

Question 1. What legal administrative, policy or other measures exist in your State to protect women from sexual and gender based violence and harassment online?

Kenya has several laws that seek to protect women from sexual and gender based violence and harassment online, some of these laws include

1. The Constitution

Article 31 provides that “Every person has the right to privacy, which includes the right not to have—

(c) Information relating to their family or private affairs unnecessarily required or revealed; or

(d) The privacy of their communications infringed.”

One can argue that their right to privacy has been infringed.

2. Sexual Offences Act

Section 11 provides that any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years. The Act defines an indecent act to mean an unlawful intentional act which causes exposure or display of any pornographic material to any person against his or her will.

3. Computer Misuse and Cybercrimes Act, 2018

Section 27 reads “A person who, individually or with other persons, willfully communicates, either directly or indirectly, with another person or anyone known to that person, commits an offence, if they know or ought to know that their conduct—

(a) is likely to cause those persons apprehension or fear of violence to them or damage or loss on that persons’ property; or

(b) Detrimentally affects that person; or

(c) Is in whole or part, of an indecent or grossly offensive nature and affects the person.”

It goes ahead to say that a person who is liable for such offense is liable to a fine of not more than 20 million, or an imprisonment not exceeding 10 years or both.

4. National Cohesion and Integration Act, 2008.

Section 13 provides that

(1) A person who—

(a) Uses threatening, abusive or insulting words or behavior, or displays any written material;

(b) Publishes or distributes written material;

(c) Presents or directs the performance the public performance of a play;

(d) Distributes, shows or plays, a recording of visual images; or

(e) provides, produces or directs a programme,

Which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behavior commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.

A person who is liable for any offense under this section is liable for a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or both.

5. Penal Code

Section 238 of the Penal Code makes it an offence to intimidate and molest. Specifically section 238(2) provides that a person who intimidates another person, with intent to cause alarm to that person or to cause him to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do, causes or threatens to cause unlawful injury to the person, reputation or property of that person or anyone in whom that person is interested.

2. How effective are they?

Crimes related to hate speech and intimidation on cyberspace are effective as one may pursue criminal charges as the crimes are not ambiguous. The National Cohesion and Integration Act together with the Penal Code clearly defines the offences together with their sentences. Online platforms such as Instagram, YouTube, and Facebook provide avenues for reporting persons engaging in cyber bullying. Unfortunately most of these provisions on cyber bullying are vague as they don't contextualize the crime as there is no law that has sought to define what cyberbullying is. However, the elephant in the room is the fact that we have many laws but the implementation has been a key challenge, with many people tolerating this form of violence/abuse.

3. What impact have they had on women's empowerment and public participation, including freedom of expression?

Cyberbullying restricts the opportunities digitalization offers. It restricts women from having a voice. Young women are deterred from taking part in political discussions, conversations, online debates and or engaging in civic spaces. .

Cyberbullying poses a serious threat not just to the physical health of individuals but also impacts their emotional wellbeing. We have had numerous cases where women have committed suicide as a result of being trolled online while others sink into depression and placed on antidepressant medication. Physical aggression is often directed to males while other victims face revenge porn that includes non-consensual sharing of intimate images, unsolicited sending of sexual and pornographic images and other forms of cyberbullying that entails sexualized behavior.