2001) 51 *J Legal Educ* 356.

²⁷¹ Chapter I, section 2 of the Constitution of the Republic of South Africa states that the constitution is the supreme law of the land and that all law must be consistent with it.

²⁷² Section 8(1) of the Constitution of South Africa emphasizes this by declaring that the Bill of Rights shall be applicable to all laws and shall bind the all the three arms of government; the executive, legislature and judiciary.

²⁷³ Neema Iyer, Bonnita Nyamwire and Sandra Nabulega, "Alternate Realities, Alternate Internets African Feminist Research for a Feminist Internet" *Pollicy*. (2020). 13.

²⁷⁴ *Ibid.* 16.

²⁷⁵ *Ibid.* 34.

²⁷⁶ *Ibid.* 35.

The Domestic Violence Act No.14, 2021 was enacted with the objective, amongst others, to amend and insert definitions that were not provided for in the 1998 Act. For the purpose of this section, only relevant definitions within the amendment will be discussed. The definitions inserted in the amendment relate to sexual harassment, hate speech, and re-transmitters of violence. Under section 1 (fA), the amendment makes provision for the definition of domestic violence to include sexual harassment. The definition of what sexual harassment is within the amendment reads that sexual harassment means,²⁷⁷

(a) unwelcome sexual attention from a respondent who knows or ought reasonably to know that such attention is unwelcome;

(b) unwelcome explicit or implicit behaviour, suggestions, gestures, remarks made, communications sent or delivered, or electronic communications disclosed, to the complainant—

(i) of a sexual nature; or

(ii) regarding the complainant's or related person's sexual orientation, gender or gender expression, by a respondent, that has the effect of offending, intimidating or humiliating the complainant;

(c) implied or expressed promise of reward made to the complainant if they comply with a sexually oriented request; or

(d) implied or expressed threat of reprisal made to, or actual reprisal against, the complainant for refusal to comply with a sexually oriented request;

As an interlude, it is worth reiterating that online violence is a continuum of GBV, and that GBV has various forms, such as domestic violence and intimate partner violence.²⁷⁸ This highlights that the violence may happen within the perimeters of relationships within a domestic setting or with an intimate partner who is not part of a domestic setting. Further, that the violence may be characterized by threats and harassment among other acts.

²⁷⁷ Section 1 on definitions under the Domestic Violence Act No. 14, 2021.

²⁷⁸ See chapter one. Part 1.4.

The first definition of what constitutes sexual harassment within the amendment Act is the elements of unwanted sexual attention and that such attention ought to be reasonably known by the individual making such advancements that they are unwelcome. The second definition qualifies the first one by defining what other conduct and how such conduct may constitute sexual harassment. It goes on to state that unwelcome sexual attention may be characterized by express or tacit behaviour, gestures and remarks which may be made or sent through a computer system. This definition encapsulates sexual harassment online. It also captures the gender element of sexual harassment as online violence targeted specifically at women and girls. Section 1 (fA) (b) makes provision that even where such sexual misconduct is made with regard to the complainant's sexual orientation, gender expression or gender, it also constitutes sexual harassment. This definition therefore captures online harassment with regard to women, girls and members of the Lesbians, Gay, Bisexual, Transgender and Intersex (LGBTI+) community. It brings into perspective the element of intersectionality of violence and how it disproportionately affects these groups and ought to be afforded protection. The third and fourth definitions incorporate sextortion within the context of sexual harassment which may be experienced online. These definitions recognise the elements of coercion or threats by a perpetrator to a victim to comply with a sexual request and that failure to comply carries an imminent threat or harm to the victim.

The amendment has inserted the definition of spiritual abuse. It defines spiritual abuse as conduct "... advocating hatred against the complainant because of their religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant."²⁷⁹ This definition addresses hate speech in the context of religion and beliefs. To an extent, it makes provision for violence, in the context of online or offline activity, where discrimination or threats are advanced on the basis of hatred of the victim's religious belief(s). It therefore, considers the intersectionality aspect where women with multiple social identities, which may be defined as marginalised or a minority, are disproportionately affected by online violence through hate speech.

Additionally, the amendment makes further provision for the definition of who may be perpetrators of domestic violence. In particular, it makes provision for third party actors; who may be considered to be re-transmitters or secondary perpetrators in the context of online violence. The

²⁷⁹ Ibid. Spiritual abuse definition (a).

definition of third party actors under section 1 of the amendment is that it is not a prerequisite that the secondary perpetrator has a domestic relationship with the victim.²⁸⁰ The definition does add that such an actor should have “... conspired with, was procured by, or used by...” and/or “... aided or allegedly aided...” the primary perpetrator.²⁸¹ The amendment seems to cover the non-image based form of online violence in that it covers threats, hate speech and harassment, including sexual harassment. However, it does not address image-based online violence, which is characterized by Non-Consensual Disclosure of Intimate Images (NCDII). Perhaps, this is by reason of the misconduct being addressed by a separate piece of legislation.²⁸²

In 2019 the South African parliament passed the Film and Publications Amendment Act No. 11, 2019, that came into effect on the 1st March 2022. The Act amended the Films and Publications Act No. 65, 1996, to regulate and govern online commercial distribution of content such as films, publications and games.²⁸³ Section 24E (1) of the amendment Act makes it an offence to distribute private sexual images or videos of another individual without their consent and imposes a fine of 150 000 rands and/or imprisonment for a maximum of two years. In the instance where the victim(s) is identifiable in the image or video, the imposed penalty doubles to 300 000 rands and/or imprisonment for a maximum of four years.²⁸⁴

This provision makes mention of crucial elements of revenge porn as a variant of online violence. It makes mention of the perpetrator “knowingly distributing”, through mediums such as the “internet and social media”, “without prior consent of the individual(s) in the image or video” and with the “intention to cause harm to the said individual.” The Act makes a tight seal for possible loopholes by providing that even where prior consent might have been given implicitly by the individual, it shall not be a defence especially if such image was intended for private purposes.²⁸⁵ Section 18F (6) of the Act further provides that for investigative purposes, the internet service provider shall be compelled to furnish law enforcement authorities with information on the identity

²⁸⁰ Ibid. Third party actors definition (a). It provides that such actors may or may not have a domestic relationship with the victim.

²⁸¹ Ibid. (b) and (c) (ii).

²⁸² Film and Publications Amendment Act No. 11, 2019.

²⁸³ Preamble of the Film and Publications Amendment Act No. 11, 2019.

²⁸⁴ Ibid. Section 24E (2).

²⁸⁵ Ibid. Section 18F (3) and (4).

of the perpetrator(s). This requirement will not only assist in identifying primary perpetrators but re-transmitters of the content to be called to book.

Section 24G of the Films and Publication Amendment Act No. 11, 2019, with regard to hate speech as online violence states that, “any person who knowingly distributes in any medium, including the internet and social media any ... publication which ... incites imminent violence, or advocates hate speech, shall be guilty of an offence...” The same section imposes a criminal liability of a fine not exceeding 150 000 rands or to imprisonment for a period not exceeding two years, or to both a fine and imprisonment.²⁸⁶ However, the amendment Act does not define what conduct constitute hate speech. Therefore, this still leaves a lacuna within legislative measures in imposing criminal liability for hate speech.

In 2018, the Prevention and Combating Hate Crimes and Hate Speech Bill was drafted. The Bill states that the object of the yet to be promulgated Act is to prevent hate crimes and hate speech.²⁸⁷ Section 4 (1) (a) thereof defines hate speech as intentionally publishing, advocating or communicating to others in a way that could reasonably be understood to show intention to bring about or incite harm or promote hatred²⁸⁸ based, amongst others, culture, gender identity, gender, disability, religion, sex, sexual orientation.²⁸⁹ Section 6 (3) thereof states that where an individual is found guilty of hate speech, upon conviction, they shall be liable to pay an unspecified amount as a fine and/or imprisonment for a period not exceeding three years. Unfortunately, the Bill has not been passed as yet by parliament. As a result, there is still an insufficiency in terms of legal measures to address hate speech online and hate crimes that y occur subsequently due to the incitement of the hate speech.

The Cybercrimes Act No.19, 2020 is another statute to consider as part of the legal frameworks within South Africa. The Cybercrimes Act No. 19, 2020 was passed into law in 2019 and only came into effect on the 1st June 2021. The objective of the Act is to create offences for cybercrimes and to criminalize the disclosure of data messages which are harmful. Chapter II of the Act makes provision for the definition of a number of offences such as cyber extortion and the NCDII. Section

²⁸⁶ Ibid. Section 24G.

²⁸⁷ Prevention and Combating Hate Crimes and Hate Speech Bill, 2018. Section 2 (c).

²⁸⁸ Ibid. Section 4(1) (i) and (ii).

²⁸⁹ Ibid.

10 of the Act states that any individual who intercepts and/or interferes with data or a computer program with the intention of gaining an advantage from another person or compelling another to act or refrain from acting is guilty of an offence.²⁹⁰ This definition encapsulates sextortion as a form of online violence; in particular, where unethical means of obtaining such data is utilized. It states the element of interception or interference, which is also known as hacking, as an element of the offence. Another signifying element of this offence is the intention to have some advantage or gain at the expense of the victim. That is, the victim is compelled either through express threats or is unduly influenced in order to have the outcome of the situation favourable to the perpetrator.

Chapter II, Part II of the same Act makes provision for NCDII. Section 6 thereof provides that any individual who unlawfully and intentionally discloses through electronic communication intimate images of another without the consent of the said person has committed an offence. Section 6 (2) (a) (i) to (iii) provides that it is not a prerequisite that the victim or complainant be identifiable with the image; that being described as the person in that image or being identified from other information from the image is sufficient. Section 6 (2) (b) goes further to define that such intimate image(s) complained of can either be real, simulated, or altered to depict the victim or complainant in a sexual manner. The section additionally makes express provision to mention female, transgender, and intersex persons being potentially depicted in such images.²⁹¹ This provision does not only make revenge porn an offence but, in the same breathe covers deepfakes. That is, it covers instances where intimate images are distributed without consent and where such images have been digitally altered to depict the victim in a sexual nature, whether identifiable or not.

The South African legal frameworks seem to cover a great deal of online violence. It covers sexual harassment, hate speech, and image-based online violence through a number of statutes. In as much as the legal frameworks seem to have been sufficiently developed, it has been stated that in practice, they do not sufficiently address the issue of GBV online or offline.²⁹² It is stated that this insufficiency is a systemic issue and not *per se* a legal one.²⁹³ Further that, other measures such as sensitisation, creating awareness, and capacity building of the public are also necessary.²⁹⁴ Other

²⁹⁰ Cybercrimes Act No.19, 2020. Section 10 (a) and (b).

²⁹¹ Ibid. Section (6) (2) (b) (ii).

²⁹² Neema Iyer, Bonnita Nyamwire and Sandra Nabulega (n 264). 35.

²⁹³ Ibid.

²⁹⁴ Ibid.

jurisdictions have opted to consolidate existing laws, which to an extent address online violence, into one statute and supplement it by making provisions for the borderline acts which are not covered by such statutes. The United Kingdom was among the first countries to have a draft bill specifically for online violence.²⁹⁵

The South African Courts have been faced with the duty to intervene between parties regarding information shared online in relation to another. The brief facts of the case of *M Booysen v J Dolley-Major*²⁹⁶ are as follows; both parties are priests of the Anglican church and had been acquaintances. In 2016, Dolley-Major made a Facebook post stating that Booysen had raped her. In 2021, Doodley Major made a video post naming Booysen as the perpetrator. The video gained momentum online, garnered and prompted discussions on the rape and other rape incidents. Doodley instituted an urgent interdict for Dolley-Major to take down the post as they were defamatory. Without placing much attention to the aspect of defamation and genders of the parties in the facts; objectively speaking the facts may be summarised from another perspective as, one person had made communication online on the basis of their right to freedom of expression which has potential to bring harm or suffering to another. The conduct had potential to affect their right to integrity, but also susceptible to other threats from other online users considering the nature of the accusation made against them.

The court in this instance, focused its reasons on the rape aspect of the case and the prevailing circumstances in the country. At paragraph 19, the court stated that,

“ Through her online speak out, the respondent has gone from victim to survivor and now uses the platform to educate and support others. The growth in her support base is an indication of the effect of the South African rape culture and the destruction it wreaks in the lives of women, as well as the need for safe spaces to talk without being judged...”

Baartman, J. in dismissing the application, considering the above, stated that “I accept that the applicant has a right to have his dignity and good name protected. However, it is apparent that the applicant has known for years that his reputation and good name were being tarnished through online posting” Further that, “[t]he irreparable harm that the applicant fears, in the circumstances

²⁹⁵ Online Safety Bill, 2021.

²⁹⁶ *Booyesen v Major and Another* (5043/2021) [2021] ZAWCHC 273 (31 August 2021).

of this matter, is non-existent”²⁹⁷ The court is applauded in giving special recognition to the need to protect rape victims and to encourage safe spaces for interaction on rape issues as a way to mitigate its stigma. The case has highlighted on the need to govern social media activity in order to balance the rights of different individuals. That is, the right of freedom of expression of one and the right to dignity of another. The court in dismissing the application but encouraging the applicant to pursue the matter as a defamation case, according to me, failed to strike this balance. The court implied that the right to freedom of expression prevails over the right of integrity of another. In as much as I believe in the notion of equal rights, I believe the court ought to have considered the integrity of Booysen considering none of the allegations have been proven and the evidence is solely circumstantial.

5.3 Legal framework in the United Kingdom that addresses the safety of women and girls online

The legal system of the United Kingdom is characterized by common law.²⁹⁸ Unlike in the instance of Lesotho and South Africa where the Constitution is the supreme law of the land, in the United Kingdom, parliament is the sovereign power.²⁹⁹ This means that the parliament is the ultimate source of law and can therefore enact laws with some scope and substance at its discretion. In 2020, the Glitch and End Violence Against Women (EVAW) undertook a survey in the United Kingdom to investigate gender-based violence and the intersectionality of online violence during the COVID-19 pandemic. The qualitative data thereof were collected from 484 respondents and found that forty six percent of the respondents reported having experienced some form of online violence since the beginning of the pandemic.³⁰⁰ Therefore online violence against women is similarly a social issue for concern in the United Kingdom that requires legislative intervention. The United Kingdom is among the first to draft a Bill specifically for safety online, particularly on social media and search platforms.

The Online Safety Bill was first introduced in May 2021 and had its first reading in the House of Commons in March 2022.³⁰¹ To date, the Bill has had its second reading and has been forwarded

²⁹⁷ Ibid. Paragraph 24.

²⁹⁸ Gary Slapper and David Kelly, *The English Legal System* (6th edn Cavendish Publishing Limited 2003) 3.

²⁹⁹ Ibid. 10.

³⁰⁰ Glitch UK and End Violence Against Women Coalition (n 7). 7.

³⁰¹ UK Government, "Parliamentary Bills – Online Safety Bill" (*House of Commons*, 5 July 2022)

to the committee stage on the 24th May 2022.³⁰² The objective of the Bill is to make provisions for regulating certain internet services which relate to communication offences. This Bill, in comparison with legal frameworks, in particular those that address cybercrime, in the jurisdictions of Lesotho and South Africa, seems to be focused on internet intermediaries as hosts of online violence and not individual conduct of the users of these platforms.³⁰³ Section 53 and 54 of the Bill make provision for the definition of content that is harmful to children and adults respectively and may be considered as offence. The Bill does not make express provision for online violence or its variants which may either be image-based or non-image based. The Bill defines such harmful content as priority content which may be defined by existing and subsequent regulations to be issued by the Secretary of State.³⁰⁴

The priority content is also inclusive of relevant offences which have been enlisted under schedule 6 and 7 of the Bill.³⁰⁵ Schedule 6 entails a list of offences under a number of legal instruments in the territories of the United Kingdom which constitute child sexual exploitation and abuse. These include causing a child to watch a sexual act, sexual communication with a child, and causing sexual exploitation of a minor.³⁰⁶ Schedule 7 is on priority offences provided for under section 52 of the Bill. Section 3 of the schedule makes provision for the offences of threat to kill, harassment, racially and religiously aggravated harassment, threat or abusive behaviour, and the threat or actual act of NCDII.³⁰⁷ These offences do entail characteristics of online violence.

Further, the Bill makes provision under section 37 for the development of a code of practice for the internet intermediaries.³⁰⁸ The Office of Communications (OFCOM) is given the regulatory status to oversee the compliance with the code.³⁰⁹ The entity, amongst others, has the function of

³⁰² Ibid.

³⁰³ Online Safety Bill, 2021. Chapter 1, section 5.

³⁰⁴ Ibid. Section 53 (2) and 54 (2).

³⁰⁵ Ibid. Section 52 (4).

³⁰⁶ Ibid. Schedule 6 section 5 (d), (h) and (j). The enlisted legislations that create such offences include the Obscene Publications Act 1959; the Protection of Children Act 1978; the Criminal Justice Act 1988; and the Sexual Offences Act 2003.

³⁰⁷ Ibid. Schedule 7, sections 3 (7) (a), 9(b), 10(b), 26 and 27. the legislation making provisions for these offences include, the Offences against the Person Act 1861; the Public Order Act 1986; the Criminal Law (Consolidation) (Scotland) Act 1995; and the Protection from Harassment (Northern Ireland) Order 1997.

³⁰⁸ These internet intermediaries include user to user service providers and search service providers. The former are usually social media platforms while the latter are search engines.

³⁰⁹ The OFCOM is an institutional framework which derives its function from the Communications Act, 2003. These powers have been extended and provided for in the Online Safety Bill, 2021.

regulatory and compliance, to perform impact assessments, to undertake research on user experience with internet services provider, and to advise and publicize information for consumers.³¹⁰ Schedule 4 of the Bill makes provision that the code of practice must adhere to the set online safety objectives.³¹¹ These objectives are inclusive of how the service of the internet intermediaries should be designed and operated. The schedule provides that users be made aware of the terms of service,³¹² that users be given more control over the content they come upon and their interactions with other users on the platforms,³¹³ and that the intermediaries provide higher protection for children than adults.³¹⁴

The developed code of practice that entails these objects will assist in guaranteeing the safety of women and girls online by giving them power over who they interact with, and on which subject matters. Women will therefore have the ability to regulate threats and harassment targeted towards them and raise the issue with the service provider to address the issue. The service providers therefore have a tacit obligation to assist law enforcement where such offences occur. The provisions in the schedule have further imposed the duty on the service providers to ensure a higher standard of safety for children online. This means the safety of girl children will be proactively guaranteed on these platforms from online violence.

5.4 Conclusion

Different jurisdictions have different legislation intended to achieve certain objectives. Such statutes are their legal frameworks to address or govern some social activity. Jurisdictions with different legal systems are likely to have varying approaches in that regard. On the one hand, South Africa has a number of statutes that address some forms of online violence. These include three statutes and a Bill which addresses domestic violence, harassment, and cybercrimes and hate speech. On the other hand, the United Kingdom has intended to promulgate a single statute which will address online violence. The statute addresses most variants of online violence and defines them as punishable offences. The Bill takes a step further to ensure the protection of digital space users from online violence by further imposing obligations to internet intermediaries and imposing

³¹⁰ Online safety Bill, 2021. Part 12 section 191 (2).

³¹¹ Ibid. Schedule 4, section 3.

³¹² Ibid. section 4 (iii).

³¹³ Ibid. section 4 (v).

³¹⁴ Ibid. section 4(vi).

sanctions for such failure to protect their users. Therefore, some legal frameworks, depending on the jurisdiction, promise greater protection from online violence than others. There is also a need for existing legal frameworks to have as an objective express provision to protect internet users, in particular those at risk such as women and children amongst others, from online violence.

6. Chapter six: Findings, conclusion, and recommendations.

6.1 Introduction

The study on online violence and existing legal frameworks revealed some grey areas in addressing online violence in some jurisdictions. Further, there is a need to strategize the legislative approach and objectives to combat and eliminate online violence against women and girls. Other jurisdictions, such as the United Kingdom, have preventive and regulatory legislation to prevent online violence, while others, such as South Africa, are merely preventive, and such provisions are found in a number of instruments.³¹⁵ Below, the chapter outlines the *lacuna* in the legal frameworks of Lesotho and makes recommendations on how to fill and address the gaps in order to address online violence against women and girls.

6.2 The grey areas in the legal frameworks of Lesotho

As illustrated in the previous chapters, there are legislative measures set in place which can address violence against women and girls online. In the context of Lesotho, the Cybercrimes and Computer Crimes Bill, 2021 is anticipated to be the main statute that governs online activity and to do so sufficiently. The Bill does cover certain aspects of online violence such as NCDII, sexual harassment, cyberbullying, and acts that incite racism and xenophobia.³¹⁶ The Bill does, however, fall short in addressing other forms of online violence such as catfishing, doxing and other acts which constitute hate speech that are not made on the basis of race or nationality.

The South African Cybercrimes Act No. 19, 2020 is part of the South African legal measures that govern the internet and its safety. It defines various forms of online violence as offences and imposes penalties.³¹⁷ The provisions of this Act are supplemented by the provision of other legislations, such as the Films and Publications Amendment Act, No.11, 2019, which specifically addresses NCDII and its different forms. The Online Safety Bill, 2021 of the United Kingdom is more of a compound and broad legislative measure to ensure safety online. The Bill similarly to the legislation in Lesotho and South Africa, outlines offences of online violence. This is done from other existing laws which govern violence and harm to its citizenry, which may also be perpetuated online. The distinguishing feature of the British framework is its consideration of involving the

³¹⁵ See chapter 5, Part 5.2 and 5.3.

³¹⁶ See Chapter 4. Part 4.4.2.

³¹⁷ See chapter 5. Part 5.2.

internet intermediaries and imposing certain roles and responsibilities in order to guarantee the safety of the users of their platforms. These include the development of the code of practice which sets out guidelines for the intermediaries and the oversight mechanism to ensure the safety of the users.

6.3 Conclusion

The Cybercrimes and Computer Crimes Bill of Lesotho does not fully address online violence in comparison with legislative measures of other jurisdictions. Other jurisdictions cover most variants of online violence that are specific to women and girls while the Bill does not. The Bill further fails to put into perspective all active participants in the facilitation of online violence. That is, the state, the users of internet intermediaries, and the service providers of internet services. Unlike in the instance of South Africa where other legislative measures in existence supplement the Cybercrimes Act, 2020, existing legal frameworks in Lesotho, such as the Counter Domestic Violence Bill, 2021 do not have provisions that define online violence in the context of domestic violence and GBV.

6.4 Recommendations

In as much as the Online Safety Bill, 2021 has been criticized for a number of issues which include its non-express provision for violence against women online,³¹⁸ and the lack of inclusion of all forms of image-based sexual violence,³¹⁹ I believe the approach in attempting to hold the non-state actors accountable would be ideal in Lesotho. Imposing obligations through a code of practice to ensure online safety is commendable. I believe this is one of the missing aspects in the Cybercrimes and Computer Crimes Bill 2021 of Lesotho. It is therefore recommended that the Bill be amended to insert and include obligations on internet service providers to ensure online safety of their Basotho users, in particular women and girls. It is further recommended that the Bill be amended to include and enlist all forms of online violence and provide explicitly penalties on each conduct as to whether it attracts criminal liability or a delictual one. I believe the recommended approach will proactively and reactively address online violence. The reason for this assertion is that the state would have enacted legislative measures that regulates the conducts of the users and

³¹⁸ Fiona Vera-Gray and Clare McGlynn, “VAWG Principles for the Online Safety Bill” (*Ending Violence Against Women & Girls Sector*, September 2021). 7.

³¹⁹ *Ibid.* 8.

facilitators. Users will be bound by the service's terms of use, and failure to comply shall attract some repercussions. The service facilitators will also have their outlined roles and responsibilities to ensure the safety of their users.

6. Bibliography

Books

Slapper, G. and Kelly, D. *The English Legal System* (6th edn Cavendish Publishing Limited 2003). <

<https://routledgetextbooks.com/textbooks/9780415639989/downloads/2009spring.pdf> >
[accessed 01/07/2022].

Krajewski, M. et, al. (eds), *Sustainable Development Goals and Human Rights*, vol. 5 (Springer, 2020). < https://www.wipo.int/edocs/pubdocs/en/wipo_pub_226.pdf > [accessed 10/06/2022].

Powell, A., Henry, N. and Flynn, A. *Image-based Sexual Abuse*. (Routledge handbook of critical criminology, 2. 2018).<

https://researchmgt.monash.edu/ws/portalfiles/portal/319918063/ImageBasedSexualAbuseReport_170220_WEB_2.pdf [accessed 06/02/2022].

Journal Articles

Alderson, P. and Goodey, C. “Theories of Consent” Theories in health care and research (1998). Vol. 317. BMJ. 1-3. < <https://discovery.ucl.ac.uk/id/eprint/1483871/> > [accessed 20/04/2022].

Anderson, S., Beaman, L. and Platteau, J.P. (eds), “Towards Gender Equity in Development” (2018). UNU-WIDER *OUP*.

Andersson, N. et.al. “Gender-based violence and HIV: Relevance for HIV prevention in hyperendemic Countries of Southern Africa,” *AIDS* (2008). Vol. 22. S73-S86 < https://journals.lww.com/aidsonline/fulltext/2008/12004/gender_based_violence_and_hiv_relevance_for_hiv.7.aspx > [accessed 24/1/2021].

Appel, G. et al. “The future of social media in marketing” *Journal of the Academy of*

Quarterly, vol. 60, no. 4, Dec. 1983, pp. 615–621,<

<https://journals.sagepub.com/doi/abs/10.1177/107769908306000405?journalCode=jmqb> >
[accessed 05/05/2022].

Awan, I. "Islamophobia and Twitter: A typology of online hate against Muslims on social media." *Policy & Internet* 6.2 (2014): 133-150.

Aziz, Z. "Due diligence and accountability for online violence against women" *Due Diligence Project*. (2017) < <https://duediligenceproject.org/wp-content/uploads/2019/05/Paper-on-Due-Diligence-and-Accountability-for-Online-Violence-against-Women-make-this-active-link.pdf> > [accessed 10/06/2022].

Belkofer, C.M. and McNutt, J.V. "Understanding social media culture and its ethical challenges for art therapists" *Art Therapy*. (2011) pages 159-164.

Cohen, L. et. al. "Conflict Resolution and Violence Prevention: From Misunderstanding to Understanding" (1998) *The Fourth R. National Institute for Dispute Resolution* 1-15 < <https://www.preventioninstitute.org/sites/default/files/publications/Conflict%20Resolution%20and%20Violence%20Prevention.pdf> > [accessed 04/04/2022].

Crawford-Lichtenstein, C. "Hard Law v. Soft Law: Unnecessary Dichotomy" 35 *Int'l L.* (2001). 1433.

De Silva, R. "Mining the Intersections: Advancing the Rights of Women and Children with Disabilities within an Interrelated Web of Human Rights" (2009) 18 *Pac Rim L & Pol'y J* 293. < http://heinonline.org.nul.remotexs.co/HOL/Page?public=true&handle=hein.journals/pacrimlp18&div=14&start_page=293&collection=journals&set_as_cursor=0&men_tab=srchresults > [accessed 29/05/2022].

Diaz, F.L. "Trolling & the First Amendment: Protecting Internet Speech in the Era of Cyberbullies & Internet Defamation" (2016) *U Ill JL Tech & Pol'y* 135- 158 < http://heinonline.org.nul.remotexs.co/HOL/Page?public=true&handle=hein.journals/jltp2016&div=9&start_page=135&collection=journals&set_as_cursor=0&men_tab=srchresults > [accessed 03/03/2022].

Dlamini, N.J. “Gender-Based Violence, Twin Pandemic to COVID-19.” *Critical Sociology*, vol. 47, no. 4–5, (2021), pages 583–590, doi:10.1177/0896920520975465 <https://journals.sagepub.com/doi/full/10.1177/0896920520975465> [accessed 25/11/2021]

Dunn, S. “Technology Facilitated Gender Based Violence” An Overview. Supporting a Safer Internet Paper No. 1. (2020). Pages 1-38. < https://www.cigionline.org/static/documents/documents/SaferInternet_Paper%20no%201_0.pdf > [accessed 23/03/2022].

Dupuy, P.M. “Soft Law and the International Law of the Environment” 12 *Mich. J. Int'l L.* (1990-1991). < <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mjil12&div=20&id=&page=> > [accessed 02/06/2022].

Hall, M., Hearn, J. and Lewis, R. “Upskirting, Homosociality and Craftsmanship: A thematic Analysis of Perpetrators and Viewers Interactions” (2022) *Violence Against Women* 532-500 < https://helda.helsinki.fi/dhanken/bitstream/handle/10227/459713/Hall_Hearn_Lewis_Upskirting_VAW_2021_.pdf?sequence=4&isAllowed=y > [accessed 03/03/2022].

Herring, J. and Wall, J. “The Nature and Significance of the Right to Bodily Integrity” *Cambridge Law Journal*, (2017). 1- 23. < <https://www.cambridge.org/core/terms> > [accessed 30/04/2022].

Iya, P.F. “The Legal System and Legal Education in Southern Africa: Past Influences and Current Challenges” (2001) 51 *J Legal Educ* 355. < https://heinonline.org.nul.remotexs.co/HOL/Page?collection=journals&handle=hein.journals/jled51&id=365&men_tab=srchresults > [accessed 25/06/2022].

Kali, M. “Women Empowerment in Lesotho: Reality and/or myth?” *International Journal of Scientific Research and Management* 6.03 (2018). Vol. 6 Iss.3 pages 1-8 https://www.researchgate.net/profile/Moeketsi-Kali/publication/342067294_Women_Empowerment_in_Lesotho_Reality_Andor_Myth/inks/5ee08520299bf1d20bdec34a/Women-Empowerment-in-Lesotho-Reality-And-or-

[Kali/publication/342067294_Women_Empowerment_in_Lesotho_Reality_Andor_Myth/links/5ee08520299bf1d20bdec34a/Women-Empowerment-in-Lesotho-Reality-And-orMyth.pdf](https://www.researchgate.net/publication/342067294_Women_Empowerment_in_Lesotho_Reality_Andor_Myth/links/5ee08520299bf1d20bdec34a/Women-Empowerment-in-Lesotho-Reality-And-orMyth.pdf) [accessed 24/11/2021].

Kar, M. "Iranian Law and Women's Rights" *The Transnational Muslim World, Human Rights, And The Rights Of Women And Sexual Minorities. Muslim World Journal of Human Rights*,(2007) Vol. 4, Iss. 1. 8.< <https://www.degruyter.com/document/doi/10.2202/1554-4419.1113/html> > [accessed 04/04/2022].

Korlat, S. et. al., "Gender role identity and gender intensification: Agency and communion in adolescents' spontaneous self-descriptions" (2021). Vol. 19, No. 1, *European Journal of Developmental Psychology*. 64-88. < <http://www.tandfonline.com/nul/remotexs.co/doi/epub/10.1080/17405629.2020.1865143?needAccess=true> > [accessed 15/03/2022].

Marketing Science. Iss. 48.1 (2020) pages 79-95.

Mc Glynn, C., Rackely, E. and Houghton, R. "Beyond 'Revenge Porn': The Continuum of Image Based Sexual Violence" (2017) *Feminist Legal Studies* 25-46 < <https://link.springer.com/article/10.1007/s10691-017-9343-2> > [accessed 3/03/2022].

McCrudden, C. "Human Dignity and Judicial Interpretation of Human Rights" *The European Journal of International Law* (2008) Vol. 19 no. 4 EJIL 655-724 < <http://ejil.oxfordjournals.org/> > [accessed 15/04/2022].

Meskys, E., Liaudaskas, A. and Kalpokiene, J. "Regulating Deep-Fakes; Legal and Ethical Considerations" (2019) Vol. 15, Issue 1. *Journal for Intellectual Property Law &Practice* 24-31 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3497144 > [accessed 25/03/2022].

Muluneh, M., Stulz, V., Francis, L. and Agho, K "Gender Based Violence against Women in Sub Saharan Africa: A Systematic Review and Meta-Analysis of Cross- Sectional Studies" (2020) *Int. J. Environ. Res. Public Health*. < <https://www.mdpi.com/1660-4601/17/3/903> > [accessed 26/02/2022].

Nussbaum, M.C. “Capabilities and Human Rights” *Fordham L Rev* (1997) 273.<
http://heinonline.org.nul.remotexs.co/HOL/Page?public=true&handle=hein.journals/flr66&div=18&start_page=273&collection=journals&set_as_cursor=0&men_tab=srchresults >
[accessed 24/05/2022].

Porterfield, J. and Kleiner, B.H. “A new era: Women and leadership” (2005) *Equal Opportunities International*, Vol. 24. Iss. 5/6. 49 – 56. <
<https://www.emerald.com/insight/content/doi/10.1108/02610150510788150/full/html> >
[accessed 04/04/2022].

Possetti, J. et. al. “The Chilling: Global Trends on Online Violence against Women Journalists” A Research Discussion Paper. UNESCO. (2021). <
<https://unesdoc.unesco.org/ark:/48223/pf0000377223/PDF/377223eng.pdf.multi> > [accessed 12/12/2021].

Powell, A., Henry, N. and Flynn, A. “Policing image-based sexual abuse: stakeholder perspectives” *Routledge* (2018) <
<https://www.tandfonline.com/doi/abs/10.1080/15614263.2018.1507892> > [accessed 06/02/2022].

Powell, A., Hinds, S and Flynn, A. “Technology Facilitated Abuse” A survey of support services stakeholders. *ANROWS* (2021). < [4AP.4-Flynn et al-](#)
[&div=18&start_page=273&collection=journals&set_as_cursor=0&men_tab=srchresults](#) >
[accessed 24/05/2022].

Razavi, S. “The 2030 Agenda: challenges of implementation to attain gender equality and women's rights.” *Gender & Development* 24.1 (2016). 25-41 <
<https://www.tandfonline.com/doi/abs/10.1080/13552074.2016.1142229> >[accessed 02/06/2022].

Shale, I. “Historical perspective on the place of international human rights treaties in the legal system of Lesotho: Moving beyond the monist-dualist dichotomy” (2019) 19 *African Human Rights Law Journal* 193-218.

Shale, I. “The Lesotho Human Rights Commission” *Chapter 10*. (2016).<
https://www.pulp.up.ac.za/images/pulp/books/legal_compilations/NHRI/Chapter%2010%20NHRI.pdf >[accessed 3/03/2022].

Tomkins, K. “Police, Law Enforcement and the Environment” *Current Issues in Criminal Justice*. (2005). Vol. 16. Issue 3. 294-306.

Reports

Vera-Gray, F. and Mcglynn, C. “VAWG Principles for the Online Safety Bill” (*Ending Violence Against Women & Girls Sector*, September 2021). <
<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2021/09/Large-print-4-pager-Joint-Principles-for-the-OSB.pdf> > [05/07/2022].

Iyer, N., Nyamwire, B. and Nabulega, S. “Alternate Realities, Alternate Internets African Feminist Research for a Feminist Internet” (*Pollicy*, 2020). <
https://www.apc.org/sites/default/files/Report_FINAL.pdf > [accessed 05/03/2022].

Glitch UK and End Violence Against Women Coalition. “The Ripple Effect: COVID-19 and the Epidemic of Online Abuse” (*Creative Commons Lisence*, 2020). <
<https://glitchcharity.co.uk/wp-content/uploads/2021/04/Glitch-The-Ripple-Effect-Report-COVID-19-online-abuse.pdf> > [accessed 24/11/2021].

Lesotho Government Beijing +25 Review Report, 2020,<
<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/64/National-reviews/Lesotho.pdf> >[accessed 18/06/2022].

Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective* A/HRC/38/47
<https://digitallibrary.un.org/record/1641160?ln=en#recor%20d-filescollapse-header>
[accessed 11/11/2021].

Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (2019). A/74/48053 <

https://www.ohchr.org/sites/default/files/newyork/Documents/A_74_48053_AUV.docx >
[accessed 15/04/2022].

International Instruments

African Charter on Human and Peoples' Rights (Banjul Charter), 1981.

African Commission Resolution on the Protection of Women Against Digital Violence in Africa. ACHPR/Res. 522 (LXXII) 2022. < <https://www.achpr.org/sessions/resolutions?id=558> >
> [accessed 28/08/2022].

African Union African Charter on the Rights and Welfare of the Child, 1990. < https://www.achpr.org/public/Document/file/English/achpr_instr_charterchild_eng.pdf >
[accessed 29/05/2022].

African Union Convention on Cyber Security and Personal Data Protection, 2000. < [https://au.int/sites/default/files/treaties/29560-treaty-0048 -
_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf](https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf) >
[accessed 15/06/2022].

African Union Declaration of Principles on Freedom of Expression in Africa, 2002.< https://www.achpr.org/public/Document/file/English/draft_declaration_of_principles_on_freedom_of_expression_in_africa_eng.pdf > [accessed 18/06/2022].

African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003. < <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf> > [accessed 08/06/ 2022].

African Union Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998/2004). < <http://www.african-court.org/wpafc/wp-content/uploads/2020/10/2-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf> > [accessed 20/06/2022].

Convention on the Elimination of all forms of Discrimination Against Women CEDAW, 1981
< <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> > [accessed 20/11/2021].

Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 2011. < <https://rm.coe.int/168046031c> > [accessed 15/06/2022].

South Asian Association for Regional Cooperation Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution, 1997. < https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_251026.pdf > [accessed 07/06/2022].

The Berne Convention, 1886. < https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf > [accessed 17/06/2022].

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), 1994. < <https://www.oas.org/en/CIM/docs/Belem-do-Para%5BEN%5D.pdf> > [accessed 07/06/2022].

The United Nations Convention of the Elimination of all forms of Discrimination Against Women (CEDAW), 1979. < <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf> > [accessed 02/06/2022].

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984. < <https://www.ohchr.org/sites/default/files/cat.pdf> > [accessed 14/06/2022].

United Nations Convention on the Rights of the Child (CRC), 1989. < <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf> > [accessed 29/05/2022].

United Nations Declaration on the Elimination of Violence Against Women (DEVAW), 1993. < https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.21_declaration%20elimination%20vaw.pdf > [accessed 06/06/2022].

United Nations International Covenant on Civil and Political Rights (ICCPR), 1966.<
<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf> >
[accessed 30/05/2022].

United Nations Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999.< <https://www2.ohchr.org/english/law/pdf/cedaw-one.pdf> > [accessed 14/06/2022].

United Nations Paris Principles on Human Rights Institutions (Paris Principles), 1993. <
<https://www.un.org/ruleoflaw/files/PRINCI~5.PDF> > [accessed 10/06/2022].

United Nations the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.< <https://www.ohchr.org/sites/default/files/cescr.pdf> > [accessed 30/05/2022].

United Nations Universal Declaration on Human Rights (UDHR), 1948. <
https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf >
[accessed 30/05/2022].

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [African Commission on Human and Peoples' Rights Legal Instruments \(achpr.org\)](http://www.achpr.org)
[accessed 20/11/2021].

World Intellectual Property Organization WIPO Copyright Treaty (WCT), 1996.<
https://www.wipo.int/edocs/pubdocs/en/wipo_pub_226.pdf> [accessed 16/06/2022].

General Comments, Resolutions and Recommendations

African Union Resolution on the Right to Freedom of Information and Expression on the Internet in Africa. ACHPR/Res.362 (LIX). (2016)<
<https://www.achpr.org/sessions/resolutions?id=374> > [accessed 15/06/2022].

General Recommendation No. 19: Violence against Women by the Committee of the Elimination of Discrimination of Women. Resolution A/47/38.
https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CE_DAW_GEC_3731_E.pdf [accessed 20/1/2021].

United Nations General Assembly Resolution 48/104 on the elimination on violence against women (20 December 1993) < <https://www.ohchr.org/sites/default/files/eliminationvaw.pdf> > [accessed 07/03/2022].

United Nations General Assembly Resolution on Promoting interreligious and intercultural dialogue and tolerance in countering hate speech. A/RES/75/309. (2021). < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/200/61/PDF/N2120061.pdf?OpenElement> > [accessed 29/05/2022].

United Nations Human Rights Committee, General comment No. 36 (2018) on article 6 of ICCPR, on the right to life. CCPR/C/GC/36. < <https://www.refworld.org/docid/5e5e75e04.html> > [accessed 06/04/2022].

United Nations Human Rights Counsel Resolution A/HRC/32/L.20 < <https://digitallibrary.un.org/search?ln=en&p=Resolution%20A%2FHRC%2F32%2FL.20%20&f=&c=Resource%20Type&c=UN%20Bodies&sf=&so=d&rg=50&fti=0> > [accessed 06/03/2022].

Statutes and Bills

Children's Protection and Welfare Act, 2011.

Computer Crimes and Cyber Security Bill, 2022.

Counter Domestic Violence Bill, 2021.

Cybercrimes Act No. 19, 2020

Domestic Violence Act No. 116, 1998.

Domestic Violence Amendment Act No. 14, 2021.

Film and Publication Act No. 65, 1996.

Film and Publications Amendment Act No. 11, 2019.

Human Rights Commission Act No.2, 2016

Online Safety Bill, 2021.

Penal Code Act, 2010.

Police Service Act No. 7, 1998.

Prevention and Combating Hate Crimes and Hate Speech Bill, 2018.

Sexual Offences Act No. 3, 2003.

Sixth Amendment to the Constitution of Lesotho, 2011.

The Constitution of Lesotho, 1993.

Websites and Blogs

UK Government,” Parliamentary Bills – Online Safety Bill” (*House of Commons*, 5 July 2022) < <https://Bills.parliament.uk/Bills/3137> > [accessed 02/07/2022].

United Nations Population Fund, “UNFPA launches bodyright, a new ‘copyright’ symbol to demand protection from online violence” (2nd December 2021).< <https://www.unfpa.org/press/unfpa-launches-bodyright-new-copyright-symbol-demand-protection-online-violence> > [accessed 12/06/2022].

Case Law

Booyesen v Major and Another (5043/2021) [2021] ZAWCHC 273 (31 August 2021) < <https://www.saflii.org/za/cases/ZAWCHC/2021/273.html> > [accessed 01/09/2022].

DPE and TRC v Speaker of the National Assembly and Others Constitutional Case I\0.5/2016. < <http://dpe.org.ls/wp-content/uploads/2017/03/DPE-TRC-Constitutional-Case.pdf> > [accessed 01/03/2022].

Gerald P. Mitchell v State of Wisconsin USSC 18-6210 < https://www.supremecourt.gov/DocketPDF/18/18-6210/90559/20190304155748168_18-6210%20tsac%20DKTLibertyProject%20A.pdf > [accessed 06/05/2022].

Patel v Hussain 485 S.W.3d 153 (2016) < https://scholar.google.com/scholar_case?case=5211055769905940100&q=revenge+porn+compensation&hl=en&as_sdt=2006 > [accessed 28/04/2022].

Roshanara Ebrahim v. Ashleys Kenya Limited & 3 others [2016] eKLR <
<http://www.kenyalaw.org>> [accessed 27/02/2022].

Vikram Deo Singh Toomar v. State of Bihar 1988 A.I.R. 1782, 1988 S.C. R. SLP. (1) 755 <
<https://indiankanoon.org/doc/588316/>> [accessed 01/09/2022].

Miscellaneous

African Declaration on Internet Rights and Freedoms. <
<https://africaninternetrights.org/sites/default/files/African-Declaration-English-FINAL.pdf>>
[accessed 18/06/2022].

Due Diligence Project, “Submission by the Due Diligence Project to the Office of the High Commissioner for Human Rights Pursuant to Human Rights Council Resolution 32/13 on Ways to Bridge the Gender Digital Divide from a Human Rights Perspective” *OHCHR*. (2017) <
<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/GenderDigital/DueDiligenceProject.pdf>> [accessed 10/06/2022].

Gender Based Violence AoR. “Learning Brief 1: Understanding Technology Facilitated Gender Based Violence” *Learning Series on Technology Facilitated Gender Based Violence*. Gender Protection Cluster. (2021).

Gender Based Violence AoR. “Learning Brief 3: Implications of technology facilitated gender based violence and actions for humanitarian agencies, donors and online industries” *Learning Series on Technology Facilitated Gender Based Violence*. Gender Protection Cluster. (2021).