



Data Governance and Digital Safety: Evaluating Kenya's Legal Approach to Technology-Facilitated Gender-Based Violence



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Acknowledgment

The preparation and publication of this report have been made possible through funding from the Hewlett Foundation. We would like to recognise Dr Melissa Omino, Director at CIPIT, for her visionary research leadership towards the development of this report. We thank Florence A. Ogonjo, Doreen Abiero, Gia Sanjan and Irene Makau, the authors of this report. We are equally grateful to Dr Nelly Chepngetich Rotich and Joshua Kitili, whose insights and editorial expertise significantly elevated the quality and depth of the final publication. Lastly, we wish to thank the administrative team at CIP-IT for their continued support throughout the development of this report, as well as Gloria Muthoka for designing it.

List of Acronyms and Abbreviations

Core Concepts and Issues

TFGBV: Technology-Facilitated Gender-Based Violence

GBV: Gender-Based Violence

DCC: Digital Coercive Control

OSEA: Online Sexual Exploitation and Abuse

CSAM: Child Sexual Abuse Material

PTSD: Post-Traumatic Stress Disorder

Organizations and Entities

UNFPA: United Nations Population Fund

AMWK: Association of Media Women in Kenya

ICRW: International Center for Research on Women

ICJ: International Commission of Jurists (specifically ICJ Kenya)

SADC: Southern Africa Development Community

Legal and Policy Frameworks

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women.

DEVAW: Declaration on the Elimination of Violence Against Women

DPA: Data Protection Act (specifically the Kenyan Data Protection Act of 2019)

STAJ: Social Transformation through Access to Justice (referring to the Judiciary of Kenya's STAJ Blueprint)

Social and Development Terms

SDGs: Sustainable Development Goals

PWD: Persons with Disabilities

HRDs: Human Rights Defenders

Executive Summary

Technology is increasingly embedded in the social, economic, and political fabric of Kenyan society, reshaping how individuals interact, participate and exercise their rights. However, these same digital spaces have also become sites where existing gendered inequalities are reproduced and intensified. This report situates Technology Facilitated Gender-Based Violence (TFGBV) within the broader context, arguing that such harm is not a distinct or isolated phenomenon, but rather a continuation of entrenched structures and unequal power relations now mediated through digital platforms.

In identifying this harm, the report critically interrogated Kenya's legal and regulatory framework, highlighting the persistent gap between technological development and legislative responses. In the absence of law explicitly addressing TFGBV, the current approach relies on adapting legal instruments. International and regional frameworks provide a normative human rights foundation, though limited in their origins, as they were not established in contemplation of the digital era. Domestically, the report leans on the Constitution of Kenya, which establishes broad protections for dignity, privacy, and security, and on other subsidiary legislation that has been amended, marking important progress by enabling content takedown and a system of deactivation orders. Data Protection Laws emerge as a critical tool for data governance, empowering individuals to exercise their rights.

Despite the evolving framework, enforcement is identified as a central challenge, noting significant barriers to justice. To address the shortcomings, the report proposes targeted recommendations aimed at shifting from a reactive to a proactive governance approach. Addressing TFGBV effectively requires more than incremental legal reform; it calls for a clear reconceptualization of data governance as a core component of digital safety, capable of reinforcing legal protections while addressing social and structural drivers of harm.

1 Introduction

Tracing the roots of aggravation against women, gender-based violence (GBV) (synonymously termed as violence against women with distinct behaviour) has been viewed through a multifactorial framework.¹ Underlying social and cultural factors, including a woman's cultural background, her relationships, and her history of abuse or sexual experiences, often contribute to the root causes of the violence she experiences.² Despite such factors, a broader perspective towards conceptualising GBV is indicative of its impact on women, regardless of socioeconomic status, through several forms such as intimate partner violence, sexual assault and forced marriages.³ Technology, which has accelerated the rate at which global communication occurs and resources are accessed, is a key medium facilitating GBV at present; hence, technology facilitated GBV.⁴

Acknowledging the ambiguity in defining technology-facilitated gender-based violence (TFGBV), the United Nations Population Fund (UNFPA) tailored a definition based on several international publications as "an act of violence perpetrated by one or more individuals that is committed, assisted, aggravated and amplified in part or fully by the use of information and communication technologies or digital media against a person based on their gender".⁵ Manifestations of TFGBV include, online harassment and abuse, cyberbullying, non-consensual sharing of intimate images, doxxing, stalking, shallow fake and online impersonation, described further in this report. Perpetrators of TFGBV are often individuals known to the victim, such as family members, friends, or

intimate partners, though they can also be strangers.⁶

The use of technology through a 'spaceless' medium to advance abuse in multiple forms constitutes 'digital coercive control', which often results in women being tracked and monitored. Digital Coercive Control (DCC) can be described as mechanisms that perpetrators use to stalk, harass and abuse current or former partners in digital society through technological platforms and their associated social networking services.⁷ DCC resembles perpetrators' omnipresent surveillance, referring to the continuous monitoring of victims through various technological means.⁸ This constant oversight creates a sense that the abuser is always present at all times, effectively using technology to maintain control and surveillance over the victim's movement, communications and environment.⁹ Such surveillance has an impact on women who feel disempowered, insecure and constantly struggle to manage their emotional state.¹⁰ Such disempowerment leads to a digital gender divide, as women are discouraged from participating in online spaces that have economic and even educational value. This exclusion prevents them from engaging in public and political life. These areas play a crucial role in development, particularly in achieving the Sustainable Development Goals (SDGs), such as SDG 5 on gender equality and SDG 16 on inclusive institutions. As an example, in 2022, over half of women candidates in the election in Kenya, compared to about one-third of men, experienced TFGBV on their Facebook accounts through hate speech, aimed at silencing them. This weakened women's participation in politics and policymaking.

¹Heise L, Ellsberg M, Gottmoeller M, 'A global overview of gender-based violence' International Journal of Gynaecology and Obstetrics, 2002, <<https://movendi.ngo/wp-content/uploads/2015/03/a-global-overview-of-gender-based-violence.pdf>> accessed on 27 November 2024.

²ibid.

³Khushi Ochani, Amna Siddiqui, Sidhant Ochani, 'An insight on gender-based violence' Health Science Reports, 2024, <<https://onlinelibrary.wiley.com/doi/pdfdirect/10.1002/hsr2.1815>> accessed on 27 November 2024.

⁴Rutgers, 'Decoding technology-facilitated gender-based violence: A reality check from seven countries' 2024, <<https://rutgers.international/wp-content/uploads/2024/06/Decoding-TFGBV-Report-2024.pdf>> accessed on 27 November 2024.

⁵UNFPA, 'Technology-facilitated Gender-based violence: Making all spaces safe', 2021, <<https://www.unfpa.org/sites/default/files/pdf/UNFPA-TFGBV-Making%20All%20Spaces%20Safe.pdf>> accessed on 27 November 2024.

⁶Nicola Henry and Anastasia Powell, 'Technology-facilitated sexual violence: A literature review of empirical research' Trauma, Violence, & Abuse, 2016, <<https://pubmed.ncbi.nlm.nih.gov/27311818/>> accessed on 27 November 2024.

⁷Pepperdine Dispute Resolution Law Journal, 'Digital Coercive Control' (2024) 4 Pepperdine Dispute Resolution Law Journal 328, 19, 22, 24, 30, 32, 35 <<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1554&context=drj>> accessed 2 July 2025.

⁸Michaela M. Rogers, Colleen Fisher, Parveen Ali, Peter Allmark, and Lisa Fontes, 'Technology-Facilitated Abuse in Intimate Relationships: A Scoping Review' (2023) <<https://doi.org/10.1177/15248380221090218>> accessed 2 July 2025.

⁹Roxanne Leitão, 'Technology-Facilitated Intimate Partner Abuse: a qualitative analysis of data from online domestic abuse forums' Human-Computer Interaction, 2019, <<https://www.tandfonline.com/doi/full/10.1080/07370024.2019.1685883>> accessed on 27 November 2024.

¹⁰ibid.

A study on technology-facilitated intimate partner abuse in the United Kingdom revealed that victims and survivors of intimate partner abuse used various forms of TFGBV to control their partners.¹¹ Forms of TFGBV included overt and covert surveillance and persistent threats of harassment. These behaviours encompass monitoring victims' contacts, communications, and social media accounts, tracking victims' locations and movements and sending continuous threats, harassment and other forms of abuse through digital channels.¹² Overt surveillance that takes the form of using a partner's passwords or shared devices to access private information under the guise of suspected infidelity was identified as key in such relationships.¹³ Covert surveillance, including the use of spy apps or account breaches, further enabled perpetrators to monitor victims without their knowledge.¹⁴ Additionally, restrictions to access devices due to confiscation or destruction of the devices, as well as prolonged isolation of the victims, equally contributed to the abuse.¹⁵

A 2017 study in the United States of America on how victims have undergone online harassment indicated that social media platforms were at the forefront in facilitating TFGBV, with other avenues such as one's comments section, messaging apps and emails taking subsequent positions.¹⁶

A 2021 study by the Economist Intelligence Unit illustrated how women were impacted disproportionately by TFGBV as compared to men.¹⁷ Prevalence in TFGBV cases was particularly noted in women in abusive intimate relationships, i.e. women who were part of minority groups such as women with disabilities and women in political or professional

roles requiring activism, to name a few.¹⁸ The study further demonstrated how TFGBV affects younger women who belong to countries that generally have a history of institutionalised gender inequality.¹⁹ Nine main tactics used by perpetrators were identified by the study as astroturfing, cyber-harassment, doxing, hacking and stalking, hate speech, impersonation, misinformation and defamation, video-and-image-based abuse and violent threats.²⁰ 92% of the women studied stated that their sense of well-being was threatened by such abuse. Further, the study showed that 1 in 3 women think twice before posting content online.²¹

Additionally, a 2021 study by the Inter-Parliamentary Union found that 46% of African women in parliament have experienced online attacks.²² These online attacks deter women from participating in politics, harm their influence and visibility, and, in turn, impact the quality and efficiency of their work in parliament and in democracy. Similarly, 73% of women journalists experience online violence in their course of work. 20% of these women have been attacked offline in connection to online violence, causing many to withdraw from public conversations, stop reporting online, and in some cases, leave the profession entirely.

Zooming into Africa, a 2021 study on the nature of technology-facilitated abuse among young adults conducted in Sub-Saharan Africa indicated how a majority of young adults have experienced some form of technology-facilitated violence and abuse (TFVA),

¹¹Michaela M. Rogers, Colleen Fisher, Parveen Ali, Peter Allmark, and Lisa Fontes, 'Technology-Facilitated Abuse in Intimate Relationships: A Scoping Review' (2023) <<https://doi.org/10.1177/15248380221090218>> accessed 2 July 2025.

¹²ibid.

¹³ibid.

¹⁴ibid.

¹⁵ibid.

¹⁶PEW Research Center, 'Online harassment 2017' 2017, <[Online Harassment 2017](#)> accessed on 27 November 2024.

¹⁷Economist Intelligence Unit, 'Methodology: Measuring the prevalence of online violence against women' 2021, <https://cdn.vev.design/private/WbTNg-dOVVvgyq5TIBiYpWVmMCJQ2/hyw1xhPZO6_EIU_METHODODOLOGY_PREVALENCE%20OF%20ONLINE%20VIOLENCE%20AGAINST%20WOMEN_FINAL.pdf.pdf> accessed on 27 November 2024.

¹⁸Foreign, Commonwealth & Development Office, 'Technology-facilitated gender-based violence: preliminary landscape analysis' 2023, <https://assets.publishing.service.gov.uk/media/64abe-2b21121040013ee6576/Technology_facilitated_gender_based_violence_preliminary_landscape_analysis.pdf> accessed on 27 November 2024.

¹⁹Economist Intelligence Unit (n 17).

²⁰ibid.

²¹Economist Intelligence Unit, 'Measuring the prevalence of online violence against women' 2021, <[Measuring the prevalence of online violence against women](#)> accessed on 27 November 2024.

²²Inter-Parliamentary Union and African Parliamentary Union, Issue brief: Violence Against Women in Parliaments in Africa (2021) <https://www.ipu.org/resources/publications/issue-briefs/2021-11/sexism-harassment-and-violence-against-women-in-parliaments-in-africa> accessed 30 October 2025.

... a 2021 study on the nature of technology-facilitated abuse among young adults conducted in Sub-Saharan Africa indicated how a majority of young adults have experienced some form of technology-facilitated violence and abuse (TFVA), with women being disproportionately affected.

with women being disproportionately affected.²³ Observations made within the study further reflected how the most prevalent forms of TFVA that women experience are unwanted sexual content, breached account access, stalking and violent threats, while coping strategies usually take the form of blocking perpetrators or changing passwords due to legal and institutional barriers in the region.²⁴

The impact that TFGBV has on women, particularly in the Global South, translates to psychological and emotional harms which manifest through feelings of fear, anxiety and trauma due to online abuse, harassment and threats.²⁵ Additionally, public disclosure of private information, a common result of TFGBV, often leads to defamation and misrepresentation. This targets women's personal reputations, leading them to be socially ostracised and further victimised. These acts have led to infringement on the right to privacy online, restriction of women's freedom of expression in mainstream media, silencing of women online and overall censorship of their online presence.²⁶

Holistically, studies surrounding TFGBV globally have been evaluated as lacking evidence, due to poor coordination of data collection at global or regional levels, inconsistent and unclear standards and definitions and an overall underestimation of

prevalence on such levels.²⁷ Evidentiary limitations further plague the legal system in ascertaining recourse through substantive law, considering that the burden of proof generally falls on the victim.²⁸ In this context, victims of the abuse have to give sufficient proof, which is complicated by their trauma, limited digital literacy and the nature within which the abuse occurs. The limitations oftentimes lead to case dismissals, creating barriers to access to justice.²⁹ Globally, cases have been testamentary to how TFGBV can be trivialised due to the use of technology as a medium as opposed to physical violence.³⁰

Additionally, gaps in the legal framework hinder efforts to combat TFGBV. A study on the regulations addressing violence against women online in Ethiopia, Kenya, Senegal, South Africa and Uganda mirrored how provisions to criminalise gender-based violence in general and in the online space are present.³¹ However, legislative efforts as well as specific laws to address TFGBV are lacking to the extent that they have been described as '...failure...to live up to their constitutional obligations'.³²

By conducting a comprehensive review of existing research, reports and policy, this report aims to assess the prevalence of TFGBV in Kenya, its impact

²³Olusesan Ayodeji Makinde, Emmanuel Olamijuwon, Nchelem Kokomma Ichegbo, Cheluchi Onyemelukwe, and Michael Gboyega Ilesanmi, 'The Nature of Technology-Facilitated Violence and Abuse among Young Adults in Sub-Saharan Africa', *The Emerald International Handbook of Technology-Facilitated Violence and Abuse*, 2021, <https://research-repository.st-andrews.ac.uk/bitstream/handle/10023/28526/Makinde_2021_Technology_facilitated_violence_CC.pdf;jsessionid=7985597B5F5D2056C4E301683A49C-D25?sequence=1> accessed on 28 November 2024.

²⁴ibid.

²⁵Suzie Dunn, 'Technology-Facilitated Gender-Based Violence: An Overview', *Centre for International Governance Innovation*, 2020, <<https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/>> accessed on 27 November 2024.

²⁶ibid.

²⁷Foreign, Commonwealth & Development Office, 'Technology-facilitated gender-based violence: preliminary landscape analysis' 2023, <https://assets.publishing.service.gov.uk/media/64abe2b21121040013ee6576/Technology_facilitated_gender_based_violence_preliminary_landscape_analysis.pdf> accessed on 27 November 2024.

²⁸Wendy O'Brien and Marie-Helen Maras, 'Technology-facilitated coercive control: Response, redress, risk, and reform', *International Review of Law, Computers & Technology*, 2024, <https://www.tandfonline.com/doi/pdf/10.1080/13600869.2023.2295097?casa_token=Vq2YlinwNSEAAAAA:06cegRaNpgRRIsT8YhBkCRSo3hp-prEky-3oVQi_NLC4MQ711BDztLX6YIL4TTHPsTXHd0701oe52A> accessed on 28 November 2024.

²⁹ibid.

³⁰ibid.

³¹Chioma Nwaodike and Nerissa Naidoo, 'Fighting Violence Against Women Online: A Comparative Analysis of Legal Frameworks in Ethiopia, Kenya, Senegal, South Africa, and Uganda', 2020, <https://ogbv.policypolicy.org/legal_analysis.pdf> accessed on 28 November 2024.

³²ibid.

on survivors, and institutional and legal responses. This research is informed by the backdrop of increased awareness and capacity-building initiatives to understand and combat TFGBV, as well as noted reports of this increase at the onset of the COVID-19 pandemic. While the focus of this study is the impact of TFGBV on women, it also, in context, addresses men, thereby providing comprehensive, evidence-based guidance to develop recommendations and equip various stakeholders within the country on TFGBV.

2 Kenyan Context of Technology-Facilitated Gender-Based Violence

GBV is a global issue that disproportionately affects women. However, in Kenya, its underpinnings may be distinct.³³ As a patriarchal society with reinforced gender roles in most households, GBV in Kenya has its impact on socioeconomic, political and cultural fronts by virtue of systemic and structural foundations in Kenyan society.³⁴

While citizens are aware of the different manifestations of GBV in society, it remains prevalent in Kenya for reasons identified by a study conducted by members of Social Development Direct in 2018,³⁵ particularly cultural norms and attitudes deriving from community perception of violence within marriage. Often, violence within marriages is normalised due to sociocultural norms. Only severe acts of violence which cause visible physical injuries are viewed as socially unacceptable, resulting in wider reporting.³⁶ Stigma surrounding GBV survivors, which discourages them from reporting, prevailing gender roles and stereotypes underpinning the violence and a widespread acceptance of violence as part of normal relationships, further compound

the continued prevalence of GBV.³⁷ Despite reporting, lack of access to established support services in rural areas hinders efforts to mitigate GBV, compounded by entrenched beliefs that stigmatise the act of reporting, particularly for women.³⁸

A closer look into the analysis of how TFGBV affects women in professions that spotlight them in the public eye reveals the impact of online violence as reflected in the tone and content of online texts.³⁹ For instance, a study on online activities of politicians in the Kenyan 2022 general elections revealed how social media was utilised to target female politicians' bodies, sexuality, and traditional social roles rather than their competence, capacity, and contributions as leaders.⁴⁰

Legally, studies suggest that current frameworks not only address the prevention of GBV but also include mechanisms for reporting and seeking remedies.⁴¹ However, there is a persistent enforcement gap resulting from factors such as deeply ingrained customs and norms in the society, limited infrastructure and resources, and limited engagement at county levels, to name a few.⁴² A policy brief by the International Commission of Jurists (ICJ) in Kenya established the persistent regulatory challenges regarding accountability measures in place for TFGBV.⁴³ The policy brief highlights challenges related to resource constraints and inefficient training among police, prosecutors, and judicial officers, which hinder the effective handling of TFGBV cases. The lack of specific laws to address TFGBV forms

³³Dr. Ruth Aura, 'Situational Analysis and the Legal Framework on Sexual and Gender-Based Violence in Kenya: Challenges and Opportunities', 2015, <<https://kenyalaw.org/kl/index.php?id=4512>> accessed on 28 November 2024.

³⁴ibid.

³⁵Patricia Fernandes, Verena Phipps and Lisa Schmidt, 'Kenya Gender-Based Violence Service Gap Analysis at the County Level', Social Development Direct, 2020, <<https://documents1.worldbank.org/curated/en/486011588224486592/pdf/Kenya-Gender-Based-Violence-Service-Gap-Analysis-at-the-County-Level.pdf>> accessed on 28 November 2024.

³⁶ibid.

³⁷ibid 12, 30-31.

³⁸ibid.

³⁹Robi Koki Ochieng, 'An exploration of gender-based violence perpetuated in online print stories against prominent and professional women in Kenya', 2018,

<https://www.academia.edu/38476339/An_exploration_of_online_violence_perpetuated_against_prominent_and_professional_women_in_Kenya_pdf> accessed on 28 November 2024.

⁴⁰Arthur Kakande, Bonnita Nyamwire, Bonaventure Saturday and Irene Mwendwa, 'A report on Online Violence Against Women in the 2022 Kenya General Election', Byte Bullies, 2023, <https://policy.org/wp-content/uploads/2023/05/Byte_Bullies_report.pdf> accessed on 28 November 2024.

⁴¹National Gender and Equality Commission, 'The Status of Sexual and Gender Based Violence (SGBV) Policies and Laws in Kenya', 2016, <<https://www.ngeckkenya.org/Downloads/Status%20of%20SGBV%20Legislations%20in%20Kenya.pdf>> accessed on 28 November 2024.

⁴²ibid.

⁴³ICJ Kenya, 'Ending Technology-Assisted Violence Against Women in Kenya', 2016, <https://icj-kenya.org/?sdm_process_download=1&download_id=5033> accessed on 28 November 2024.

a critical part of the prevalence of cases in Kenya.⁴⁴ Whilst this calls for a holistic approach to materially change the state of criminalising forms of TFGBV in the country, capacity building among enforcers of the law, stakeholders within tertiary institutions,⁴⁵ and the public is critical.⁴⁶

The prevalence of GBV in Kenya escalated during the COVID-19 pandemic, as evidenced by a tenfold increase in reports to the national helplines during lockdown.⁴⁷ Specifically, a report by the Media Council of Kenya found that between January and December 2020, a total of 5,009 cases were recorded through the National GBV toll-free helpline 1195. This was an increase of 36% from the previous year.⁴⁸ In 2021, the Government of Kenya made admirable commitments to end GBV in the country by adopting a GBV indicator, investing more finances towards aiding victims, investing in academia, and advocating for collaboration on a multi-stakeholder level to ensure accountability.⁴⁹ Despite these efforts, the online space now facilitates GBV through various forms of harassment in Kenya.

Research and literature highlight the dire impact of TFGBV, noting its significant and multifaceted nature. The psychological, social, and economic repercussions of TFGBV remain profound, affecting not only the victims but also the broader community and societal structures.⁵⁰ Victims of TFGBV often

experience significant psychological distress, including anxiety, depression, and a diminished sense of self-worth. A report by AMWK highlights that women with disabilities are particularly vulnerable, facing compounded stigma and isolation that exacerbate their experiences of online harassment, with some of these experiences translating to actual physical harm. The emotional toll of such violence can lead to withdrawal from public life, limiting their participation in social, political, and economic spheres.⁵¹

Moreover, the AMWK report underscores the economic implications of TFGBV. Victims find it challenging to maintain employment or pursue career opportunities due to the fear of harassment or retaliation.⁵² This economic vulnerability may, in turn, lead to increased dependence on others, further entrenching gender inequalities. The societal perception of women, especially those with disabilities, as less capable or deserving of respect is reinforced through acts of TFGBV, perpetuating harmful stereotypes and cultural norms.⁵³

Additionally, the Rapid Study to TFGBV report on tertiary institutions, highlighting the experience of 90% of young adults in tertiary institutions, suggests significant implications for the victims and the wider educational environment.⁵⁴ The high percentage indicates that TFGBV is not an isolated issue, as may be assumed. However, it is a significant problem that impacts many young adults. This kind of exposure to online harm may create a culture of fear and anxiety, undermine the overall well-being of students and potentially hinder their academic performance.⁵⁵

The psychological impact on victims is particularly concerning. Many individuals who experience TFGBV report severe mental health issues, including anxiety, depression, and post-traumatic stress disorder (PTSD). The study indicates that 38.7% of victims reported psychological impacts, which can

⁴⁴UNFPA and Collaborative Centre for Gender & Development, 'Rapid Study on Technology Facilitated Gender-Based Violence in Tertiary Institutions', 2024, <<https://kenya.unfpa.org/en/publications/rapid-study-technology-facilitated-gender-based-violence-tfgbv-kenyas-higher-learning>> accessed on 28 November 2024.

⁴⁵Means all post-secondary school education and training programmes but does not include any training undertaken in a university as defined in the Kenya Institute of Curriculum Development Act Cap 211A.

⁴⁶ibid.

⁴⁷Nita Bhalla, 'Kenya orders probe into rise in violence against women and girls during pandemic', Reuters, 2020, <<https://www.reuters.com/article/world/kenya-orders-probe-into-rise-in-violence-against-women-and-girls-during-pandemic-idUSKBN2472EQ/>> accessed on 28 November 2024.

⁴⁸Media Council of Kenya, Media Coverage of Gender-Based Violence during the COVID-19 Period (2023). <<https://mediacouncil.or.ke/sites/default/files/downloads/GBV%20Report.pdf>> accessed 2 July 2025.

⁴⁹Equality Now, 'Kenya just committed to ending gender-based violence in five years. Here's how they plan to do it', 2021, <[Kenya just committed to ending gender-based violence in five years. Here's how they plan to do it](https://www.equalitynow.org/kenya-just-committed-to-ending-gender-based-violence-in-five-years-heres-how-they-plan-to-do-it)> accessed on 28 November 2024.

⁵⁰Collaborative Center for Gender and Development, 'Rapid Study on Technology Facilitated Gender Based Violence in Tertiary Institutions' (2024). <<https://kenya.unfpa.org/en/publications/rapid-study-technology-facilitated-gender-based-violence-tfgbv-kenyas-higher-learning>> accessed 10 September 2024.

⁵¹Robi (n 39).

⁵²ibid.

⁵³ibid.

⁵⁴Collaborative Center for Gender and Development, 'Rapid Study on Technology Facilitated Gender Based Violence in Tertiary Institutions' (2024) <<https://kenya.unfpa.org/en/publications/rapid-study-technology-facilitated-gender-based-violence-tfgbv-kenyas-higher-learning>> accessed 10 September 2024.

⁵⁵ibid.



significantly affect their ability to engage fully in their education and social interactions.⁵⁶

Considering the studies presented depicting manifestations of TFGBV in Kenya, and the likely impact, there is a pressing need for effective reporting mechanisms, robust support services for victims, and comprehensive awareness programs that educate not only the larger student population where the number is higher, but also the public on the harms and manifestations of TFGBV. Owing to the number of Kenyans on online spaces, it is imperative that they become knowledgeable about the nature of TFGBV and its far-reaching consequences. Consequently, the studies highlight the importance of developing clear policies addressing TFGBV. The apparent trend in normalising TFGBV poses a far more significant threat to gender equality. If left unaddressed, it can perpetuate harmful stereotypes and reinforce existing inequalities. This undermines not only the rule of law but also human rights such as the right to privacy, freedom of expression, right to life and physical integrity, right to dignity, right to non-discrimination and the right to access justice.⁵⁷

The noticeably high rate of TFGBV reinforces the urgent need for a critical focus on online harm, particularly on the role that policy, laws, and regulations play in combating TFGBV, the extent of institutionalisation in developing guidelines and mechanisms to provide protection and justice to victims and deterring perpetrators.

3 Identifying the Types and Manifestations of TFGBV

TFGBV is still not widely or systematically recognised as a legitimate form of gender-based violence among societal groups, and more so, relevant regulatory authorities, lawmakers and stakeholders responsible for addressing TFGBV.⁵⁸ As of January 2024, statistics showed that approximately 22.7 million Kenyans were internet users, with internet penetration standing at 40.8% of the total population.⁵⁹ The continued rise in online presence, while reflecting significant digital milestones in Kenya, suggests a likely increase in internet / online-related harms, such as TFGBV.

As TFGBV is technology-centred, it manifests in different ways. Research conducted by the

⁵⁶Collaborative Center for Gender and Development (n 12).

⁵⁷Elizabeth Coombs, 'Human Rights, Privacy Rights, and Technology-Facilitated Violence' in [Jane Bailey, Nicola Henry and Asher Flynn], [The Emerald International Handbook of Technology-Facilitated Violence and Abuse] (Emerald Publishing Limited, 2021) i-xxiv <<https://doi.org/10.1108/978-1-83982-848-520211059>> accessed 4 November 2024.

⁵⁸'Decoding Technology Facilitated Gender Based Violence.' (Rutgers International, 2024) <<https://rutgers.international/wp-content/uploads/2024/06/Decoding-TFGBV-Report-2024.pdf>> accessed September 10, 2024.

⁵⁹Global Digital Insights (Data Reportal, 2024) <<https://datareportal.com/reports/digital-2024-kenya>>

International Center for Research on Women (ICRW) notes the complexity of TFGBV and how far it is reaching.⁶⁰ The study notes that TFGBV occurs worldwide and is not confined to any region. Though the severity of TFGBV and response mechanisms vary, they are notable worldwide.⁶¹

Continued and developing research in the growing area of online harms notes with concern that the normalisation of TFGBV in digital spaces not only perpetuates a culture of violence and harassment but also has severe psychological and emotional impacts on the victims.⁶² TFGBV comprises a spectrum of online behaviours that may occasionally cross into the offline world, where women are faced with explicit messaging and tracking. Although TFGBV occurs in online/digital spaces, it can severely affect the survivors, both online and offline. TFGBV also encompasses the experiences of both men and women. However, women and girls rank higher and are often disproportionately impacted by TFGBV.⁶³

A 2024 study on TFGBV in Kenya, conducted by the United Nations Population Fund (UNFPA) Programme Division, Gender, Human Rights and Inclusion Branch, highlights various forms of technology-facilitated violence. The types of TFGBV identified include:⁶⁴

- ➔ **Online defamation:** involves publicly releasing false or malicious information that damages a person's reputation. Such information or content is shared on online platforms. This is primarily done through social media platforms, which contribute to the widespread dissemination of such information.⁶⁵
- ➔ **Cyberbullying:** a repeated behaviour

aimed at scaring, angering or shaming a person(s) using digital technologies. Cyberbullying can manifest in several ways, including spreading lies or posting embarrassing photos on social media; sending hurtful, abusive or threatening messages, images and videos through messaging platforms; or impersonating someone and sending mean messages to others on their behalf using fake or pseudo accounts.⁶⁶

- ➔ **Doxxing:** the posting of personal and sensitive information, including home and work addresses, telephone numbers, email addresses and family names, without permission.⁶⁷
- ➔ **Image-based abuse:** the use of imagery, often sexual, aimed to objectify, exploit, humiliate or harass the target. Examples include non-consensual sharing of intimate images, which could consist of images of both adults and children.⁶⁸
- ➔ **Online impersonation:** involves creating a fake profile and assuming someone's identity for nefarious purposes, including destroying someone's reputation or threatening their safety.⁶⁹
- ➔ **Online sexual exploitation and abuse (OSEA):** this term encompasses several sexually exploitative and harmful behaviours that occur or are facilitated online using digital technologies. OSEA includes online grooming, live-streaming of sexual abuse, child sexual abuse material (CSAM), online sexual coercion and extortion, online sex trafficking, and

⁶⁰International Center for Research on Women (ICRW), 'Technology-facilitated Gender-based Violence: What is it, and how do we measure it?' (2018). <https://www.icrw.org/wp-content/uploads/2018/07/ICRW_TFGBVMarketing_Brief_v8-Web.pdf> accessed September 10, 2024.

⁶¹ibid.

⁶²'Decoding Technology Facilitated Gender Based Violence.' (Rutgers International, 2024) <<https://rutgers.international/wp-content/uploads/2024/06/Decoding-TFGBV-Report-2024.pdf>> accessed September 10, 2024.

⁶³Rutgers, Decoding Technology Facilitated Gender Based Violence. (n 54).

⁶⁴'An Infographic Guide to Technology Facilitated Gender Based Violence.' (UNFPA, 2024) <<https://www.unfpa.org/sites/default/files/pub-pdf/An%20Infographic%20Guide%20to%20An%20Infographic%20Guide%20to%20TFGBV.pdf>> accessed 27 November 2024.

⁶⁵ibid.

⁶⁶UNICEF 'Cyberbullying: What is it and How to Stop it.' <<https://www.unicef.org/end-violence/how-to-stop-cyberbullying>> accessed 27 November 2024.

⁶⁷UNFPA 'Digital Violence Terms.' <<https://www.unfpa.org/thevirtualisreal-background#glossary>> accessed 27 November 2024.

⁶⁸UNFPA 'Digital Violence Terms.' <<https://www.unfpa.org/thevirtualisreal-background#glossary>> accessed 27 November 2024.

⁶⁹UNFPA 'Digital Violence Terms.' <<https://www.unfpa.org/thevirtualisreal-background#glossary>> accessed 27 November 2024.

image-based sexual abuse.⁷⁰

- ➔ **Shallow fake:** manipulating an image using editing software, such as attaching someone's face to another person's body. A more advanced characterisation of this would be the use of machine learning deepfakes.⁷¹
- ➔ **Trolling and misinformation:** use of explicit language that is highly gendered to perpetuate stereotypes or false information or rumours about individuals, mainly targeting women who are non-conforming and vocal about women's rights or empowerment issues.⁷²

These types and manifestations of TFGBV trigger and exacerbate offline physical and sexual violence, further contributing to the normalisation of abuse and threatening behaviour both online and offline.⁷³

A 2024 study by the Collaborative Center for Gender and Development on manifestations of TFGBV in Kenya observed TFGBV among Kenyans online, mostly aged between 17 and 34. Notably, this was prevalent among those within the median age of 20, highlighting the need for a more in-depth examination of TFGBV among youth in universities and tertiary institutions.⁷⁴ Although the research was conducted in tertiary institutions, it revealed that TFGBV occurs differently among male and female students, highlighting the most common types of TFGBV and, in turn, shedding light on the extent to which digital harms are perpetuated in digital spaces, particularly in Kenya. Key findings from the research showed that

90% of students in tertiary institutions experienced one form or another of TFGBV, with female students being the most disproportionately impacted in comparison to male students, statistics representing 64% and 35.5%, respectively.⁷⁵

The research additionally classified the most prevalent TFGBV. Online defamation and cyberbullying were the highest, at 21.9% and 19.1%, respectively. This was followed by non-consensual sharing of intimate images at 17.8%. Amongst the female students, online defamation and non-consensual sharing of intimate images were most observed. This is in comparison to the male students who experienced more online defamation and cyberbullying. Male students were identified as the primary perpetrators, accounting for 78.6% of TFGBV cases. Female students and male teaching staff were also noted as perpetrators, although with lower statistical numbers at 11.5% and 5.4% respectively.⁷⁶

A research report by the Association of Media Women in Kenya (AMWK) highlighted that TFGBV was dominant in older social media platforms such as Facebook and WhatsApp, which accounted for about 36.11% and 30.56% of incidents, respectively, in comparison to Twitter at 8.33%, with TikTok having the lowest incidence at 5.56%. Other platforms, such as LinkedIn, personal email accounts, and online discussion sites, were mentioned by 1.39% of participants, indicating a much lower prevalence of TFGBV on these platforms. This research's primary focus was on influential women, based on their profession, vocation, economic, educational, and social networks. The main respondents included politicians, government officials, journalists, academics, athletes, and women in business. Entrepreneurs and professionals in various business sectors, women in creative arts, human rights defenders (HRDs), and social influencers were also among the respondents. This indicates a gendered nature to TFGBV with women, and in this case, women of influence being disproportionately impacted by the growing categorisation of online harms.⁷⁷

⁷⁰Equality Now 'Online Sexual Exploitation and Abuse: A Glossary of Terms.' <<https://equalitynow.org/online-sexual-exploitation-and-abuse-a-glossary-of-terms/>> accessed 10 September 2024.

⁷¹'Digital Violence Terms.' (UNFPA), available at: <https://www.unfpa.org/the-virtualisreal-background#glossary>

⁷²Deborah Brown and Allison Pytlak 'Why Gender Matters in International Cyber Security.' (Association for Progressive Communication, April 2020) <https://www.apc.org/sites/default/files/Gender_Matters_Report_Web_A4.pdf> accessed 10 September 2024.

⁷³Collaborative Center for Gender and Development, 'Rapid Study on Technology Facilitated Gender Based Violence in Tertiary Institutions' (2024). https://kenya.unfpa.org/en/publications/rapid-study-technology-facilitated-gender-based-violence-tfgbv-kenyas-higher-learning?_cf_chl_tk=xAUjnbT7n2ii9nENwyNmuTqzLa4EJ0tWgMWaM.ioccurr differently amongH5t4-1732707509-1.0.1.1-uTIGNzjf_ef6XfhYRWJaxp08Aw3yLtBcy-WM45uhjRg> accessed 10 September 2024.

⁷⁴ibid

⁷⁵ibid.

⁷⁶ibid.

⁷⁷Robi Koki Ochieng and Dr. Rose Kimani, An Investigation on the Prevalence of Technology Facilitated - Gender Based Violence (TFGBV) Against Women with Prominent Public Lives (2023, AMWIK).

The report revealed that the most common forms of TFGBV reported included being sent unsolicited intimate images (29.17%), hate speech (25%), and harassing private messages (22.22%).⁷⁸ A key observation in these TFGBV manifestations was that, although incidents occur in public spaces, they are exacerbated through private communications. About 60% of the incidents noted were perpetrated by strangers or individuals whose real identities were unknown to the victims, bringing in a concept of perpetrator anonymity, which online platforms often provide offenders, making it difficult for victims to report such incidents.⁷⁹

Notably, the research further introduced a new component towards observing TFGBV, an observation of the disproportionate impact of TFGBV on marginalised groups, mainly persons with disabilities (PWD).⁸⁰ The findings of the report revealed that 60% of persons with a disability experienced one form or another of TFGBV, with a dangerous trend of the form of violence materialising offline. Factors impacting the trend included physical limitations, ignorance and prejudice against PWDs.⁸¹

The concept of TFGBV is primarily at its nascent stages, where definitions and concepts are still being formed and developed.⁸² The fact that it is a technology-centred online harm implies that, as technology evolves, some of the harms will also grow. The law may not always keep up with ever-evolving technology. However, policymakers can develop laws that can be leveraged to take a pre-emptive stance in consideration of the impact that TFGBV has on the victims.⁸³

⁷⁸ibid.

⁷⁹ibid.

⁸⁰ibid.

⁸¹Collaborative Center for Gender and Development, 'Rapid Study on Technology Facilitated Gender Based Violence in Tertiary Institutions' (2024) <https://kenya.unfpa.org/en/publications/rapid-study-technology-facilitated-gender-based-violence-tfgbv-kenyas-higher-learning?_cf_chl_tk=xAU-jnbT7n2il9nENwyNmuTqzLa4EJ0tWgMWaM.iH5t4-1732707509-1.0.1.1-uTL-GNnzfj_ef6XfhYRWJaxp08Aw3yLtBcyWM45uhjRg> accessed 10 September 2024.

⁸²Global Partnership, 'TFGBV Preliminary Landscape Analysis' (2023) <<https://www.sddirect.org.uk/sites/default/files/202307/Global%20Partnership%20TFGBV%20Preliminary%20Landscape%20Analysis.pdf>> accessed 15 November 2024.

⁸³Daniel Malan, 'Technology is changing faster than regulators can keep up - here's how to close the gap' (World Economic Forum, 28 November 2018) <<https://www.weforum.org/stories/2018/06/law-too-slow-for-new-tech-how-keep-up/>> accessed 15 November 2024. Such laws already exist and are further discussed in the research report at 4.0 and 5.0

4 Legal and Policy Framework Addressing TFGBV

Globally, no laws specifically address TFGBV. However, multiple applicable international, regional, and national laws exist that can be leveraged to address TFGBV. This stems from already existing robust laws that address gender-based violence, which may, in turn, apply to addressing gender-based violence perpetuated using any form of technology. The existing laws often address cases of online violence and harassment, which are often scattered across various legal instruments.⁸⁴

● 4.1. International Instruments

Policies and regulations have been developed over the years to address GBV. To this end, international, regional, and local regulations, coupled with the rise of cybersecurity and data protection regulations, can be leveraged to address certain elements of TFGBV. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is among the international instruments. Adopted in 1979, CEDAW aims to address discrimination against women in all its forms. It seeks to eliminate distinctions, exclusions, or restrictions made based on sex that impair or nullify the recognition, enjoyment, or exercise by women of human rights and fundamental freedoms based on equality with men.⁸⁵ The Convention emphasises the need for states to take appropriate measures to ensure equality in political, economic, social, cultural, and other fields. Additionally, it seeks to modify social and cultural patterns that perpetuate gender stereotypes and discrimination.

Although TFGBV is not specifically mentioned in the text, as it was developed before the widespread use of the internet and digital technologies almost 45 years ago, CEDAW took a futuristic approach in the framing of Article 2, which emphasises the commitment of States Parties to condemn discrimination against women in all forms and

⁸⁴Robi (n 39).

⁸⁵United Nations, 'Convention on the Elimination of All Forms of Discrimination against Women' (adopted 18 December 1979, entered into force 3 September 1981) UN Doc A/RES/34/180. <<https://www.ohchr.org/sites/default/files/cedaw.pdf>> accessed 25 November 2024.

The Beijing Declaration and Platform for Action, adopted on September 15, 1995, during the Fourth World Conference on Women held in Beijing, comprehensively laid the policy agenda calling for the elimination of all forms of violence against women and girls, upholding CEDAW.

to pursue policies aimed at eliminating such discrimination. Additionally, Article 5 focuses on modifying social and cultural patterns of conduct for men and women. The Article aims to eliminate prejudices and practices based on gender stereotypes. This provision can address cultural norms that contribute to TFGBV or are in the process of forming. This is particularly relevant to research on women in politics and public life, as technology often amplifies existing gender biases and stereotypes, making this issue even more significant.

The Beijing Declaration and Platform for Action, adopted on September 15, 1995, during the Fourth World Conference on Women held in Beijing, comprehensively laid the policy agenda calling for the elimination of all forms of violence against women and girls, upholding CEDAW. Much like CEDAW, the Declaration does not explicitly address TFGBV. However, anchoring elements outlined in the Declaration regarding violence against women can be applied to the context of TFGBV. They include:

- ➔ **Human rights and fundamental freedoms:** This emphasises that the rights of women and girls are not separate or secondary to universal human rights. Rather, they are an essential and integral part of the broader human rights framework. The principle asserts that all individuals, regardless of gender, are entitled to the same rights and protections under international law.⁸⁶ An extension of this to TFGBV would consider the right to safety and security. This recognises a wider notion that violence and harassment can

occur online just as they do in physical spaces.

- ➔ **Urgent action against violence:** This principle also outlines the need to eliminate all forms of discrimination against women in both private and public life and the urgency of states to address any forms of violence, whether traditional or modern.⁸⁷ Inference can therefore be drawn when addressing manifestations of contemporary forms of violence, such as TFGBV.
- ➔ **Accountability and legal frameworks:** The Declaration emphasises the need for governments to establish accountability mechanisms and strengthen legal frameworks to protect women from violence. This can include laws and policies that specifically address TFGBV, ensuring that perpetrators are held accountable for online abuse and harm.⁸⁸
- ➔ **Data collection and research:** The Declaration points out the need for adequate data and research on violence against women, citing the limitations in disaggregated data for both women and girls in both private and public life.⁸⁹ This is equally observable in cases of TFGBV, where there is a lack of comprehensive research on the experiences of victims/survivors of TFGBV, which hampers the development of effective legal responses. Additionally, lawmakers do not always have access to the data needed to inform

⁸⁶Beijing Declaration and Platform for Action (Fourth World Conference on Women, Beijing, 4-15 September 1995) <<https://www.un.org/womenwatch/daw/beijing/platform/>> accessed 25th November para [2-5].

⁸⁷ibid para 224.

⁸⁸ibid para 123 and 29.

⁸⁹ibid para 120.



decision-making.⁹⁰ Emphasis on data collection and research is crucial for understanding the scope of TFGBV and developing effective interventions and policies to address it.

Additional international instruments that introduce similar nuances to how they can be leveraged to address TFGBV include the Declaration on the Elimination of Violence Against Women (DEVAW). The Declaration adopted in 1993 recognises in its Preamble explicitly that violence against women is a manifestation of historically unequal power relations between men and women and calls for the elimination of all forms of violence against women.⁹¹ This would ideally also capture those occurring in the digital space.⁹² The Declaration also recognised that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political,

economic, social, cultural, civil or any other field.⁹³

The UN Resolution on the Elimination of Domestic Violence Against Women, adopted in 2004, urges states to take measures to prevent and eliminate domestic violence.⁹⁴ Specifically, the Resolution encourages flexibility in access to justice, employment of female police officers and setting up centres for victims of gender-based violence,⁹⁵ in the context of TFGBV. This could be extended to ensure that victims have access to support services. Like the UN Resolution, the Istanbul Convention (Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence), although primarily focused on Europe, provides a comprehensive framework for preventing violence against women and includes provisions that can be applied to

⁹⁰Suzie Dunn, 'Addressing Gaps and Limitations in Legal Frameworks and Law Enforcement on Technology-Facilitated Gender-based Violence' (Expert paper prepared for the Expert Group Meeting in preparation for the 67th session of the Commission on the Status of Women, October 2022) <<https://www.unwomen.org/en/digital-library/publications/2022/10/expert-paper-on-technology-facilitated-gender-based-violence>> 25 November 2025.

⁹¹Preamble, paragraph 6.

⁹²Declaration on the Elimination of Violence against Women, GA Res 48/104, UN GAOR, 48th sess, UN Doc A/RES/48/104 (20 December 1993) <<https://www.ohchr.org/sites/default/files/eliminationvaw.pdf>> accessed 25 November 2024.

⁹³Declaration on the Elimination of Violence against Women, GA Res 48/104, UN GAOR, 48th sess, UN Doc A/RES/48/104 (20 December 1993) art 3. <<https://www.ohchr.org/sites/default/files/eliminationvaw.pdf>> accessed 25 November 2024.

⁹⁴United Nations General Assembly, 'Elimination of Domestic Violence against Women' A/RES/58/147 (22 December 2003). <<https://documents.un.org/doc/undoc/gen/n03/503/40/pdf/n0350340.pdf>> accessed 25 November 2025.

⁹⁵United Nations General Assembly, 'Elimination of Domestic Violence against Women' A/RES/58/147 (22 December 2003) paras 6(f), 6(g) <<https://documents.un.org/doc/undoc/gen/n03/503/40/pdf/n0350340.pdf>> accessed 25 November 2024.

technology-facilitated violence.⁹⁶

Article 2 of the Istanbul Convention focuses on the elimination of all forms of violence against women. Article 5 outlines the obligation of parties to exercise due diligence in preventing, investigating, and punishing acts of violence, which can extend to online harassment and abuse. Collectively, these provisions can be leveraged to develop a framework addressing TFGBV. The General Recommendation No. 35 on Gender-Based Violence Against Women issued by the CEDAW Committee specifically addresses the need for states to combat gender-based violence in all its forms.⁹⁷ This includes those facilitated by technology, underscoring the importance of establishing legal frameworks to protect women.

● 4.2. Regional Instruments

Regionally, various instruments have been developed to address GBV. The frameworks can equally be leveraged to an extent to address TFGBV, especially as they form the basis for addressing all forms of violence against women. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted on July 11, 2003, outlines several key rights for women. These include the right to equality, women's economic rights, rights within marriage and choice of partner, the right to participate in decision making at all levels, access to health services and most importantly, the protection of women from all forms of violence, including domestic violence and harmful practices.⁹⁸

Article 5 on the elimination of harmful practices, particularly, sets the basis upon which the

Protocol can be leveraged to address online and digital harms, as it calls for state parties to prohibit and condemn harmful practices that jeopardise human rights in any way, as well as take necessary legislative measures to address such practices, in this context, practices such as TFGBV. This further extends to supporting victims through health, legal, judicial, emotional, and psychosocial services.

The Regional Action Plan (RAP) for Africa on Ending Violence against Women and Girls, officially announced on December 16, 2021, aims to establish a comprehensive framework that guides regional partners and Member States in their efforts to prevent and respond to violence against women and girls across the continent.⁹⁹ By addressing the underlying factors that contribute to such violence, RAP aims to translate global and regional commitments into actionable strategies and interventions.¹⁰⁰ RAP also serves as a foundational framework for addressing TFGBV, given the regional networks established to address all forms of GBV and RAP's ability to advance policy to address TFGBV.

Though specific to the Southern African region, the Southern Africa Development Community (SADC) Model Law on Gender-Based Violence, adopted during the 50th Plenary Assembly of the SADC Parliamentary Forum, was developed to address the inadequacies and fragmentation of existing national laws on GBV. It provides a cohesive framework for Member States to adopt.¹⁰¹ It aims to promote a common regional approach to combat gender-based violence effectively, strengthen legislative responses, and ensure victims have access to justice. Additionally, the Model Law aligns national legislation with international human rights standards, promotes gender equality,

⁹⁶Council of Europe, 'Convention on Preventing and Combating Violence Against Women and Domestic Violence' (Istanbul, 2011) <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>> accessed 25 November 2024.

⁹⁷United Nations Committee on the Elimination of Discrimination Against Women, 'General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19' (2017) CEDAW/C/GC/35 <<https://docs.un.org/en/CEDAW/C/GC/35>> accessed 27 November 2025.

⁹⁸Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 July 2003. art 2, 5 <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Protocolon-theRightsofWomen.pdf>> accessed 25 November 2024.

⁹⁹United Nations Development Programme, 'Regional partners develop first Regional Action Plan for Africa on Elimination of Violence Against Women and Girls' (16 December 2021) <<https://www.undp.org/africa/press-releases/regional-partners-develop-first-regional-action-plan-africa-elimination-violence-against-women-and-girls>> accessed 26 November 2024.

¹⁰⁰ibid.

¹⁰¹Southern African Development Community Parliamentary Forum, SADC Model Law on Gender-Based Violence (2020) <<https://www.sadc.int/documents-publications/show/2020-sadc-gender-based-violence-model-law>> accessed 26 November 2024.

and stimulates awareness and advocacy around GBV issues.¹⁰² The Model Law not only serves as a foundational tool for enhancing legal protections and addressing gender-based violence across the Southern African region but also provides a framework for developing TFGBV-specific laws and regulations.

Adopted in August 2022 by the African Commission on Human and Peoples Rights at the 72nd Ordinary session, the Resolution on the Protection of Women Against Sexual Violence in Africa recognised the existing prevalence of TFGBV, including cyber harassment, cyberstalking, non-consensual sharing of intimate images and sexist hate speech, which disproportionately affect women.¹⁰³ The Resolution calls for member states to review and strengthen their legislative frameworks to criminalise digital violence and protect women's rights online explicitly. Additionally, the Resolution provides for parameters that must be established to address TFGBV, including encouraging legislation that expands the definition of gender based violence to include digital forms.¹⁰⁴ Fostering cooperation between law enforcement and digital service providers, promoting digital literacy among women and girls to close the digital gender gap, and comprehensive training of professionals working with victims, coupled with measures to protect women journalists and women in politics from online abuse, are further noted as critical parameters for addressing TFGBV regionally.¹⁰⁵

● 4.3 National Instruments

At the national level, addressing TFGBV involves leveraging various parts of the legal framework that can be applied to combat this form of violence. In discussing national instruments, consideration is given to the existence of technology-related regulation that touches on online harm.

The Constitution of Kenya 2010 contains provisions that specifically and through contextual application, regulate human rights and fundamental freedoms.¹⁰⁶ These encompass protections against various forms of violence, including gender-based violence. This initially derives from Articles 2(5) & 2(6), which state that international law and any treaties or conventions ratified by Kenya form part of the law of Kenya.

The Constitution makes no specific reference to TFGBV; however, its provisions protect individuals from TFGBV. Article 27 provides for equality and freedom from discrimination. This provision can be interpreted to include protections against violence and abuse, including those facilitated by technology, such as TFGBV, noting the limited attention given to TFGBV. Additionally, Articles 28, 29 and 31 on the right to human dignity, freedom and security of the person and the right to privacy also provide a basis for addressing TFGBV through legal and institutional mechanisms. Article 28 acknowledges every person's right to human dignity and the right to have it respected and protected. This reinforces the State's obligation to take measures to prevent violations that undermine a person's sense of worth and autonomy, which is the case with manifestations of TFGBV such as online harassment, cyberbullying, and non-consensual sharing of intimate images, among other forms of abuse.

Similarly, Article 29 guarantees certain rights related to personal security and protection from harm, including the right to be free from torture, cruel, inhumane or degrading treatment or punishment. The most significant clause is Article 29(4), which provides every person with the right to freedom and security of the person, including protection against violence from public or private sources. This right can be specifically contextualised, reinforcing the right of TFGBV victims to protection and security from such harms, with the note that private sources of harm address TFGBV harms such as cyberbullying and cyberstalking through online platforms.

¹⁰²ibid.

¹⁰³African Commission on Human and Peoples' Rights, 'Resolution on the Protection of Women Against Digital Violence in Africa', ACHPR/Res. 522 (LXXII) 2022. <<https://achpr.au.int/en/adopted-resolutions/522-resolution-protection-women-against-digital-violence-africa-achpr>> accessed 2 July 2025.

¹⁰⁴ibid.

¹⁰⁵ibid.

¹⁰⁶Constitution of Kenya 2010 <<https://www.kenyalaw.org/kl/index.php?id=398>> accessed 2 July 2025.

Article 31 on the right to privacy, which includes the right to keep personal information and data private, is significant because many forms of TFGBV abuse involve breaches of privacy. The right to privacy, therefore, provides a constitutional foundation for laws and policies aimed at protecting individuals from digital forms of gender-based violence, emphasising the need for safeguarding personal data and digital communication from misuse.

The Defamation Act, Cap 36, Laws of Kenya, can provide a civil-law avenue through which victims of TFGBV can seek relief before the court of law. Although there is no specific reference to TFGBV, section 4, for instance, addresses slander against women, covering spoken or published words referencing unchastity.¹⁰⁷ Leveraging this Act, one can be compensated where harm is caused by online posts, audio messages or videos.

Section 8 on defamation by wireless broadcasting can also be invoked where wireless broadcasting, i.e., radio, could extend to podcasts and social media livestreams, which are considered permanent publications that can be referenced/charged under libel. However, the limitation of the Defamation Act is that it has outdated definitions that have not considered changes brought about by the digital world, for instance, the definition of newspaper is limited to print, whereas newspapers are now online, similar to considerations for wireless broadcasting, which is confined to radio communication without regard for social media live streams or podcasting.¹⁰⁸

The Sexual Offences Act of 2006, while primarily focused on physical sexual offences, can be applied to cases where technology is used to facilitate sexual violence, such as through the sharing of non-consensual intimate images or online sexual harassment. Sections 5 and 23 of the Act provide for sexual harassment, imposing a penalty of imprisonment for a term of not less than three years, or a fine of not less than one hundred

thousand shillings, or both.

The Computer Misuse and Cyber Crimes Act of 2018 aims to establish a comprehensive legal framework to effectively address and combat cybercrimes. Its main objectives are protecting the confidentiality, integrity, and availability of computer systems and data; preventing unlawful use of these systems; facilitating the detection, investigation, and prosecution of cybercrimes; and protecting the rights to privacy, freedom of expression, and access to information as guaranteed under the Constitution of Kenya.¹⁰⁹

The Act has several provisions that can be leveraged to address TFGBV, especially when TFGBV-related harm involves the use of computers. Part III of the Act on Offences, specifically Section 6, outlines offences related to the misuse of computers and data, including harassment or abuse conducted via digital platforms. Additionally, Sections 22 and 23 of the Act, which address false publications and the publication of false information, can be leveraged to address online defamation. Section 24 addresses child pornography and the penalties associated with it, while Section 27 discusses cyber harassment. These sections address manifestations of TFGBV, such as cyberbullying.

In line with this, the Computer Misuse and Cyber Crimes (Amendment) Act of 2025, assented on 15th October 2025 and commenced on 5th November 2025, introduced key provisions that could also be leveraged in better addressing TFGBV.¹¹⁰ The Amendment Act provides definitions of computer misuse and cybercrime, which were not previously defined. Computer misuse is defined as unauthorised use, modification, or access to a computer system, program, or data. In this instance, images and messages can be considered as data. As such, some categories of TFGBV can be considered within the context of data falling under the definition of computer misuse, thereby

¹⁰⁷Defamation Act, Cap 36, Laws of Kenya <<http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/D/Defamation%20Act%20-%20No.%2010%20of%201970/docs/DefamationAct10of1970.pdf>> accessed 26 November 2025

¹⁰⁸ibid.

¹⁰⁹Computer Misuse and Cybercrimes Act 2018 (No 5 of 2018) (Kenya) Sec 3 <<https://www.pckamunya.co.ke/wp-content/uploads/2018/07/Computer-Misuse-and-Cybercrimes-Act.pdf>> accessed 26 November 2024.

¹¹⁰Kenya, 'Computer Misuse and Cybercrimes (Amendment) Act, 2025' <<https://new.kenyalaw.org/akn/ke/act/2025/17/eng@2025-10-21>> accessed 27 November 2025.



subject to redress mechanisms provided under the Act.¹¹¹ Additionally, the Amendment Act defines cybercrime as an offence committed through the use of information and communication technology to target networks, systems, data, websites or technology or to facilitate a crime.¹¹² The definition captures categories of TFGBV by incorporating offences committed using technology, thereby encompassing offences like doxxing, cyberbullying and image-based abuse. Identity theft is also included, which could capture instances of TFGBV that manifest through online impersonation.

The Amendment Act further provides for the inclusion of a clause in the Act to address additional penalties for other offences committed through a computer system under section 46 (added as 46A), as ordered by the court. To this extent, courts can order the deactivation of a computer system, website or digital device used to commit offences under the Act or order the removal of the harmful content from the website, computer system or digital device.¹¹³ Additionally, the Amendment Act gives power to authorised persons (authorised persons under the Computer Misuse and Cybercrimes Act 2018, mean “an officer in a law

enforcement agency or a cybersecurity expert designated by the Cabinet Secretary responsible for matters relating to national security”), to make an application to the court for orders for removal of content or material or orders for closure and deactivation and any other such orders the court may deem fit, leaving room for broader redress mechanisms, such as monetary compensation.¹¹⁴

The insertion of Section 46A, especially the prerogative of removal and deactivation, is particularly significant for TFGBV cases, as it is a step towards strengthening platform accountability and requiring perpetrators to remediate the damage by removing all harmful content, thereby preventing further sharing.

Although not discussed in this report, children are likely to be exposed to forms of TFGBV, given their increased access to the internet and digital spaces, which makes them vulnerable to harmful content online.¹¹⁵ The Children’s Act of 2022 protects children from various forms of abuse, including online exploitation and harassment. It emphasises the need for safeguarding children in the digital space, which is crucial in addressing TFGBV against minors. Online abuse includes

¹¹¹ Kenya, ‘Computer Misuse and Cybercrimes (Amendment) Act, 2025’ (n 1) s 4.

¹¹² Kenya, ‘Computer Misuse and Cybercrimes (Amendment) Act, 2025’ s 2.

¹¹³ Kenya, ‘Computer Misuse and Cybercrimes (Amendment) Act, 2025’ s 2.

¹¹⁴ Kenya, ‘Computer Misuse and Cybercrimes (Amendment) Act, 2025’ s 6.

¹¹⁵ Tracey Burns and Francesca Gottschalk (eds), *Educating 21st Century Children: Emotional Well-being in the Digital Age* (OECD Publishing 2019) <https://doi.org/10.1787/71b7058a-en>. Accessed 26 November 2024.

cyberbullying, grooming and solicitation, cyber enticement, cyber harassment and cyberstalking, all of which are regulated in Section 22(3-6) of the Act.

The Data Protection Act, enacted in 2019 to give effect to Article 31 of the Constitution of Kenya, which recognises the right to privacy, provides a framework for addressing TFGBV. Protecting personal data is especially significant in addressing the protection of victims and limiting exposure to TFGBV, especially for vulnerable groups like women in politics or public life. The place of data protection laws is discussed more comprehensively below.

Overall, although there are no specific TFGBV-related regulations yet, international, regional, and national frameworks can be leveraged to address forms of TFGBV. Additionally, the scope can be expanded to consider emerging manifestations of TFGBV, which remain crucial to protecting victims and working toward the elimination of online harms.

4.3.1 The Place of Data Protection and Privacy Laws in Addressing TFGBV

In Kenya, the Data Protection Act (DPA) of 2019 plays an important role in addressing TFGBV.¹¹⁶ The DPA was enacted to safeguard personal data. As such, it protects individuals' personal data from unauthorised access and misuse by ensuring that the collection, processing and storage are in line with the principles of data protection outlined under Section 25 of the DPA.¹¹⁷ The purpose limitation principle reflected in section 25(c) of the DPA, for instance, requires that data collected for explicit, specified, and legitimate purposes should not be further processed in a manner that contravenes those purposes.¹¹⁸ Such a provision prevents perpetrators from exploiting victims' data for malicious purposes. Malicious actors often rely on repurposing data for coercion or financial gain. However, under this principle, secondary markets for victim data that would

be used for doxxing or online impersonation, for example, would lose legitimacy as data cannot be legally used beyond its original purpose.¹¹⁹

The DPA also grants individuals specific rights, including the right to access, correct, and delete their data.¹²⁰ It further places a corresponding duty on the data processors and controllers to ensure that data processing is in line with the rights of the data subject.¹²¹ Having a clear set of rights and corresponding duties empowers victims of TFGBV, who may need to reclaim control over their online presence, and gives them grounds to seek redress for breaches of their data and privacy rights.

The principle of prior informed consent, which is given freely before data is collected or processed under section 26 (a) of the DPA, is particularly relevant in the context of TFGBV. Understanding how one's data will be used and the potential implications of sharing sensitive personal data allows individuals to make informed decisions about whether to share it.

The right to deletion allows individuals to request the deletion of their personal information from databases when it is no longer necessary for the purposes for which it was collected.¹²² This right can be instrumental for victims seeking to remove harmful content or information that could facilitate further abuse.

Section 41 of the DPA provides for data protection by design and by default. Data controllers and processors (in this case, mostly the tech companies that own the platforms where TFGBV is perpetrated) should implement appropriate technical and organisational measures to protect personal data. This obligation further extends to verifying that safeguards are effectively implemented and continuously updated in response to new risks and deficiencies. TFGBV is a new risk and deficiency that cannot be handled

¹¹⁶Constitution of Kenya, 2010 art.31.

¹¹⁷Data Protection Act No. 24 of 2019 s.25.

¹¹⁸ibid s.25 (c).

¹¹⁹'Social Media and Online Safety.' (Parliament of the Commonwealth of Australia, March 2022) <<https://www7.austlii.edu.au/au/other/cth/AUHRSelCPublnq/2022/1.pdf>> accessed 26 November 2024.

¹²⁰ibid s. 26(d)(e).

¹²¹ibid s. 30(a).

¹²²ibid s. 26 (e).

by the traditional response mechanisms put in place by tech companies, and they should update their safeguards to address it using available technology.

Specific safeguards are provided under section 45 for the processing of sensitive personal data. Section 2 of the DPA defines sensitive data to include data relating to someone's sex, sexual orientation, race, ethnic or social origin, belief, conscience, health status, etc. These specific aspects contribute to the issues around GBV. Women are often attacked online based on their sensitive personal data, such as their social status. The DPA under Section 45 provides that sensitive data should be processed in accordance with the principles of data protection and further sets out the grounds for processing such data. This heightened protection can be critical in ensuring sensitive personal data is not used to further TFGBV.

Lastly, the duty to notify individuals promptly in case of a data breach that could compromise their personal information is also instrumental in the context of TFGBV.¹²³ This level of transparency is essential for victims of TFGBV, as timely notifications can help them take protective measures against potential threats.

5 Preventive Measures and Solutions

Preventive measures against TFGBV in Kenya involve a multifaceted approach that includes legislative reforms, community engagement, and technological innovations. These efforts aim to create a safer digital environment for women and marginalised groups while addressing the root causes of gender-based violence. This section will highlight some of the measures already in place to address TFGBV and thereafter propose other solutions that may be adopted.

● 5.1 Community Engagement and Education

Engaging communities is essential for fostering

a cultural shift regarding gender-based violence. Participatory research approaches have been effective in understanding local realities and needs, facilitating grassroots movements that empower women and advocate for their rights.¹²⁴ Training programs for community members can raise awareness about legal rights and encourage collective action against TFGBV. For example, initiatives that provide knowledge on women's land rights have proven beneficial in strengthening community advocacy efforts and reclaiming women's rights.

● 5.2 Technological Innovations

The role of technology in preventing TFGBV is increasingly significant. Innovations such as automated detection of harmful language in digital communications and safety features on social media platforms are being implemented to identify and mitigate potential abuse before it escalates.¹²⁵ These proactive measures help in creating safer online spaces by alerting users to potentially abusive content and encouraging responsible online behaviour.

6 Recommendations

● 6.1 Legislative Reforms

Kenya has recognised the importance of a robust legal framework to address gender-based violence effectively. Initiatives such as the Sexual and Gender-Based Violence Strategy 2023-2030¹²⁶ and the Social Transformation through Access to Justice (STAJ) Blueprint 2023-2033 have been launched to provide comprehensive measures against gender-based violence, focusing on both

¹²⁴Tania Ros-Sanchez, M^a Beatriz Lidón-Cerezuela, Yolanda Lopez-Benavente and E. Abad-Corpa. 'Promoting empowerment and self-care in older women through participatory action research: Analysis of the process of change.' *Journal of advanced nursing* (2023) <<https://doi.org/10.1111/jan.15573>> accessed 29 November 2024.

¹²⁵Shiza Ali, Afsaneh Razi, Seunghyun Kim, Ashwaq Alsoubai, Chen Ling, M. de Choudhury, P. Wisniewski and G. Stringhini. 'Getting Meta: A Multimodal Approach for Detecting Unsafe Conversations within Instagram Direct Messages of Youth.' *Proceedings of the ACM on Human-Computer Interaction*, 7 (2023): 1 - 30. <<https://doi.org/10.1145/3579608>> accessed 29 November 2024.

¹²⁶The Judiciary of Kenya, 'Sexual and Gender-Based Violence Strategy 2023-2030,' <<https://www.judiciary.go.ke/wp-content/uploads/2023/07/SGBV-Strategy.pdf>> accessed 29 November 2024.

¹²³ibid s. 29.

prevention and response.¹²⁷These frameworks emphasise the need for specialised courts in regions with high rates of GBV to ensure swift justice for victims and deter potential offenders.

However, more attention is needed to address TFGBV, particularly by developing contextualised laws and policies that reflect the intersection of GBV and its digital manifestations.

● 6.2 Strengthen Reporting Mechanisms with Rural and Marginalised Communities in Mind

A key finding of this report is the need for accessible and responsive reporting channels to facilitate victims' access to justice, especially in rural areas where institutional coverage is limited. Institutions in place should be expanded to establish multi-channel reporting mechanisms, including community-based centres, mobile platforms, and digital tools. Additionally, training local community actors to identify and handle TFGBV reports can further strengthen reporting mechanisms.

● 6.3 Improve Data Collection, Research and Monitoring Systems

Most of the studies noted in this report are structured towards understanding TFGBV; however, the data and research are primarily concentrated in the West. Given the current gaps in data and research capacity, particularly in Africa, specifically Kenya, establishing centralised data collection systems that track TFGBV incidents across diverse contexts, including rural areas and more disaggregated categories, would help improve understanding of the growing scope of TFGBV and its trends, and inform evidence-based policy interventions.

● 6.4 Facilitating Cross-Sectoral and Community Level Collaboration

Coordinated efforts are required to adequately

address TFGBV, efforts among government agencies, civil society, community organisations and technology providers. Multi-stakeholder collaborations that include community leaders and affected persons to foster joint advocacy and community-led identification, mitigation, and prevention strategies would be beneficial in channelling policy change and addressing the social impacts of TFGBV.

Additionally, establishing a national or regional TFGBV coalition can facilitate resource sharing, joint advocacy, and strategic planning across sectors. Regular knowledge-sharing sessions enable stakeholders to exchange experiences, best practices, and case studies on TFGBV. This exchange can build a stronger evidence base that informs policy changes and intervention strategies. Such coalitions should ensure the inclusion of all relevant stakeholders, amplify survivors' voices, and make their needs central to response strategies.

7 Conclusion

TFGBV is not merely a digital problem but a reflection of entrenched gender inequalities that permeate Kenyan society. As technology evolves, so do data avenues and, in turn, manifestations of gendered violence in the online space. Consequently, it remains imperative that regulatory approaches equally advance to deter the rise of categorised harms such as TFGBV. In this context, the focus is mainly on how data governance mechanisms can be leveraged to reinforce other regulatory mechanisms, not only to mitigate but also to curb gendered harms arising from the use and evolution of technology.

¹²⁷The Judiciary of Kenya, 'A Blueprint for Social Transformation through Access to Justice', <<https://judiciary.go.ke/wp-content/uploads/2023/11/STAJ-Blueprint-1.pdf>> accessed 29 November 2024.

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This study was made possible by a grant provided by the The Hewlett Foundation.

We thank the organization for their continued support.



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