

1

DIGITAL VIOLENCE AGAINST WOMEN IN AFRICA: LOCATING THE ROLE OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Susan Chenai Mutambasere
Centre for Human Rights, University of Pretoria

Janet Ramatoulie Sallah-Njie
Special Rapporteur on the Rights of Women in Africa,
African Commission on Human and Peoples' Rights

1	Introduction.....	3
2	Digital violence against women in Africa (DVAW)	7
	2.1 Violence against women in Africa.....	7
	2.2 Digital technologies in Africa	9
3	Online violence against women in Africa: The scope of the problem.....	12
4	Legislative framework.....	16
5	African Commission on DVAW	19
6	Good practices from other regions	21
	6.1 Prevention	22
	6.2 Protection.....	23
	6.3 Prosecution	24
	6.4 Providing remedies	24
	6.5 State accountability.....	25
7	Proposed framework for Africa	25
	7.1 A study	26
	7.2 General comment	26
	7.3 Communications procedure.....	27
	7.4 State reporting.....	28
8	Conclusion.....	28
	Table of abbreviations	30
	References.....	31
	Legislation	34

Abstract

The use of digital media and access to online space is fast becoming imperative for the realisation of several human rights. The immediate rights one can observe are the right to information, freedom of expression, and freedom of association. However, the digital space has also become an avenue for exercising, among others, the right to political participation, education, health, and economic empowerment. All these rights are enshrined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and are crucial to women's development and well-being. As such, it is important that every individual has equal access to the digital space without fear or discrimination. This is not the reality for many women, as they face many hurdles to actively participate online, one of which is violence perpetrated in the digital space. What this translates to is that while everyone can access the internet with the right tools, substantive equality means the obstacles placed in the way of women enjoying the internet space are removed, and they can equally participate. The African Commission on Human and Peoples' Rights is working on tackling this phenomenon in Africa. The Special Rapporteur on the Rights of Women in Africa has mandated and is leading this task. To successfully carry out this task, the mandate can benefit from progress that has been made elsewhere by other mechanisms. This chapter reflects briefly on the African-specific context of digital violence against women. It traces the work done so far by the mechanism of the Special Rapporteur on digital violence against women, discusses progress made by similarly placed mandates from other international and sub-regional mechanisms under the Platform of Independent Mechanisms on Discrimination and Violence Against Women, and it draws up good practices while making a case for a normative framework that can be drawn up to fight digital violence against women in Africa, which includes an intersectional approach through the inclusion of other special mechanisms of the African Commission. The chapter relates the sub-theme of strengthening the effectiveness of the special mechanism of the Special Rapporteur in reducing the vulnerability and marginalisation of women and girls.

Keywords: *African Commission on Human and Peoples' Rights, Special Rapporteur on the Rights of Women in Africa, digital violence*

*against women, Africa, Platform of Independent Expert Mechanisms
on Discrimination and Violence Against Women*

1 Introduction

The development of digital technologies across the world is fast-paced and constantly evolving, providing more conveniences to the world. It is an opportunity that has been identified as relevant for sustainable development, driving world economies towards speedy advancements in development. The African Union (AU), in its Agenda 2063, recognises in the goals under Aspiration 1 that science, technology, and innovation are critical for the development of Africa's human and social capital.¹ Access to digital tools and technologies has become crucial for the 'future of work' and development generally.² Access to digital technologies is also considered as a fundamental human right. In 2019, the African Commission on Human and Peoples' Rights (African Commission) updated The Declaration on Principles of Freedom of Expression and Access to Information of 2019 to include digital rights. It states that 'universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights'.³

However, access to digital spaces has also created more opportunities for individuals to abuse the space. While for Africa, the process of internet penetration and exercise of digital rights has been slower than in other more developed countries for various reasons, including less developed infrastructure, it has also been taking shape as more and more people become connected in the digital sphere. Connectivity in Africa has been improving to varying degrees across different platforms, countries, and demographics within those countries. It should be noted that there are different levels of digital penetration in African states, and the factors that affect the rate of penetration vary, including economic levels. Similarly, African women are heterogeneous in their circumstances, identities, and personalities, so their challenges in accessing the digital space are equally

1 African Union Agenda 2063: The Africa We want (2015).

2 UNDP *Gender equality in digitalization: Key issues for programming* (2021).

3 Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019).

diverse. Therefore, any reference to Africa and African women in this chapter does not in any way assume homogeneity, and where necessary, these differences will be highlighted.

Within the scope of individuals abusing the digital space emerges the issue of violence against women (VAW), which in Africa is a scourge that is pervasive and has the effect of curtailing the fundamental freedoms of women in many respects.⁴ With the advancements in digital technologies, perpetrators of VAW are finding new and innovative ways to inflict violence, which sometimes do not have immediate consequences, if at all. It has been posited that the policing of digital violence against women (DVAW) is difficult due to the under-reporting of incidents.⁵ Further, regulating digital spaces to prevent violence is not consistent across African countries.

While domestic legal and policy frameworks are the first instance tools with which DVAW can be tackled, this chapter takes the position that normative standards backed up by wider continental interventions through regional human rights mechanisms could reinforce the elimination of DVAW in Africa. The African Commission is the premier human rights treaty body established by the AU with a specific mandate to promote and protect human rights on the African continent. To fulfil its mandate, the African Commission has established special mechanisms to work on various thematic areas of human rights. The Special Rapporteur on the Rights of Women in Africa (SRRWA) is the mechanism mandated to promote and protect the rights of women in Africa and is also the custodian of the Maputo Protocol. One of the mandate's core functions is to ensure that the Maputo Protocol is ratified, domesticated, and implemented. Other mechanisms that are relevant to the subject at hand are the Special Rapporteur on Freedom of Expression

4 D Lewis & C Orderson 'Digital activism and violence against women: Changing landscapes of feminist activism in southern Africa' (2012) *Think Piece for Gender and Citizenship in the Information Society* <https://idl-bnc-idrc.dspacedirect.org/items/287812e6-a506-4e24-9051-00d43318fd61>. See also I Zviyita & A Mare 'Same threats, different platforms? Female journalists' experiences of online gender-based violence in selected newsrooms in Namibia' (2023) 25 *Journalism* 779-799.

5 NamTshuwe Digital 'Understanding online gender-based violence in Southern Africa: An eight-country analysis of the prevalence of digitally enable gender-based violence' *Report published by Centre for Human Rights, University of Pretoria* (2021).

and Access to Information, as well as the Working Group on Economic, Social and Cultural Rights.

The main research question is to investigate to what extent a human rights lens can be employed to eliminate DVAW, with the underlying principle of substantive equality for women as the driving force. In that respect, it explores ways to ensure that the rights encapsulated in the Maputo Protocol are upheld through strategies to eliminate DVAW. The African Commission, through its relevant special mechanisms, is positioned to embody this proposal, utilising its mandate to leverage a normative framework grounded on existing instruments that can set universal normative standards for African states. As DVAW in Africa is deemed an emerging issue, this chapter will use good practices from other similarly situated mechanisms, as well as the United Nations mechanisms, to propose a normative framework that is suited to the African context. The regional and international mechanisms from which good practices will be drawn are all part of the Platform of Independent Mechanisms on Discrimination and Violence Against Women (EDVAW platform).

The conceptual framework for this chapter centres around three variables: substantive equality as a key component in the exercise of digital rights, VAW as a human rights violation undermining digital rights, and normative frameworks for the realisation of digital rights.

The premise of this chapter is that digital rights, or access to information technology and digital spaces, is an extension of the established human rights of an individual within the context of the digital space. Thus, the rights that an individual holds and enjoys in the real world, for example, freedom of expression, of association, freedom from torture and other inhuman and degrading treatment, freedom from violence and right to dignity, among others, are directly transferable to the participation of an individual in the digital space; which is more and more becoming a microcosm of the physical world. Thus, all individuals should be able to enjoy these rights without discrimination on the basis of their gender, political affiliation, disability or other grounds. In considering a substantive equality approach to digital rights, this chapter aligns itself with the proposition that substantive equality should not be considered as a single formula but from a four-dimensional approach: that is, to redress disadvantage, to address stigma, stereotyping, prejudice

and violence; to enhance voice and participation; and to accommodate difference and achieve structural change.⁶

By adopting this conceptualisation of substantive equality in the exercise of digital rights, the chapter thus views DVAW as an affront to substantive equality. It is trite that equality between men and women is already an aspiration and not a reality. Therefore, the chapter proposes that achieving formal equality in accessing the digital space for men and women is insufficient without considering and eliminating the structural challenges that make the participation of women possible. DVAW needs to be eliminated with all its associated stereotyping and stifling of women's voices in order to achieve substantive equality in the exercise of digital rights.

To eliminate DVAW, the chapter considers regional and international normative standards as a panacea for domestic frameworks for dealing with the problem. While international human rights standards already exist for the protection and promotion of the rights exercised both online and offline, it is posited that the fast-evolving arena of the digital space requires fortification in order to adequately respond to new and emerging threats posed by digital advancement.

By way of clarification of terms, this chapter uses the term DVAW, deriving its definition of women from article 1(k) of the Maputo Protocol.⁷ The phenomenon of DVAW itself is explained in detail in section 3 of the chapter.

The structure of the chapter is as follows: This introduction forms section 1, introducing the subject matter as well as laying down the conceptual framework for the chapter. Section 2 frames the scope of the chapter by giving an overview of the two main themes of the research: digital use in Africa and VAW. This segues into section 3, which gives an overview of the scope of DVAW in Africa. It problematises DVAW and its effect on women's rights and includes statistical examples where available. Section 4 explores the legislative framework applicable to DVAW. It begins by discussing the international and regional frameworks and then gives examples of how some African countries are regulating

6 S Fredman 'Substantive equality revisited' (2016) 14 *International Journal of Constitutional Law* 712-738.

7 Women are defined in article 1(k) of the Maputo Protocol simply as persons of female gender, including girls.

DVAW. Section 5 discusses some of the initiatives that the African Commission has initiated through the special mechanisms procedure led by the SRRWA. Section 6 dives into standards, programmes, and initiatives from other regions under the EDVAW platform. Section 7 proposes a normative human rights framework that is context-specific to Africa, which the African Commission can utilise to assist member states in developing their own domestic frameworks towards eliminating DVAW. Section 8 concludes by tying in all the recommendations that will arise from this chapter and proposes the normative human rights framework in the previous section as a response to the research question.

2 Digital violence against women in Africa (DVAW)

2.1 Violence against women in Africa

To contextualise DVAW, this section defines the parameters of VAW to locate it in the digital technology space. It also explores what VAW looks like for African women, as the cultural and social context presents specific challenges, coupled with the low-income status of many African countries and societies.

VAW is defined by the Maputo Protocol as follows:

All acts perpetrated against women, which cause or could cause them physical, sexual, psychological and economic harm including the threat to take such acts or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life, in peace time and during situations of armed conflict or of war.⁸

In broad terms, VAW can be classified as intimate partner violence and non-intimate partner violence, with both of these classifications manifesting in various ways such as sexual, physical, economic or psychological.⁹ VAW is both a public health issue, with economic (reduced economic/labour participation and income) and social consequences, as well as a human rights violation.¹⁰ A human rights-

8 Maputo Protocol, art 1(j).

9 LC Casique & ARF Furegato 'Violence against women: Theoretical reflections' (2006) *Revista Latino-Americana de Enfermagem*.

10 A Alesina, B Brioschi & E La Ferrara 'Violence against women: A cross-cultural analysis for Africa' (2021) *Economica* 88.

based approach to VAW recognises that VAW is a form of systemic discrimination against women.¹¹ The Committee on the Elimination of All Forms of Violence Against Women (CEDAW Committee), in its General Recommendation 19, recognised that VAW was a ‘form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.’¹² Primarily, VAW results in the violation of various women’s fundamental rights, like the right to dignity, the right to freedom from torture and other forms of inhuman and degrading treatment, economic, social and cultural rights, the right to health and even the right to life. In addition, VAW affects women’s right to participate, associate and freely express themselves, as it affects their behaviour and self-esteem.¹³

The World Health Organization has estimated that one in every three women (33%) has been a victim of VAW.¹⁴ However, VAW has also been described as ‘a tip of the iceberg or silent epidemic’ as many cases go unreported for a variety of reasons.¹⁵ When analysed from a social angle, VAW is a by-product of patriarchy and inequality between men and women, which positions women as inferior to men.¹⁶ Therefore, one of the reasons why VAW goes unreported is the socialisation of women to keep their domestic business to themselves; hence, they do not report in fear of stigma and humiliation.¹⁷ From an economic perspective,

11 S Qureshi ‘A recognition of violence against women as a violation of human rights in the United Nations System’ (2013) *South Asian Studies* 187-198.

12 UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation 19: Violence against women, 1992, A/47/38 (General Recommendation 19).

13 DF Malanga ‘Survey of cyber violence against women in Malawi’ Proceedings of the 1st virtual Conference on Implications of Information and Digital Technologies for Development (2021).

14 25 March 2024 Factsheet in WHO ‘Violence against women’ <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (accessed 17 June 2024).

15 T Palermo, J Bleck & A Peterman ‘Tip of the iceberg: Reporting and gender-based violence in developing countries’ (2014) 179 *American Journal of Epidemiology* 602-612 as quoted by MD Muluneh, V Stul, L Francis & K Agho ‘Gender-based violence against women in sub-Saharan Africa: A systematic Review and meta-analysis of cross-sectional studies’ (2020) 17 *International Journal of Environmental Research and Public Health* 903.

16 VC Fox ‘Historical Perspectives of violence against women’ (2002) 4 *Journal of International Women’s Studies* 15-34.

17 JP Barnett, E Maticka-Tyndale & T Kenya ‘Stigma as social control: Gender-based violence stigma, life chances and moral order in Kenya’ (2016) 63 *Social Problems* 447-462. See also KS Dickson, ENK Boateng, D Adzrago, IY Addo, E Acquah &

where women are reliant on their male partners for financial security, they are reluctant to report intimate partner violence at the risk of losing their source of financial support. VAW has also been normalised in some societies to a point where some women are unaware that there are legal avenues that they can follow for recourse, a situation which is at times reinforced by a lack of action by law enforcement officials when a report is made.¹⁸

In Africa, research indicates that social structures and norms contribute to the acceptability of VAW, especially by intimate partners.¹⁹ VAW was found to be more common in communities where men traditionally took over the economic control of the family, as women were considered inferior and incapable of making decisions for the family.²⁰ However, in the same study, the converse was also found to be true, as in societies where women were traditionally seen as economically inferior, but have now taken up more active economic roles, violence against them increases as a way of re-asserting male dominance.²¹ This second hypothesis could possibly align with the apparent motivations of VAW in digital spaces in most contemporary African societies; as shown later, women who are more vocal and participatory in social and political spaces tend to be the target of DVAW. A disturbing observation, however, particularly as it relates to intimate partner or domestic violence, is the acceptability of VAW, which leads to under-reporting.²²

2.2 Digital technologies in Africa

The penetration of digital technologies in Africa is rapidly growing, even though it remains behind the bigger economies in the Western hemisphere.²³ The lockdown protocols that were affected across the continent and the whole world during the COVID-19 pandemic

SH Nyarko 'Silent suffering: Unveiling factors associated with Women's inability to seek help for intimate partner violence in Sub-Saharan Africa' (2023) 20 *Reproductive Health* 110.

18 Malanga (n 13) 630.

19 Alesina and others (n 10).

20 Alesina and others (n 10).

21 Alesina and others (n 10).

22 Alesina and others (n 10).

23 A de Fedeau, M Menski & S Perry 'Africa's digital infrastructure transformation' (2021) *White and Case* <https://www.whitecase.com/insight-our-thinking/africas-digital-infrastructure-transformation> (accessed 23 August 2023).

accelerated the growth of digital infrastructure and reliance on digital technologies. More and more people have turned to the internet for social activities, education, and health services that they could not physically access. Digital platforms like those used to verify COVID-19 certificates, facilitate cash transfers, and conduct virtual meetings became common.²⁴ The AU adopted a Digital Transformation Strategy 2020-2030 with the aim to achieve universal digital access and a 'single Pan-African digital market by 2030'.²⁵ It is estimated that as of May 2022, 473 million Africans had access to the internet, with the projection that the number would rise to 773 million by 2025.²⁶

Women, however, trail even further behind in terms of access to digital technologies. Their participation in digital spaces should consider the structural factors that enable or restrict their involvement. The inequalities that persist between men and women in Africa are also reflected in the access to the digital space, with research showing that most of the new internet users since 2013 have been men.²⁷ In fact, it is estimated that women are 14 per cent less likely to own a mobile phone than their male counterparts.²⁸ Internet use also varies widely from country to country in Africa. In this regard, Afrobarometer reported in 2020 that 58 per cent of women in Cabo Verde used the internet regularly (regularly defined as a few times a week), and 57 per cent of women in Mauritius also used the internet regularly.²⁹ However, it was found that less than 10 per cent of women in Mali, Niger, Madagascar, Burkina Faso, and Malawi had access to the internet regularly.³⁰ The gender digital divide on its own is a problem and is a reflection of the offline divide between men and women.

24 De Fedeau (n 23).

25 De Fedeau (n 23).

26 De Fedeau (n 23).

27 A Mazibuko 'Africa's digital gender divide' (2023) *Accord Conflict and Resilience Monitor* <https://www.accord.org.za/analysis/africas-digital-genderdivide/#:~:text=Moreover%2C%20women%20in%20developing%20countries,the%20women%20population%20was%2034%25> (accessed 23 August 2023).

28 Mazibuko (n 27).

29 Afrobarometer 'African women have less access to the internet than African men do. That's a problem' (2020) *Analysis* <https://www.afrobarometer.org/articles/african-women-have-less-access-internet-african-men-do-thats-problem/> (accessed 24 August 2023).

30 Afrobarometer (n 29).

A key factor contributing to the gender digital divide is the lack of online safety for women. This divide prevents women from equally accessing and benefiting from technology. Other contributing factors include affordability, as women often have less economic power than men and cultural norms that discourage women from engaging with technology by presenting it as a male domain.³¹

Regarding the affordability of technological services, the phenomenon of unpaid care work, which plagues women in different jurisdictions, limits the time they can devote to the active pursuit of careers and other economic endeavours. UN Women estimates that women undertake 2.6 times more unpaid care and domestic work than men.³² This affects women's income and leads to less prioritisation of digital devices and costs towards internet access.

The illiteracy of women also acts as an obstacle to women effectively utilising digital spaces. UNESCO estimates that globally, 765 million youth and adults lack basic literacy skills, of which two thirds are women.³³ Thirty-six per cent of these live in Africa, meaning there is a significant number of women who lack basic literacy skills, hence hampering their access to the internet. In addition to basic literacy, the challenge of lack of digital literacy. The lower digital literacy among women often results from a combination of factors, such as lower education levels, employment status, and economic level, which in turn cause a lack of comfort in using technology.³⁴

Despite these dismal statistics, the digital space has become a space for women to organise against violence and other forms of discrimination, thus emphasising the need to ensure that it is a safe space. For example, in South Africa in 2018, protesters used the hashtag #TotalShutdown to protest the continued rise in VAW and femicide in the country.³⁵ The #MyDressMyChoice campaign in Kenya also made use of digital

31 J Mariscal, G Mayne, U Aneja & A Sorgner 'Bridging the gender digital divide' (2019) 13 *Economics* 9

32 UN Women 'Turning promises into action: Gender equality in the 2030 Agenda for sustainable development', 2018, www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the-2030-agenda-for-sustainable-development-2018#view (accessed 10 October 2024)

33 UNESCO 'Global Alliance for Literacy' <https://www.uil.unesco.org/en/literacy/global-alliance> (accessed 17 June 2024).

34 OECD *Bridging the gender digital divide: Include, upskill and innovate* (2018).

35 UN Women 'In South Africa, women call for #TotalShutdown of gender-based violence', August 2018, <https://www.unwomen.org/en/news/stories/2018/8/>

platforms to spread the word and protest the victimisation of women in the streets based on what they wear.³⁶

3 Online violence against women in Africa: The scope of the problem

While offline VAW has been relatively well documented and is often easy to define and identify, DVAW is ever-evolving as more and more advancements in digital technologies take place. Key themes can be identified when it comes to DVAW, and they help to illuminate the manifestation of the problem. First is the understanding that DVAW is an online reflection of the VAW, inequality and discrimination that women face offline. Second is the reflection that DVAW takes on an intersectional lens, as some women are more at risk because of various identities. Third is the conclusion that in order to achieve substantive equality and equal participation socially, economically and politically, there is a need to take measures to prevent, protect and provide remedies for DVAW. Within this last point is the location of the role of internet intermediaries, who can play a significant role in putting in place innovative measures that can both prevent DVAW and enable the prosecution of perpetrators as a deterrent.

Despite the ever-evolving nature of DVAW, some forms have been identified, and these include online harassment, stalking, trolling, body shaming, and the non-consensual creation of sexual images using artificial intelligence.³⁷ It also includes versions of intimate partner violence through methods like GPS tracking and non-consensual sharing of intimate images. Just like offline VAW, DVAW includes threats meant to intimidate the victim, including threats of rape and death, which sometimes result in offline follow-through.³⁸ The digital space has also become the means by which human traffickers lure and recruit their victims. Apart from direct targeted attacks, DVAW can also take the

news-in-south-africa-women-call-for-totalshutdown-of-gender-based-violence (accessed 17 June 2024).

36 World Bank ‘#MyDressMyChoice: Tackling gender discrimination and violence in Kenya one tweet at a time’ <https://blogs.worldbank.org/en/developmenttalk/mydressmychoice-tackling-gender-discrimination-and-violence-kenya-one-tweet-time> (accessed 17 June 2024).

37 NamTshuwe Digital (n 5).

38 As above.

form of violent, misogynistic video games or shows with a stereotypical portrayal of women.³⁹

While the reach of digital technologies is limited amongst African women, this does not discount their vulnerability to DVAW. The scope of DVAW is often difficult to evaluate because of under-reporting and the lack of defined mechanisms for reporting and investigating reported cases.⁴⁰ Under-reporting is also a result of the offline challenge women face in reporting cases of violence, where they are met with disbelief and victim blaming, which prompts them to keep quiet rather than speak out. Nevertheless, it is estimated that in the world, at least 23 per cent of women have experienced some form of DVAW, and 1 in 10 women has experienced DVAW since the age of 15.⁴¹ Further, anecdotal evidence shows that many different manifestations of DVAW are present in Africa. In Kenya, it was reported that a 19-year-old girl committed suicide after a man that she had met on Facebook threatened to publish her intimate pictures.⁴² In addition, instances of abusers using online dating platforms and other social media platforms to lure their victims for assault and murder have also emerged. In Kenya, a girl was murdered in a short-term rental by a man who lured her from a dating site.⁴³ In Nigeria, the COVID-19 pandemic saw the rise of DVAW as more and more people relied on the internet during this period. Data from the Nigerian Communications Commission indicated that active internet subscriptions surged from 136 million in March 2020 to 151 million in September 2020.⁴⁴ The lockdown protocols during the pandemic led to diminished economic activity, which in turn resulted in perpetrators taking out their frustrations on women online.⁴⁵

39 Human Rights Council (HRC) Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, (28 May 2014) UN Doc A/HRC/26/38 (2014) (Report of the Special Rapporteur on violence).

40 CIPESA <https://cipesa.org/2022/03/combating-online-violence-against-women-and-girls-towards-a-digital-equal-world/> (accessed 23 August 2024).

41 Report of the Special Rapporteur on violence (n 39).

42 E Lirri 'The challenge of tackling online violence against women in Africa' <https://www.opennetafrica.org/the-challenge-of-tackling-online-violence-against-women-in-africa/> (accessed 23 August 2024).

43 ICJ 'The darkside of online platforms fueling violence against women', 2024, <https://icj-kenya.org/news/the-dark-side-of-online-platforms-fueling-violence-against-women/> (accessed 17 June 2024).

44 J Takon 'Online violence against women in Nigeria during Covid 19' (2021) *Paradigm Initiative Policy Brief*.

45 As above.

The manifestation of DVAW in Africa reflects the intersectional identities of women. The entrenchment of patriarchy and traditional conceptions about the position of women in society and the spaces they ought to occupy drive the attacks on women who venture out of the private space designated for them by society into the public arena. While traditionally, the public arena in the physical space literally meant the public areas, the innovations brought on by technological advancements have expanded the public arena to include the public online spaces that anyone can frequent. The activation of misogyny thus follows women into these digital public spaces, and attacks then take place there.⁴⁶ Thus, women who are prominent socially and politically are at a higher risk of being the target of DVAW. Researchers have posited that as a real danger to democratic processes, the concept of what they term ‘gendered disinformation’ is gaining traction and is sometimes state-sponsored.⁴⁷ Gendered disinformation is defined as ‘[i]nformation activities (creating, sharing, disseminating content) which attacks or undermines people on the basis of their gender; weaponises gender narratives to promote political, social or economic objectives.’⁴⁸ It disproportionately affects women and is often meant to drive the exclusion of women from active participation in those spaces. In addition to politically active women, gendered disinformation targeted at female journalists curtails the tenets of access to information and freedom of expression and has the effect of silencing women’s participation in public spaces and discrediting them professionally.⁴⁹ In Uganda, research shows that women who were candidates in the 2021 general elections were at a greater risk for online violence than male candidates.⁵⁰ The nature of the violence was mostly

46 R Lewis, M Rowe & C Wiper ‘Online/Offline Continuities: Exploring misogyny and hate in online abuse of feminists’ in K Lumsden & E Harmer (eds) *Online othering* (2019) 121-143. See also S Donato, H Eslan-Ziya & E Mangone ‘From offline to online violence: New challenges for the contemporary society’ (2022) 32 *International Review of Sociology* 400-412.

47 E Judson, A Atay, A Krasodonski, R Lasko-Skinner & J Smith ‘Engendering hate: The contours of state-aligned gendered disinformation online’ (2020) *Demos*.

48 As above.

49 Internet Governance Forum ‘Best practice forum on gender and digital rights: Exploring the concept of gendered disinformation’, 2021, https://intgovforum.org/en/filedepot_download/248/21181 (accessed 11 August 2024).

50 A Kakande, G Achieng, N Iyer, B Nyamwire, S Nabulega & I Mwendwa ‘Amplified abuse: Report on online violence against women in the Uganda 2021 general elections’ (2021) *Policy* 8.

sexualised trolling, body shaming, insults and gendered abuse.⁵¹ The violence increased the more active online the female candidates were.

The digital space has also become an organising platform for various movements by women, with women human rights defenders using social media and other forms of digital media to build momentum for their causes. The advent of hashtag movements has seen several issues being pushed into public discourse and sometimes spilling over into offline spaces. For example, in Kenya, the #MyDressMyChoice movement went viral as women protested the stripping of women who were considered to be ‘indecently dressed’.⁵² Therefore, online spaces must remain safe and available for women to utilise them. Unfortunately, women human rights defenders are often targets for DVAW, as they are seen to be challenging the status quo and pushing against inequality.⁵³ It must be noted that highlighting the experiences of prominent women is not intended to diminish the experience of everyday women who also form a large part of victims of DVAW in their everyday lives and are as equally affected by its devastating effects.

According to the UN Special Rapporteur on Violence against Women, its Causes and Consequences (UN Special Rapporteur), digital technologies are now providing new and reconfigured forms of abuse, underlying structural inequality, discrimination and patriarchy.⁵⁴ The offline discrimination that women experience is now being transferred to the digital space, where the cloak of anonymity emboldens even individuals who would otherwise not have the courage to hurl insults.⁵⁵

The effects of DVAW are far-reaching and just as serious as offline VAW. To begin with, DVAW results in women withdrawing from the digital space, thus widening the gender digital divide that the continent is already battling. This withdrawal means that a cross-section of women is unable to exercise their right to freedom of association and reduces their capacity to create and curate knowledge in public discourses. It thus curtails their right to freedom of expression when either they withdraw or their expression results in backlash and attacks on their person.

51 Kakande (n 50).

52 MA Simiyu ‘Digital activism and safety and security for women human rights defenders in Kenya’ (2020) *BUWA!* 144.

53 Simiyu (n 52).

54 Report of the Special Rapporteur on violence (n 39).

55 Lewis and others (n 46).

DVAW infringes on women's right to privacy and dignity, especially in the context of sexual violence and the non-consensual sharing of either privately shared intimate content or deep-fake content generated through artificial intelligence. The psychological effect of this violence is damaging to women's offline lives as it affects their self-esteem. As the world becomes increasingly reliant on digital spaces, DVAW affects women's ability to fully access services like educational content, health services, and economic opportunities, which have all become commonplace in the digital space. The impact of this is the increased inequality between men and women in the real world, especially if women continue to trail behind in terms of their economic pursuits. Additionally, it has become apparent that the digital space is relevant for political participation, where aspiring candidates can campaign and interact with the electorate through information technology infrastructure. African women are already struggling with political participation as the offline environment is not conducive for them in many countries. DVAW thus makes online political participation even harder.

4 Legislative framework

When digital rights are considered an extension of offline rights, then existing international human rights standards and norms are applied regarding freedom of expression, association, dignity, privacy and other associated rights. These are clearly articulated in instruments such as the Universal Declaration of Human Rights (accepted widely as international customary law) and the International Covenant on Civil and Political Rights. Specific to women's rights, these rights are also enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is premised on equal participation of women in all spheres of life, both public and private. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits physical and mental pain and suffering inflicted for various reasons, including discrimination, and has been interpreted by the Special Rapporteur on Torture to apply to VAW, especially in the context of domestic violence.⁵⁶ On the continent,

⁵⁶ United Nations General Assembly (UNGA) Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

the African Charter on Human and Peoples' Rights (African Charter) prohibits discrimination on the basis of gender, while its protocol, the Maputo Protocol, is elaborated on the elimination of discrimination and protection of various women's rights, including protection from violence in its various forms.

When all these instruments were adopted, the operation of rights within the digital space had not been envisioned; thus, they were drafted with offline rights in mind. Further, regarding VAW in general, the international law framework has a normative gap, which the African human rights system, through the Maputo Protocol, has covered. CEDAW, as a treaty, does not explicitly prohibit VAW. This right has emerged through interpretation and general recommendations by the Committee.⁵⁷ As the digital evolution continues, emerging trends have necessitated the re-evaluation of existing rights (which, for CEDAW, includes the extended definition of discrimination to include VAW), and most of this re-evaluation has been done through soft laws. A discussion of these soft laws forms the first stage towards demonstrating good practices for adaption into the African context in designing the normative framework for eliminating DVAW.

The CEDAW Committee has, over the years, acknowledged the emerging effects of the digital space on the realisation of the rights contained in CEDAW. General Recommendations are a mechanism that the Committee uses to elaborate and expand the meaning of rights already contained in the treaty. In General Recommendation 33 of 2015, the CEDAW Committee acknowledged that digital technologies played an important part in the empowerment of women.⁵⁸ In 2016, General Recommendation 34 was adopted, which was on rural women, in which the Committee recognised the role of the digital space in changing social

punishment, Nils Melzer, *Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence* (12 July 2019) UN Doc A/74/148 (2019).

57 UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) General Recommendation 12, *Violence Against Women* (Eighth session, 1989) UN Doc. A/44/38 (1990); General Recommendation 19 (n 12); UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No 35 on gender-based violence against women, updating General Recommendation No 19, 26 July 2017, CEDAW/C/GC/35.

58 Report of the Special Rapporteur on violence (n 39).

and cultural stereotypes about women and improving the efficiency of access to justice for rural women.⁵⁹ In 2017, the Committee adopted General Recommendation 35, which is specific to violence against women, in which it affirmed that the provisions of CEDAW are fully applicable to instances where VAW takes place within a digital or technological space, thus recognising the emerging forms of VAW. General Recommendation 36 of 2017, on the right of women and girls to education, the Committee addressed the issue of cyberbullying and how it can impede women and girls' access to education.⁶⁰ These soft laws have assisted in keeping CEDAW relevant and current in the changing digital landscape and apply to most African states, where the treaty has near-universal ratification status.

Domestic laws that are specifically focused on digital matters assist in combating DVAW, and some African countries have enacted these. In addition to data protection laws, some have enacted laws to deal with offences that occur within the digital space. Botswana has the Cybercrime and Related Computer Crimes Act of 2018, which prohibits, amongst other things, cyber stalking and cyber harassment, as well as non-consensual sharing of materials. Malawi has the Electronic Transactions and Cyber Security Act 33 of 2016, which creates offences for digital crimes like cyber stalking, cyber harassment and offensive communication. It also provides for the creation of what is termed the Malawi Computer Emergency Response Team, tasked with responding to information and technology security threats.⁶¹ In Nigeria, the Cybercrimes Act of 2015, in its section 24, criminalises crimes related to DVAW like cyberstalking, cyberbullying, extortion, blackmail and non-consensual sharing of intimate content (revenge porn).⁶²

Accurate and consistent implementation of these laws could assist in dealing with DVAW. However, it is reported that in some of these countries, cybercrime laws are instead used by law enforcement agencies to curtail freedom of expression online rather than protect people using digital spaces, as is the case for Nigeria.⁶³ In other instances, the legislative framework for the digital space is in a piecemeal format. It

59 As above.

60 As above.

61 NamTshuwe (n 5).

62 Takon (n 44).

63 As above.

does not provide adequate protection as far as DVAW is concerned, which often results in difficulties in victims asserting their rights.⁶⁴ Such is the case in Zimbabwe, for example, where a researcher reports that a young woman reported a matter of non-consensual sharing of nude pictures to the police, who did not investigate the matter or apply any of the available pieces of legislation.⁶⁵

5 African Commission on DVAW

As a standard-setting regional body, one of the main advantages of having norms set by the African Commission that are applicable to all African states is the attempt to have harmonised or at least compatible laws within the continent. This is particularly relevant in the context of laws concerning the digital space, as it makes it easier to have international cooperation and establish dual criminality, given the borderless nature of cybercrimes. In 2014, the AU adopted the Convention on Cyber Security and Personal Data Protection, which covers the protection of personal data, electronic transactions and cybercrimes.⁶⁶ It entered into force on 8 June 2023 following the deposit of the fifteenth instrument of ratification.⁶⁷

The work by the African Commission on DVAW has only just begun, with indications that this is a matter that it intends to take up in more detail going forward. The revised Declaration on Principles of Freedom of Expression and Access to Information in Africa of 2019⁶⁸ articulates some of the issues relevant to DVAW. Principle 5 affirms that the rights to freedom of expression and access to information shall be protected from interference both online and offline. It extends protection specifically to journalists and human rights defenders in Principle 6 by including the exercise of these rights ‘in any medium’. This is interpreted to extend to the digital space and is put in a broad enough way to survive any advancement in the technological space. Part IV of the Declaration

⁶⁴ NamTshuwe (n 5).

⁶⁵ As above.

⁶⁶ African Union Convention on Cyber Security and Personal Data Protection (2014) <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection> (accessed 10 August 2024) (Cyber Security and Personal Data Protection Convention).

⁶⁷ As above.

⁶⁸ Declaration of Principles on Freedom of Expression (n 2).

is dedicated to access to information and freedom of expression online, and it is worded in line with principles of substantive equality, which encourages universal, equitable, and meaningful access to the internet for all individuals. It calls on states to adopt laws that allow online safety for children and safeguard their privacy and identity. It encourages the criminalisation of harmful sharing of information, including non-consensual sharing of intimate images. If member states follow the guidelines provided for in the Declaration, they have the potential to strengthen domestic laws on DVAW.

In August 2022, the African Commission, led by the SRRWA, adopted a Resolution on the Protection of Women against Digital Violence.⁶⁹ The resolution leverages article 9 of the African Charter, which provides for the right to receive information and to express and disseminate an individual's opinion, and article 1 of the Maputo Protocol, which defines VAW. The resolution calls upon state parties to review their domestic legislation to expand the meaning of gender-based violence to include DVAW. Given the dearth of information on DVAW on the continent, the resolution calls on member states to conduct research on the scope of the problem within their territory and to include DVAW in their crime statistics. Other recommendations it makes are the cooperation between law enforcement and internet intermediaries in investigating and identifying perpetrators of DVAW, as well as information dissemination on the issue, including the remedial mechanisms available within the territory.

In addition to the resolution, the SRRWA has taken up the issue of DVAW through the mandate's membership in the platform of independent mechanisms – EDVAW. The EDVAW platform was formed in 2018 at the instigation of the UN Special Rapporteur as a working group on discrimination against women and girls.⁷⁰ It brings together seven mechanisms in different regions namely the UN Special Rapporteur, the UN Working Group on Discrimination against Women and Girls (UN Working Group), CEDAW Committee, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO),

69 African Commission Resolution on the Protection of Women Against Digital Violence in Africa ACHPR/Res. 522 (LXXII) 2022.

70 OHCHR <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/edvaw-platform> (accessed 26 August 2024).

Committee of Experts of the Follow-up Mechanism to the Belem do Para Convention (MESECVI), the SRRWA and the Inter-American Commission on Human Rights' Rapporteur on the Rights of Women (IA RWHR). The aim of the platform is to 'strengthen institutional cooperation between the mechanisms with a view to undertaking joint action to harmonise and improve the implementation of the existing international legal and policy frameworks on violence against women'.⁷¹

The SRRWA contributed to the thematic paper on DVAW published by the EDVAW platform in November 2022.⁷² The paper recognises DVAW as a continuum of offline VAW. It identifies strategies that could work towards reducing DVAW and the challenges that mechanisms have encountered in fighting the problem. These strategies are discussed below as part of good practices.

The essence of these interventions has been to ensure that DVAW is eliminated as it is an impediment to women freely enjoying the digital space on an equal basis with men. It is meant to amplify women's voices within the digital space as an enhancement to the enjoyment of their individual rights like freedom of association, access to information, and right to privacy in a meaningful way without obstacles.

6 Good practices from other regions

The mechanisms that form the EDVAW platform provide a wealth of good practices within their regions, which can be adapted to suit the African context. The practices coming out of the different regions reveal several strategies and frameworks that can be employed in the attempt to eliminate DVAW and are substantiated by the research and work that has already begun in the other regional mechanisms. To illustrate this, it is useful to borrow from the framework that the UN Special Rapporteur has laid out on the prevention, protection, prosecution, and providing remedies for survivors of DVAW. This framework helps to reduce the incidence of DVAW while simultaneously putting safeguards in place

71 Council of Europe *The digital dimension of violence against women as addressed by seven mechanisms of the EDVAW Platform* Thematic paper adopted by the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (2022) https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/statements/2022-12-02/EDVAW-Platform-thematic-paper-on-the-digital-dimension-of-VAW_English.pdf (accessed 26 August 2024).

72 Council of Europe Thematic Paper (n 71).

and ultimately ensuring accountability measures are in place. It also calls for a multi-sectoral approach to combat the problem.

6.1 Prevention

The creation of safeguards that ensure that DVAW does not happen in the first instance is crucial as a first step towards addressing the issue. Regulating the usage and structure of the digital space by making use of the rapidly improving technological infrastructure goes a long way towards creating safe spaces for women to participate equally online.

The UN Special Rapporteur produced a report in 2018 that analysed the phenomenon of DVAW from a human rights perspective.⁷³ The mandate encouraged member states to take responsibility for ensuring that both state and non-state actors play their role in preventing DVAW. In particular, the role of internet intermediaries is relevant, as states are supposed to ensure that the intermediaries are obligated to provide in-built protections against DVAW, eliminate discriminatory practices, and cooperate in investigations of reported cases of violations.⁷⁴

In 2021, GREVIO adopted General Recommendation 1 on the Digital Dimension of Violence Against Women. As one of the strategies for preventing DVAW, the general recommendation calls for addressing the root causes of DVAW, with a change in the perceptions and stereotypes that have made VAW generally acceptable within society. Further, it recommends the inclusion of mandatory digital literacy and online safety as part of the curricula of all levels of education. It also calls on states to incentivise internet intermediaries to incorporate robust content moderation. The African Commission can similarly utilise its general comment procedure to further elaborate on the application of the rights enshrined in the Maputo Protocol and the African Charter to apply to DVAW.

An innovative prevention strategy that the MESECVI has implemented since 2022 is a free online course on digital security, with a gender perspective, in which they are partnering with the Cybersecurity Program of the Inter-American Committee against Terrorism of the

73 Report of the Special Rapporteur on violence (n 39).

74 Report of the Special Rapporteur on violence (n 39) 14.

OAS.⁷⁵ It encourages participants to develop new internet habits through strategic thinking and alert them to the risks they face online and how to circumvent them.

6.2 Protection

A robust protection mechanism for DVAW is underlined by a set of laws and policies that establish clear rights that states are obligated to protect and promote. This applies at both international and domestic levels. It has been established elsewhere that most of the existing international treaties are playing catch-up with the emergence of digital components to the rights they are designed to protect; thus, an increase in soft laws meant to bring these treaties up to date can be seen. If implemented properly, these laws and policies have the potential to reduce the incidence of DVAW and encourage equal participation of women in technological spaces.

The UN Special Rapporteur calls for the application of existing international human rights standards to DVAW with the added component of soft laws that expand and define specific rights to suit the digital nature of the issues.⁷⁶ This requires the cooperation of not just the mandate responsible for the rights of women and children but also other mandates, including freedom of expression and access to information. Within the UN context, the UN Special Rapporteur has previously issued a joint statement with the Special Rapporteur on freedom of expression in which they indicated that DVAW undermined principles of equality and freedom of expression.⁷⁷

Similarly, GREVIO has made use of soft laws to bring up to date the existing provisions of the Council of Europe Convention on Preventing Violence against Women and Domestic Violence (Istanbul Convention). The 2021 General Recommendation 1 acknowledges that VAW has already been established as one of the most serious gender-based violations, and the addition of a digital component is now amplifying it. The adoption of this general recommendation boosts the

⁷⁵ Council of Europe Thematic Paper (n 71).

⁷⁶ Council of Europe Thematic Paper (n 71) 11.

⁷⁷ OHCHR 'UN experts urge States and companies to address online gender-based abuse but warn against censorship', March 2017, <https://www.ohchr.org/en/press-releases/2017/03/un-experts-urge-states-and-companies-address-online-gender-based-abuse-warn> (accessed 26 August 2024).

existing protection offered by the policy framework already operating in the region to protect offline rights.

MESECVI has produced a comprehensive thematic study on DVAW titled *Cyberviolence and Cyber-harassment against women and girls, within the framework of the Belém Do Pará Convention*. The study focuses on ways in which the provisions of the Belem do Para Convention can be applied to DVAW.

6.3 Prosecution

While laws and policies create a protection framework, they must be fully implemented to have the desired effect. In addition to regulating the use of digital spaces and ensuring the protection of human rights, laws and policies should contain clear prosecution protocols for DVAW in the same way that several jurisdictions have for offline violence. In this regard, equal access to the protection of the law becomes a vital right to protect, for both survivors of online violence as much as their counterparts who experience offline violence. Due to reduced access to tangible, physical evidence, which is often used in the case of offline violence, it could result in justice systems not prioritising online violence.

GREVIO's General Recommendation 1 highlights that most national response mechanisms to VAW hardly ever include DVAW, especially in responding to domestic violence. This indicates a de-prioritisation of DVAW by justice mechanisms which could result in fewer prosecutions for such cases.

6.4 Providing remedies

Prosecution acts as a deterrent for the perpetration of DVAW. However, a holistic justice system also needs to include adequate remedies for the survivors of DVAW. In this case, the aim of reparations should encourage re-entry into the digital space where survivors had retreated following the violation, as well as restoring their confidence to safely navigate the space. It should also take into consideration the psychological effect that DVAW has on women and girls and include measures to ensure rehabilitation.

The UN Special Rapporteur, in its report on DVAW, called upon states to ensure that women and girls who are victims of DVAW have fast and transparent remedies. The report recommended, among other

things, reparations, which include removal of the offensive material (again underlining the role of intermediaries) and urgent court orders to prevent any release of offensive or harmful material. This is in addition to any other form of rehabilitation, restitution, and assurances of non-repetition, which may be applicable to a particular case.

6.5 State accountability

As a way of measuring the extent to which states are implementing their obligations and the framework referred to above, state accountability mechanisms are used. Regional and international mechanisms assist in holding states accountable for their own actions as well as those of non-state actors where states have failed to put in place adequate measures for protection. In the present case, ensuring substantive equality in the use of the digital space and eliminating DVAW are the responsibility of the state.

The UN Working Group has made strides in highlighting the issues of DVAW as a way of holding states accountable within their communications procedure. For example, in a case against India, the Working Group raised the issue of online VAW journalists in 2022.⁷⁸ The use of the communications procedure is quite relevant for the African Commission and provides an opportunity for it to interpret the rights within the existing treaties in the context of the digital space.

Similarly, in its monitoring role, MESECVI has raised the issue of DVAW in several country reports. This role corresponds with the state reporting mechanism of the African Commission, which is an avenue that they can use to emphasise the importance of fighting DVAW.

7 Proposed framework for Africa

In proposing a framework for tackling DVAW, this chapter does not seek to go beyond the existing mandate and procedures of the African Commission. Rather, it highlights and leverages existing mechanisms

⁷⁸ Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief and the Working Group on discrimination against women and girls, 22 September 2022, AL IND 7/2022.

with a more deliberate and intentional focus on digital dimensions of violations against women to create a multi-dimensional framework to deal with the issue. Presently, the response of the African Commission has not been well coordinated, and instead of being a central policy issue, DVAW has been existing at the margins of the activities of the treaty body. This proposed framework is, therefore, meant to mainstream DVAW and bring it to the core of the activities of the African Commission, on the understanding that doing so will assist in furthering the principles of substantive equality and non-discrimination on the African continent. Based on the good practices identified above, the following is proposed in accordance with the existing procedures of the African Commission.

7.1 A study

The research information on DVAW within the African context is slowly gaining momentum. However, to make informed policy decisions that reflect the full extent of the problem at hand, it is proposed that the African Commission embark on continent-wide research on DVAW. This study would focus on the scope of DVAW, where in-country statistics can be obtained, and the way DVAW manifests itself. The study would also be able to highlight any emerging trends and scope out the existing laws and policies relevant to the issue. It would then analyse any challenges that are being faced either in monitoring the occurrence of DVAW or in implementing any mechanisms in place for prevention and protection. The study would form the basis upon which the African Commission can start to develop standards that member states can utilise to increase their domestic protection.

7.2 General comment

As discussed previously, the current human rights instruments of the African Commission, namely the African Charter and the Maputo Protocol, were adopted prior to the emergence of new threats through the digital spaces. Therefore, in order to make them contemporary and more directly applicable to DVAW, a General Comment on article 4 of the Maputo Protocol, which prohibits VAW, is proposed. The general comment would expand the definition of VAW as found in article 1(j) to include DVAW. In accordance with good practice, it is proposed that the general comment include the following:

- (a) Defining DVAW and recognising its ever-evolving nature as technological advancements continue;
- (b) Elaborating known forms of DVAW and how they manifest in the digital space while acknowledging that the descriptions are non-exhaustive;
- (c) Ensuring that women and girls are involved in policy dialogues regarding digital spaces;
- (d) Affirming that the existing provisions of the Maputo Protocol are also applicable to online violations;
- (e) Defining state responsibilities for tackling DVAW which include but are not limited to the following: prevention measures, which include continuous efforts to change perceptions and attitudes towards VAW; compulsory digital safety educational protocols; engagement with internet intermediaries to strengthen safety protocols on their platforms and strict moderation and monitoring mechanisms for users without it amounting to censorship;
- (f) Protection measures which include review/enactment of comprehensive laws on digital spaces, with clear penalties for perpetrators of DVAW, information dissemination on reporting mechanisms and available remedies for DVAW victims, capacity building for law enforcement and judicial officers to deal with DVAW, provision of access to legal aid to victims of DVAW; and
- (g) Remedial measures, which include engagement with intermediaries to remove offensive content online where possible, restitution, counselling and psychological support to women who have been subjected to DVAW, and deterrent penalties for perpetrators.

7.3 Communications procedure

The African Commission relies on litigants to file communications before it, alleging violation of human rights in terms of the treaties. Therefore, it cannot, in essence, control the subject matter of the cases that come before it. However, should matters concerning freedom of expression and access to information come before it, the African Commission should interrogate the extent to which the digital spaces played a role in any violations and single out issues of DVAW, where applicable. This also applies where cases of VAW or discrimination on the basis of gender come before them, in which case they should pay particular attention to any digital-related issues. This will help develop jurisprudence on DVAW and assist in interpreting the applicability of provisions to communications with a digital dimension.

7.4 State reporting

The Guidelines for State Reporting already issued by the African Commission indicate that the member states should report on all the matters concerning the implementation of the rights contained in the treaties under its purview. Once the African Commission has firmly established that offline rights apply to the online space, it should thus engage member states during the state reporting process on measures taken to investigate or eliminate any cases of DVAW. It should also interrogate member states on measures put in place to prevent the DVAW. In particular, the SRRWA, in considering the measures put in place to implement the Maputo Protocol, should investigate measures specific to DVAW. The mandate should also incorporate specific questions relating to how the state has ensured substantive equality in advancing and using digital technologies in its territory. If this is done as a matter of practice, it will encourage more and more states to consider legislative, administrative, institutional and other measures to regulate the digital space and work towards eliminating DVAW.

8 Conclusion

A few conclusions can be drawn from the matters highlighted in this chapter. The case has been made that the African continent is faced with some challenges relating to the digital dimension and digital divide. The digital divide is an indication that Africa trails behind more developed continents in terms of access to information and communication technologies, with women being even further behind than their male counterparts in terms of access to the digital sphere.

To compound their limited access, those women who do manage to access the internet are met with threats to their safety through various manifestations of DVAW. Research conducted so far and cited above indicates that women are vulnerable while they try to access digital spaces, as they continuously face various forms of violence online. This chapter asserts that the challenges that women face offline, because of patriarchal norms, stereotypes against women, inequality and discrimination, are extended onto the digital space, thus giving women no reprieve from their daily struggles.

The discussion above established that DVAW assumes an intersectional persona, with some women who are active within the

public spaces more at risk as patriarchy attempts to push them back into private, domestic spaces. This includes politically active women, gender activists, journalists and media influencers, among others. DVAW against women infringes upon and violates rights accorded to women in the Maputo Protocol and various human rights instruments, including freedom of expression, of association, freedom from torture and other inhuman and degrading treatment, freedom from violence and right to dignity.

After all of this was established, the chapter proposes to adopt a human rights approach to tackling DVAW, relying on international and regional human rights mechanisms to set universal normative frameworks to assist member states in dealing with the issue at a domestic level. It should be noted that measuring the effectiveness of the strategies employed by other regional mechanisms was beyond the scope of this chapter, but their good practices were utilised to initiate a framework for the African Commission, which is currently under-developed. Thus, the chapter concludes that to achieve substantive equality in the participation of women and men in social, political and economic discourse driven by the digital space, it is imperative that the African Commission considers a more deliberate normative framework dedicated to the digital dimension. The mandate of the SRRWA is well positioned to lead this initiative with an intersectional approach and, in the process, strengthen the effectiveness of the mandate and the African Commission in addressing the digital dimension.

Table of abbreviations

AU	African Union
DVAW	Digital violence against women
SRRWA	Special Rapporteur on the Rights of Women in Africa
VAW	Violence against women
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
EDVAW	Platform of Independent Mechanisms on Discrimination and Violence Against Women
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
UNESCO	United Nations Educational, Scientific, and Cultural Organization
MESECVI	Committee of Experts of the Follow-up Mechanism to the Belem do Para Convention
IA RWHR	Inter-American Commission on Human Rights' Rapporteur on the Rights of Women

References

- 25 March 2024 Factsheet in WHO 'Violence against women' <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>
- African Union Agenda 2063: The Africa We want (AU 2015)
- Afrobarometer 'African women have less access to the internet than African men do. That's a problem' (2020) *Analysis* <https://www.afrobarometer.org/articles/african-women-have-less-access-internet-african-men-do-thats-problem/>
- Alesina A, Brioschi B & La Ferrara E 'Violence against women: A cross-cultural analysis for Africa' (2021) *Economica* 70-104
- Barnett JP, Matlack-Tyndale E & Kenya T 'Stigma as social control: Gender-based violence stigma, life chances and moral order in Kenya' (2016) 63 *Social Problems* 447-462
- Casique LC & Furegato ARF 'Violence against women: Theoretical reflections' (2006) *Revista Latino-Americana de Enfermagem* 950-956
- CIPESA <https://cipesa.org/2022/03/combating-online-violence-against-women-and-girls-towards-a-digital-equal-world/>
- Council of Europe *The digital dimension of violence against women as addressed by seven mechanisms of the EDVAW Platform* Thematic paper adopted by the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (2022) https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/statements/2022-12-02/EDVAW-Platform-thematic-paper-on-the-digital-dimension-of-VAW_English.pdf
- De Fedeau A, Menski M & Perry S 'Africa's digital infrastructure transformation' (2021) *White and Case* <https://www.whitecase.com/insight-our-thinking/africas-digital-infrastructure-transformation>
- Dickson KS, Boateng ENK, Adzrago D, Addo IY, Acquah E & Nyarko SH 'Silent suffering: Unveiling factors associated with women's inability to seek help for intimate partner violence in Sub-Saharan Africa' (2023) 20 *Reproductive Health* 110
- Donato S, Eslen-Ziya H & Mangone E 'From offline to online violence: New challenges for the contemporary society' (2022) 32 *International Review of Sociology* 400-412
- Fox VC 'Historical perspectives of violence against women' (2002) 4 *Journal of International Women's Studies* 15-34
- Fredman S 'Substantive equality revisited' (2016) 14 *International Journal of Constitutional Law* 712-738

- Human Rights Council (HRC) Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (28 May 2014) UN Doc A/HRC/26/38 (2014)
- ICJ ‘The darkside of online platforms fueling violence against women’ (2024) <https://icj-kenya.org/news/the-dark-side-of-online-platforms-fueling-violence-against-women/>
- Internet Governance Forum ‘Best practice forum on gender and digital rights: Exploring the concept of gendered disinformation’ (2021) https://intgovforum.org/en/filedepot_download/248/21181
- Judson E, Atay A, Krasodomski A, Lasko-Skinner R & Smith J ‘Engendering hate: The contours of state-aligned gendered disinformation online’ (2020) *Demos*
- Kakande A, Achieng G, Iyer N, Nyamwire B, Nabulega S & Mwendwa I ‘Amplified abuse: Report on online violence against women in the Uganda 2021 general elections’ (2021) *Policy* 81-63
- Lewis D & Orderson C ‘Digital activism and violence against women: Changing landscapes of feminist activism in southern Africa’ (2012) *Think Piece for Gender and Citizenship in the Information Society* <https://idl-bnc-idrc.dspacedirect.org/items/287812e6-a506-4e24-9051-00d43318fd61>
- Lewis R, Rowe M & Wiper C ‘Online/Offline Continuities: Exploring misogyny and hate in online abuse of feminists’ in K Lumsden & E Harmer (eds) *Online Othering* (Elsevier 2019)
- Lirri E ‘The challenge of tackling online violence against women in Africa’ <https://www.opennetafrika.org/the-challenge-of-tackling-online-violence-against-women-in-africa/>
- Malanga DF ‘Survey of cyber violence against women in Malawi’ Proceedings of the 1st virtual Conference on Implications of Information and Digital Technologies for Development (2021)
- Mariscal J, Mayne G, Aneja U & Sorgner A ‘Bridging the gender digital divide’ (2019) 13 *Economics* 1-13
- Mazibuko A ‘Africa’s digital gender divide’ (2023) *Accord Conflict and Resilience Monitor* <https://www.accord.org.za/analysis/africas-digital-gender-divide/#:~:text=Moreover%2C%20women%20in%20developing%20countries,the%20women%20population%20was%2034%25>
- Mulunch MD, Stul V, Francis L & Agho K ‘Gender-based violence against women in sub-Saharan Africa: A systematic Review and meta-analysis of cross-sectional studies’ (2020) 17 *International Journal of Environmental Research and Public Health* 903

- NamTshuwe Digital 'Understanding online gender-based violence in Southern Africa: An eight-country analysis of the prevalence of digitally enable gender-based violence' *Report published by Centre for Human Rights, University of Pretoria* (2021)
- OECD *Bridging the gender digital divide: Include, upskill and innovate* (OECD 2018)
- OHCHR 'UN experts urge States and companies to address online gender-based abuse but warn against censorship', March 2017, <https://www.ohchr.org/en/press-releases/2017/03/un-experts-urge-states-and-companies-address-online-gender-based-abuse-warn>
- OHCHR <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/edvaw-platform>
- Palermo T, Bleck J & Peterman A 'Tip of the iceberg: Reporting and gender-based violence in developing countries' (2014) 179 *American Journal of Epidemiology* 602-612
- Qureshi S 'A recognition of violence against women as a violation of human rights in the United Nations System' (2013) *South Asian Studies* 187-198
- Simiyu MA 'Digital activism and safety and security for women human rights defenders in Kenya' (2020) *BUWA!* 144
- Takon J 'Online Violence against women in Nigeria during Covid 19' (2021) *Paradigm Initiative Policy Brief*
- United Nations Women 'In South Africa, women call for #TotalShutdown of gender-based violence', August 2018, <https://www.unwomen.org/en/news/stories/2018/8/news-in-south-africa-women-call-for-totalshutdown-of-gender-based-violence>
- United Nations Women 'Turning promises into action: Gender equality in the 2030 Agenda for sustainable development', 2018, www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the2030-agenda-for-sustainable-development-2018#view
- UNDP *Gender equality in digitalization: Key issues for programming* (UNDP 2021)
- UNESCO 'Global Alliance for Literacy' <https://www.uil.unesco.org/en/literacy/global-alliance>
- World Bank '#MyDressMyChoice: Tackling gender discrimination and violence in Kenya one tweet at a time' <https://blogs.worldbank.org/en/developmenttalk/mydressmychoice-tackling-gender-discrimination-and-violence-kenya-one-tweet-time>

Zviyita I & Mare A 'Same threats, different platforms? Female journalists' experiences of online gender-based violence in selected newsrooms in Namibia' (2023) 25 *Journalism* 779-799

Legislation

Cybercrime and Related Computer Crimes Act of 2018 [Botswana]

Electronic Transactions and Cyber Security Act 33 of 2016 [Malawi]

Cybercrimes Act of 2015 [Nigeria]

International, regional and other rights instruments

African Charter on Human and Peoples' Rights (adopted 27 June 1981 entered into force 21 October 1986) 1520 UNTS 217

African Commission Resolution on the Protection of Women Against Digital Violence in Africa ACHPR/Res. 522 (LXXII) 2022

African Union Convention on Cyber Security and Personal Data Protection (2014) <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13

Council of Europe Convention on Preventing Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS No 210

Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 171

Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief and the Working Group on discrimination against women and girls, 22 September 2022, AL IND 7/2022

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 13 September, entered into force 25 November 2005) CAB/LEG/66.6

United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No 35 on gender-based violence against women, updating General Recommendation No 19, 26 July 2017, CEDAW/C/GC/35

United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation 19: Violence against women, 1992, A/47/38

United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) General Recommendation 12, Violence Against Women (Eighth session, 1989) UN Doc. A/44/38 (1990)

United Nations General Assembly (UNGA) Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence (12 July 2019) UN Doc A/74/148 (2019)

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 (III)