



PROTECTING SEXUAL VIOLENCE VICTIMS IN THE DIGITAL AGE

ISSN 2957-8647

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Vol. 2
pp. 1-18, March 2023

www.cavendish.ac.ug

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How to cite this article:

Udonnah, G. (2023). Protecting Sexual Violence Victims In The Digital Age. CULJ Vol 2.

Abstract

Digital technologies have made significant contributions to global, social, and cultural advancements, but they have also made it easier for individuals to commit crimes such as sexual assault, cyberstalking, sexual harassment, and many others, which are referred to as Technology-Facilitated Sexual Violence (TFSV). Sexual harassment and assault are made easier by the Internet, camera-equipped phones, and social media. New social interactions, particularly those formed online, have resulted in criminal behaviour that Nigeria's legal framework does not adequately address. This article examines technologically facilitated sexual violence, which occurs when new technology is used to perpetrate or extend the harm caused by sexual assault, or to transmit sexual images of another person without their consent. It assesses the challenges to the existing criminal law posed by the emergence of technology-facilitated sexual violence. The article focuses on the scope and limitations of Nigerian criminal law to address these diverse but interconnected gender-based abuses. Despite the fact that certain jurisdictions have achieved progress, much more needs to be done. It is recommended that adequate training be provided to schools, law enforcement agencies, service providers, online communities, and social media platforms to achieve the objective of equal and ethical digital citizenship.

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Introduction

Digital technology has become a vital part of our daily lives, invading many sectors of society, including crime, and influencing how we operate and communicate. Numerous forms of sexual violence are facilitated by the proliferation of the Internet, camera-equipped mobile devices, and online social networks. Information and communication technologies (ICTs) have significantly affected contemporary culture as individuals all over the globe rely on ICTs, which have revolutionised how public and private spheres are interconnected¹. New technologies offer a multitude of opportunities, knowledge, and an expanding envisioned society with unparalleled freedoms². Given the popularity of Internet-connected devices like computers, laptops, mobile phones, and tablets, and online communication services like social media networks and social applications, it is not surprising that digital technologies have facilitated sexually based harm³. In the digital space, there is tremendous potential for victims' rights, but there are also risks and the prospect of new channels for violence against women and children⁴. Sexual assault complaints have increased due to new digital technologies, rapid technical innovation, the transnational character of internet services, and the likelihood that victims and perpetrators live in various countries, making it harder for governments to protect abuse victims⁵.

In Nigeria, neither the Criminal Code⁶ nor the Penal Code⁷ adequately addresses the majority of offences that constitute Technology-Facilitated Sexual Violence (TFSV). However, the Cybercrime Act of 2015⁸ provides provisions for certain offences, particularly those involving children. Many jurisdictions, including Nigeria, lack current or comprehensive regulations to

¹ N Henry and A Powell, *Sexual Violence in The Digital Age: The Scope and Limits of Criminal Law* (Springer Nature, London 2017) 7-9.

² N Henry, and A Powell 'The Dark Side of Virtual: Towards A Digital Sexual Ethics' in N Henry, and A Powell, (eds), *Preventing Sexual Violence: Interdisciplinary Approaches to Overcoming a Rape Culture* (Palgrave Macmillan, UK, 2014) 84-104.

³ S Burke, M Wallen, K Vail-Smith and D Knox, 'Using Technology to Control Intimate Partners: An Exploratory Study of College Undergraduates' (2011) 27 *Computers in Human Behaviour* 1162–1167.

⁴ Committee on the Rights of the Child (CRC Committee), General Comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, 2 March 2021 (CRC General Comment No. 25 (2021)), para. 3

⁵ United Nations Children's Fund 'Legislating for the Digital Age: Global Guide on Improving Legislative Framework to Protect Children from Online Sexual Exploitation and Abuse' (UNICEF, New York 2022)10-12.

⁶ Criminal Code Act, Cap C38 LFN 2004,

⁷ Penal Code (1962) Cap 89, Laws of Northern Nigeria.

⁸ Cybercrimes (Prohibition, Prevention, Etc) Act 2015.

combat various kinds of TFSV. To safeguard victims, new means for investigating, storing and preserving electronic evidence, access to justice for victims and independent oversight of children's digital rights to protection are required.⁹This article conceptualises TFSV as a form of sexual violence and examines a range of offences that fall within this category, as well as the existing legal framework for responding to and deterring such conduct.

Definition and Nature of Technology Facilitated Sexual Violence

To understand how each form of sexual violence against victims can be prevented, how victims can be better protected, and how to prosecute various forms of sexual offences, it is vital to identify the problem. The conceptualization of TFSV intends to highlight not only victim experiences but also potential gaps in legal, justice, and support responses to technology-facilitated abuse.¹⁰Sexual violence is an all-encompassing term that includes ‘any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work¹¹. This term encompasses both physical and non-physical offences. Non-physical contact includes displaying sexual objects, luring victims online for sexual purposes, inviting victims to touch sexual organs online or offline, peeking, pornography, asking or commenting on sexual matters, suggesting or forcing the victim to masturbate, and showing the victim's genitalia. Physical contact involves touching or fondling the victim's genitalia or chest, oral sex, inserting the penis into the victim's vagina or anus, or inserting fingers or other devices.¹² Technology-Facilitated Sexual Violence (TFSV) refers to a range of behaviours where digital technologies are used to facilitate both virtual and physical sexually based harms.¹³ When

⁹*Ibid.*

¹⁰A Vander Wilk, ‘Women and Girls from Violence in the Digital Age: The relevance of the Istanbul Convention and the Budapest Convention on Cybercrime in addressing online and technology-facilitated violence against women (Council of Europe’ 2021)<<https://rm.coe.int/prems-153621-gbr-2574-study-online-a4-bat-web/1680a4cc44>>accessed 3 April 2022.

¹¹ E Krug and others ‘The World Report on Violence and Health’ (2002)360 *The Lancet* 9339, 1083-1088

¹² D Ramadhan, ‘Judicial Preview Model in the Budget Function of the Legislative Body’ In *Proceedings of the 2nd International Conference on Law* 2021< https://doc-pak.undip.ac.id/14257/1/4_Kelengkapan_%20Judicial%20Preview%20Model.pdf>accessed 1 January 2023.

¹³N Henry and P Anastasia, ‘Technology-facilitated Sexual Violence: A Literature Review of Empirical Research’ (2016) 19 *Trauma, Violence and Abuse* 2, 1–14.

conceptualising TFSV, it is useful to examine a range of sexually damaging behaviours, such as facilitating rape, sexual assault, and other unwanted sexual experiences¹⁴. In Nigeria, the Cybercrime Act prohibits image-based sexual abuse, including pornography, online sexual harassment, and cyberstalking.¹⁵ As defined by the World Health Organization, the term "Technology-Facilitated Sexual Violence" embraces a range of technologically-enabled behaviours¹⁶. The widespread use of social media platforms in the aftermath of the digital revolution has given rise to innovative cultural practices and behaviours. The platforms' encouragement of user-generated content has gradually eroded the traditional boundaries separating public and private life.¹⁷

Forms of Technology Facilitated Sexual Violence

Utilising new technologies to facilitate sexual violence is currently one of the most widespread practices.¹⁸ Forms of technology-facilitated violence include, but are not limited to, the following:¹⁹

The Unauthorised Creation and Distribution of Sexual Images

Distributing sexually graphic or personal photographs without the victim's consent is known by several names, including revenge pornography²⁰, non-consensual sexting²¹, involuntary

¹⁴J Bailey, N Henry, and A Flynn, 'Technology-Facilitated Violence and Abuse: International Perspectives and Experiences' in J Bailey, A Flynn, A. and N Henry, (eds.) *The Emerald International Handbook of Technology-Facilitated Violence and Abuse : Emerald Studies In Digital Crime, Technology and Social Harm* (Emerald Publishing Limited, Bingley, (2021) 1-17.

¹⁵Cybercrimes (Prohibition, Prevention, etc.) Act 2015 s 23 and 24.

¹⁶N Henry and A Powell, 'Sexual Violence in The Digital Age: The Scope and Limits of Criminal Law' (2016) 25 *Social and Legal Studies*, 4, 397-418.

¹⁷J Katz and E Crocker, 'Selfies and Photo Messaging as Visual Conversation: Reports from The United States, United Kingdom and China' (2015) 9 *International Journal of Communication*, 1861-1872.

¹⁸N Henry and A Powell, 'Embodied Harms: Gender, Shame and Technology Facilitated Sexual Violence in Cyberspace', 2015, 21 *Violence Against Women* 6, 758-779.

¹⁹N Henry and A Powell, 'Beyond the Sext: Technology Facilitated Sexual Violence and Harassment Against Adult Women' (2014) 48 *Australian and New Zealand Journal of Criminology* 1, 1104-1118.

²⁰M Hall and J Hearn, *Revenge Pornography*. (1st edn, Routledge, London 2017) 1- 12.

²¹P Patella-Rey, 'Beyond Privacy: Bodily Integrity as an Alternative Framework for Understanding Non-Consensual Pornography' (2018) 21 *Information, Communication and Society* 5, 786-791.

pornography²², and non-consensual pornography. However, revenge pornography is just one form of technology-enabled image-based abuse attracting global attention²³. In other cases, nude or semi-nude photos were taken while a victim was asleep, unconscious, under the influence of alcohol or drugs, or during a sexual assault and disseminated via peer networks or the Internet²⁴. Non-consensual pornographic, deep fakes breach consent, autonomy, and sexual privacy by objectifying individuals without their permission.²⁵

Sexting is a form of TFSV in which sexually explicit messages are sent to a romantic partner or close friend. Since the individual performing this action is doing so voluntarily, there are no hazards to them. The problem emerges when this content is utilised to embarrass, harass, or denigrate the sender by sharing it with third parties without the victim's knowledge or approval, perhaps leading to revenge pornography²⁶. Digital sexual assault is further exemplified by sextortion. Sextortion is a form of digital sexual assault that involves threatening to reveal private or embarrassing sexual images without authorization to obtain pictures, favours, or money.²⁷ The act of Up skirting represents a form of sexual assault that has been facilitated by advancements in technology. The practice involves capturing visual or audio-visual documentation of a woman's attire, specifically her dress or skirt²⁸. In April 2019, the Sexual Offences Act 2003²⁹ was amended

²² C Grimaldi, 'A Post for Change: Social Media and the Unethical Dissemination of Non-consensual Pornography' (2021) 43 *Hastings Communications and Entertainment Law Journal* 109.

²³ D Citron and M Franks, 'Criminalizing Revenge Porn' (2014) 49 *Wake Forest Law Review* 345–391.

²⁴ A Burns, 'In Full View: Involuntary Porn and The Postfeminist Rhetoric of Choice' in C Nally and A Smith (eds), *Twenty-first Century Feminism: Forming and Performing Femininity* (Palgrave Macmillan, Basingstoke 2015) 93–118.

²⁵ B Chesney and D Citron, 'Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security' (2019) 107 *California Law Review* 6, 1753– 1820. *Police v. Ravshan Usmanov*, 2011, NSWLC 40, the accused was also charged with an indecency offence of publishing indecent articles. on appeal, the 6-months home detention sentence was overturned and was reduced to a suspended sentence only.

²⁶ P Patella-Rey, 'Beyond Privacy: Bodily Integrity as an Alternative Framework for Understanding Non-Consensual Pornography' (2018) 21 *Information, Communication and Society* 5, 786-791.

²⁷ E Agnew, 'Sexting among Young People: Towards A Gender Sensitive Approach' (2021) 29 *The International Journal of Children's Rights* 1, 3-30.

²⁸ C Thompson, 'Skirting Around the Issue: Misdirection and Linguistic Avoidance in Parliamentary Discourses on Upskirting' (2020) 26 *Violence Against Women* 11, 1403-1422.

²⁹ *Sexual Offences Act 2003*.

to make Up skirting a voyeurism felony in England and Wales.³⁰Cyber flashing³¹ is another form of TFSV, it is the practice of sending explicit nude photos to someone without their consent³². Child pornography³³, Cyber-hate speech³⁴,cyberbullying³⁵ and privacy violations like doxingare all forms of TFSV.³⁶

In response to the increase of revenge pornography on victims, several jurisdictions have criminalised the non-consensual distribution of intimate images, while the best technique is still being debated.³⁷In terms of image form, content, and perpetrator intent, there are numerous challenges to revenge pornographic laws across jurisdictions. Malice or proof that the victim was harmed is required in some jurisdictions, while others require intentional emotional suffering. Legislators are under increasing pressure to enact laws criminalising such behaviour. By establishing online norms, this regulation could prevent victim-blaming.³⁸There are legislative frameworks in place at the international and regional levels to protect victims of cybercrimes. The following are some that apply to Nigeria: United Nations Convention on the Rights of the Child³⁹; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography⁴⁰; African Charter on the Rights and Welfare of the Child⁴¹ and African Union Convention on Cyber Security and Personal Data Protection⁴². However, only

³⁰M Hall, J Hearn, and R Lewis, 'Up skirting, Homosexuality, and Craft ManSHIP: A Thematic Analysis of Perpetrator and Viewer Interactions' (2022) 28 *Violence against women*, 2, 532-550.

³¹C McGlynn, and others, 'It's Torture for the Soul': The Harms of Image-Based Sexual Abuse' (2020) 30 *Social and Legal Studies* 4, 541-562.

³²M Dragiewicz, and others, 'Technology Facilitated Coercive Control' (2018) 18 *Feminist Media Studies* 4, 609–25.

³³Cybercrime (Prohibition and Prevention) Act, 2015 s 23.

³⁴E Jane, 'Feminist Flight and Fight Responses to Gendered Cyberhate' in M Segrave M and L Vitis (eds), *Gender, Technology and Violence* (Routledge, London 2017) 14–27.

³⁵Cybercrime (Prohibition and Prevention) Act, 2015 s 24.

³⁶D Douglas, 'Doxing: A Conceptual Analysis' (2016) 18 *Ethics and Information Technology* 3, 199–210.

³⁷N Henry and A Powell, 'Beyond the Sext: Technology Facilitated Sexual Violence and Harassment Against Adult Women' (2014) 48 *Australian and New Zealand Journal of Criminology*, 1, 1104-1118.

³⁸R Budde, 'Taking the Sting Out of Revenge Porn: Using Criminal Statutes to Safeguard Sexual Autonomy in The Digital Age' (2014) *Georgetown Journal of Gender and the Law* 1-50.

³⁹Convention on The Rights of The Child (1989) Treaty No. 27531. United Nations Treaty Series, 1577, Entry into force: 2 September 1990.

⁴⁰UN Committee on the Rights of the Child (CRC) 1989; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography CRC/C/OPSC/BEL/1), 8 March 2010, CRC/C/OPSC/BEL/Q/1, art 3.

⁴¹African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990),

⁴²The African Union Convention on Cyber Security and Personal Data Protection, 27 June 2014 (EX.CL/846 (XXV)). The Convention imposes obligations on Member States to establish legal, policy and regulatory measures to promote cyber security governance and control cybercrime.

domesticated laws in line with section 12 (1)⁴³ of the constitution are enforceable. Online pornography has become common in Nigeria, particularly in recent years of internet controversy. The Criminal Code Act, Cybercrimes (Prohibition, Prevention) Act 2015 and the Violent Against Persons (Prohibition) Act are legislation in Nigeria in protecting victims of TFSV. A careful reading of the Criminal Code Act reveals the presence of some elements of revenge pornography. Nonetheless, if the act is committed without the use of the Internet, it will not be applicable. Section **170 (b)** Criminal Code Act ⁴⁴ provides:

Any person who knowingly sends, or attempts to send, by post anything which:

(b) encloses an indecent or obscene print, painting, photograph, lithograph, engraving, book, card, or article, or which has on it, or in it, or on its cover, any indecent, obscene, or grossly offensive words, marks, or designs; is guilty of a misdemeanour and is liable to imprisonment for one year.

It is important to understand that this Act was enacted in 1990 when there was little or no use of communication or technological tools, it expressly stated post, since it was the most common form of communication at the time. Many victims, however, believe that the criminal code is insufficient to prevent revenge pornography.⁴⁵ The Child Rights Act⁴⁶, which prohibits children from being procured or offered for prostitution or the production of pornography or any pornographic performance, is useful in this area⁴⁷. This offence carries a sentence of ten years imprisonment as

⁴³Constitution of the Federal Republic of Nigeria (as amended) Cap C23 Laws of the Federation of Nigeria 2004 (CFRN) 1999.

⁴⁴*Ibid.*

⁴⁵ C Onyemelukwe, 'Digital Technology, Social Media and Cyber-Enabled Gender-Based Violence and the Law in Nigeria' In Isaac O Agbede and A Arowolo (eds), Babcock University Essays on Contemporary Legal Issues, (Babcock University School of Law and Security Studies, Ilisan-Remo 2017) 65-88; I Nwafor, N Nwafor and J Alozie, 'Revenge Pornography in Nigeria: A Call for Legal Response and Cyber-Censorship of Content by Internet Service Providers (2020)13 *African Journal of Legal Studies* 2, 103-129.

⁴⁶Act No. 26 of 2003, Cap.C.50, Laws of Federation of Nigeria.

⁴⁷ Child Rights Act, s 30 (2); AAshiru, and K Toheeb, 'Child Pornography and Child Rights in Nigeria: A Critical Appraisal Of The International and Domestic Legal Frameworks' (2021) 5 *African Journal Of Law And Human Rights* 2 79- 93.

the maximum penalty⁴⁸. The United States Supreme Court acknowledged in *New York v. Ferber*⁴⁹ that the dissemination of child pornography is separate from the primary offence of child sexual abuse. However, it doesn't address children who are shown pornographic images or harassed online. While most social media sites don't allow children, they lack the capacity to monitor them.⁵⁰

The Cyber Crimes (Prohibition, Prevention, Etc.) Act of 2015⁵¹ may be the best way to protect children from technology-facilitated sexual violence. The Act aims to establish a uniform legal, regulatory, and institutional framework for the prohibition, prevention, detection, prosecution, and punishment of cybercrimes in Nigeria. In light of the foregoing, revenge porn is a cybercrime governed by this Act. Section 24 criminalises cyberstalking, bullying, harassment, and threats against property and reputation⁵². As deterrents, the Cybercrimes Law stipulates 10-year imprisonment and fines of twenty-five million naira million. The Act⁵³ does not provide for many forms of TFSV, also the criminal and penal legislation don't cover most forms of technology-enabled sexual violence. Current Nigerian legislation does not effectively address how to prevent and respond to online sexual offences. Considering our laws do not encompass digital sexual offences, Nigerian offenders cannot be held liable for the majority of the sexual assaults facilitated by the technology listed above. When there is no statutory provision for a crime, courts are frequently compelled to dismiss the charges. It is often argued that where there is no law, there is no crime.⁵⁴

The Recording and Distribution of Sexual Assault Images

A second category of TFSV focuses on the methods by which technology develops a new medium for extending the harm of an initial sexual assault and for furthering the victim's humiliation and

⁴⁸Child Rights Act, s 30 (3).

⁴⁹(1982) 458 U.S. 747.

⁵⁰C Onyemelukwe, (n 46).

⁵¹Cyber Crimes (Prohibition, Prevention Etc) Act, 2015.

⁵²*Ibid.*

⁵³*Ibid.*

⁵⁴ Constitution of the Federal Republic of Nigeria 1999, S.36(12); *Faith Okafor v. Lagos State Government and Anor*(2016) LPELR-41066(CA);



harassment⁵⁵. The 2012 Steubenville, Ohio, case highlights how technology can extend a sexual assault victim's suffering. High school students sexually attacked a classmate and some of them posted crime videos on Instagram, Twitter, and YouTube. The victim was photographed naked and raped, and Ohio considers digital rape to be a crime⁵⁶. In another high-profile Australian case, a Royal Australian Navy sailor filmed himself raping a trainee on his mobile phone and then shared the video clips with other male peers on the base⁵⁷. These incidents demonstrate how technological advancements allow the impact of sexual assault to extend far beyond the initial offence.⁵⁸In 2011, internet and social media users in Nigeria saw horrifying visuals of a rape film showing five men viciously raping a young woman in turns. The footage shocked and angered Nigerians. More rape recordings flooded the internet, and suspects in the gang rape video were apprehended, but the Nigerian police proclaimed the case over quickly because the victim hadn't come forward. The victim's silence made it harder for prosecutors to prosecute the offenders.⁵⁹

Cyber Crimes (Prohibition, Prevention, and Punishment) Act⁶⁰ states that the laws are designed to create a comprehensive, effective, and standard framework for Nigeria's efforts to combat cybercrime and prevent it from occurring. Part III of the Act addresses cyberspace-based sexual offences. The law included child pornography and related crimes⁶¹. Nigeria needs an effective internet policing framework to assist law enforcement in investigating, prosecuting, and punishing these violators.⁶²

⁵⁵N Henry, and A Powell, *The Dark Side of the Virtual World in Preventing Sexual Violence* (Palgrave Macmillan, London 2014) 84–104.

⁵⁶Ohio General Assembly, 'https://wikiz.com/wiki/Steubenville_High_School_rape_case>accessed 10 October 2022.

⁵⁷A Powell and N Henry, (n 38).

⁵⁸ A Powell, 'Seeking Rape Justice: Formal and Informal Responses to Sexual Violence Through Techno Social Counter-Publics' (2015) 19 *Theoretical Criminology* 4, 571–588.

⁵⁹ N Ikpeze and O Apará, 'The Rise of Non-Consensual Pornography in Nigerian Cyberspace: Imperatives for Statutory Criminalisation' (2019) 3 *African Journal Of Law And Human Rights* 2, 75-89.

⁶⁰Cyber Crimes (Prohibition, Prevention Etc) Act, 2015 s 23 and s 24.

⁶¹ Cyber Crimes Act 2015 s 23.

⁶² T Akpoghome, 'Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria' (2016) 4 *Journal of Law and Criminal Justice* 2, 17-30.



The Use of a Carriage Service to Procure a Sexual Assault,

A variety of technologies are also being used by perpetrators to procure and facilitate rapes and other sexual assaults. Mobile devices, email, social networking sites, chat rooms, and online dating services are just a few of the platforms included in these technologies.⁶³

Online sexual harassment and Cyberstalking

Online sexual harassment and cyberstalking are a fourth category that can be categorised as a form of TFSV. Sexual harassment is unwanted and unwelcome conduct of a sexual nature while cyberstalking can be defined as the use of the internet, email, or other electronic communications devices to stalk another person⁶⁴. Cyberstalking comprises repeated unwelcome contacts, sexual approaches or demands, threats of violence, and surveillance and monitoring of a victim's location, daily activities, and/or conversations via cameras, listening devices, computer software, mobile phone apps, or a Global positioning system.⁶⁵The 2015 Violence Against Persons Prohibition Act ('VAPP') can be understood to include cases of cyberstalking⁶⁶. It's prohibited to continually email, give, or cause the delivery of information that generates fear of violence or damages a person's dignity⁶⁷. Cybercrime (Prohibition, Prevention, etc.) Act 2015⁶⁸ is Nigeria's principal cybercrime legislation, covering cyberstalking in Nigeria. Under the Act, Cyberstalking is defined as “a course of conduct directed at a specific person that would cause a reasonable person to feel fear⁶⁹”. Section 24 of the Cybercrimes Act prohibits same and is punishable by a fine of up to N7,000,000 or 3 years in prison, or both.

Virtual Rape

⁶³A Powell and N Henry, (n 45).

⁶⁴ B Reysn , B Henson and B Fisher, ‘Stalking In The Twilight Zone: Extent Of Cyberstalking Victimization And Offending Among College Student’(2012) 33 *Deviant Behaviour* 1, 1–25.

⁶⁵ T Logan, ‘Research on Partner Stalking: Putting The Pieces Together;(2010) *Department of Behavioral Science and Center on Drug and Alcohol Research: University of Kentucky, Lexington, KY*.3-5

⁶⁶ Violence Against Persons Prohibition Act (VAPP) 2015, s 4.

⁶⁷*Ibid*, s 46.

⁶⁸Cybercrime (Prohibition, Prevention, etc.)Act 2015 s 2.

⁶⁹*Ibid* s 58; s 24.



Virtual rape, often known as cyber rape, has become a troubling trend in recent decades. Given the high degree of interaction allowed in cyberspace, this is already a reality. If an avatar is sexually assaulted in a game, that is virtual rape. In 1993, a text-based online community known as Multi-User Dungeon (MUD) LambdaMOO saw the first publicly reported virtual rape⁷⁰. Third-person gaming environments like Second Life and Grand Theft Auto 5⁷¹ have also been linked to reports of virtual rape in recent years. Hackers who break into Grand Theft Auto using the game's protected code can sexually abuse another player's avatar in-game and then upload and share recordings of the assault on YouTube and other websites.⁷²

The Digital Age and the Prevalence of Sexual Offenses

The digital age has seen an increase in sexual violence, which is now widely acknowledged as a violation of human rights around the world⁷³. The importance of the phrase sexual violence stems from the fact that it encompasses non-contact forms of abuse that, while not causing physical injury, can cause victims long-lasting psychological trauma⁷⁴. There have been instances of digital violence ever since the introduction of the internet and the first multi-user online settings, and these incidents persist today in increasingly complex forms⁷⁵. Digital sexualized violence has its roots in the male-dominated culture of early online gaming, even though the earliest claims of assault were not labelled as such⁷⁶. More crimes are being committed with digital communication tools. TFSV is a gender-related issue, even though men and boys are susceptible and its effects are severe.⁷⁷ The advancement of technology has altered cultural norms on sexual behaviour as well as increased the vulnerability

⁷⁰ J Dibbell, *My Tiny Life: Crime and Passion in a Virtual World* (Fourth Estate, London 1999) 51-65.

⁷¹ Kasumovic, M., & Brooks, R. (2014). Virtual rape in Grand Theft Auto 5: Learning the limits of the game. *The Conversation*, 18.

⁷² C Boyd, Cameron. 'Virtual violence' (2009) 21 *Australian Institute of Family Studies* 5-8.

⁷³ M Klang, and A Murray, (eds), *Human Rights in The Digital Age* (Cavendish Publishing, United States 2005) 2-3.

⁷⁴ A Powell and N Henry *Sexual Violence in a Digital Age* (Palgrave Macmillan London 2017) 23-47.

⁷⁵ *Ibid.*

⁷⁶ O Jurasz and K Barker 'Sexual Violence and Criminal Justice in the 21st Century' (2021) 22 *German Law Journal* 5, 784 – 799.

⁷⁷ G Stratton, A Powell and R Cameron, Crime And Justice In Digital Society: Towards A 'Digital Criminology'? (2017) 6 *International Journal for Crime, Justice and Social Democracy* 2, 17-33.

and alternatives available to potential victims of sexual assault⁷⁸. It is important to remember that, despite the risks brought on by the negative aspects of the digital world, these advantages far outweigh these drawbacks.⁷⁹ The use of communication technologies especially social networking sites and mobile phones has challenged criminal justice institutions.⁸⁰ Given the importance of technology in students' lives, schools, educators, and parents must address it. It's been said for years that computing and communications have revolutionised how we live and commit crimes⁸¹. The growing number of social media accounts in Nigeria demonstrates that sexual assault induced by technology is a serious social concern that has to be addressed⁸². The internet has made instrumental technology damage easier when technologies are used to harm people in ways their inventors did not anticipate.⁸³

Preventing Technology-Facilitated Sexual Violence in Nigeria

Criminal and civil remedies are options available to victims of TFSV. Victims seeking justice can file a claim for deliberate psychological trauma to seek compensation⁸⁴ for serious emotional pain inflicted on them intentionally or recklessly⁸⁵. Other non-legal steps can be taken to assist, counsel, and support victims and practitioners and enlighten the public about its prevalence, features, and repercussions.⁸⁶ In response to an increase in TFSV complaints and recognition of the damaging

⁷⁸ L Menzie and T Hepburn, Harm in the Digital Age: Critiquing the Construction of Victims, Harm, and Evidence in Proactive Child Luring Investigations (2020) 43 *Manitoba Law Journal* 392-419.

⁷⁹ A Powell and N Henry (n 75).

⁸⁰ N Bluett-Boyd, B Fileborn, A Quadara, and S Moore, *The Role Of Emerging Communication Technologies In Experiences Of Sexual Violence: A New Legal Frontier?* (Australian Institute of Family Studies, Melbourne 2013) Research Paper no. 23.

⁸¹ P Grabosky, 'Virtual Criminality: Old Wine In New Bottles?' (2001) 10 *Social & Legal Studies* 2, 243-249.

⁸² A Gjika and A Marganski, Silent Voices, Hidden Stories: A Review of Sexual Assault (Non)Disclosure Literature, Emerging Issues, And Call to Action (2020) 9 *International Journal for Crime, Justice and Social Democracy* 4, 163-176.

⁸³ M Wood, 'Rethinking How Technologies Harm' (2021) 61 *The British Journal of Criminology* 3, 627-47.

⁸⁴ VAPP Act s 1 (3).

⁸⁵ *Taylor v. Franko*, (2011) JMSJRLP No. 09-00002, a woman sued her ex-boyfriend after he posted her nude photos on 23 pornographic websites and asked for a "visit or phone call." Her ex advertised "no strings attached" masochistic sex online. The woman was awarded \$425,000 for deliberate emotional anguish, defamation, and public exposure of private facts. The purpose of compensation is to compensate the victim of a tort for the injury he has suffered, see *Martins v. COP* (2012) LPELR-9821(SC),

⁸⁶ N Henry, A Flynn, Asher and A Powell, 'Technology-Facilitated Domestic and Sexual Violence: A Review' (2020) 26 *Violence Against Women* 1828-1854.

effects on victims, numerous governments have implemented legislation making the non-consensual production and/or transmission of intimate photos unlawful.⁸⁷ However, offenders are using cutting-edge technology makes it difficult for law enforcement to investigate and punish these offences.⁸⁸ Some scholars feel that new legislation is the most effective approach to prevent all forms of TFSV. These scholars suggest that lawmakers should either reform sexual assault laws to cover revenge porn or create and approve new revenge-porn-specific laws.⁸⁹ Non-consensual pornography should be criminalised to express the right amount of societal criticism for this act.⁹⁰ Using Routine Activity Theory⁹¹, which is the foundation for much traditional crime prevention and has been extensively applied to cybercrime, it is critical to consider the efficacy of approaches that are victim-focused in the pursuit of reducing victim vulnerability, offender-focused in the pursuit of reducing offender motivations, and community-focused in the pursuit of increasing capable guardianship for the prevention of TFSV.⁹² Developing digital sexual ethics requires promoting responsible supervision. The techniques are education-based and intended towards online watchdogs or "bystanders" to encourage good digital citizenship and combat hate speech and abusive content. Online communities and social media platforms must have mechanisms for reporting harassing or hateful content, monitoring and removing it, and counter-speech.⁹³ An effective legal framework for victim protection should include criminal and civil culpability for non-consensual image creation and distribution and legal protection for victims of online sexual violence.

The Challenges to Preventing Technology-Facilitated Sexual Violence in Nigeria

⁸⁷D Citron, 'Law's Expressive Value in Combating Cyber Gender Harassment' (2009) 108 *Michigan Law Review* 3, 373-415.

⁸⁸W Binford, and others, 'Beyond Paroling: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad' (2015) 35 *Children's Legal Rights Journal* 117-62.

⁸⁹R Patton, 'Taking the Sting Out of Revenge Porn: Using Criminal Statutes To Safeguard Sexual Autonomy In The Digital Age' (2015) 16 *Georgetown Journal of Gender and the Law* 2, 407- 433.

⁹⁰D Citron and M Franks, 'Criminalizing Revenge Porn' (2014) 49 *Wake Forest Law Review* 2, 345-391.

⁹¹Routine activity theory, emphasizes that crime occurs when three elements converge: (1) a motivated offender, (2) a suitable target, and (3) the absence of a capable guardian.

⁹²A Kigerl, 'Routine Activity Theory and the Determinants of High Cybercrime Countries' (2012) 30 *Social Science Computer Review* 4, 470-86.

⁹³D Citron, and H Norton, 'Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age' (2011) 91 *Boston University Law Review* 1435-1484

Technology-facilitated sexual violence is a new wave of criminality in Nigeria, making it difficult for law enforcement agencies to catch up with criminals who use the internet for nefarious intent. The Nigerian Criminal Justice System and its counterparts in other countries face cybercrime concerns, including jurisdictional issues and digital evidence.⁹⁴ The anonymity of cybercriminals remains one of the most significant obstacles in advancing global efforts to stem the growing epidemic of cybercrime, which includes technology-facilitated sexual violence. There are no simple methods for identifying who is doing what and where a user of the Internet is located at any given moment; access to the global information system is free, and there are no prerequisites that must be met before a user can log on and connect with anyone and anywhere in the world. Thus, the unrestricted freedom of information and communication enables cybercriminals to conceal their identity using various telecommunications devices so they cannot be tracked.⁹⁵ Cross-jurisdiction is another challenge when it comes to prosecuting online crimes, this occurs when a possible victim or accused is in a foreign nation or when evidence was stored by a Foreign Service provider.⁹⁶ Its resolution necessitates international collaboration as a conflict of laws can arise in online crime prosecution when the crime is committed in one jurisdiction but the perpetrator is in another or when the crime involves parties or data in separate countries.⁹⁷ This is because internet crimes entail cross-border activities, and various countries may define and penalise online criminal activities differently. To solve these challenges, numerous legal frameworks might be used to define online criminal jurisdiction. The territoriality concept states that the crime's country's laws apply. Online crimes should follow the laws of the country where the computer server hosting the website or application used to conduct the crime is located. The principle of nationality states that the perpetrator's country's laws apply. The perpetrator's country's laws should apply to internet offences. In addition to these frameworks, other international treaties

⁹⁴G Walker, E Adomi, and S Igun, 'Combating Cyber Crime In Nigeria' (2008) 26 *The Electronic Library*, 5, 716–725.

⁹⁵E Ajayi, 'Challenges to Enforcement of Cyber-Crimes Laws and Policy' (2016) 6 *Journal of Internet and Information Systems* 1, 1-12.

⁹⁶ A Powell and N Henry, 'Policing Technology-Facilitated Sexual Violence Against Adult Victims: Police and Service Sector Perspectives' (2018) 28 *Policing and Society* 291 – 307.

⁹⁷ T Saha, 'Cyberspace—Conflicting Jurisdictional Spheres of Litigating IPR Claims' (2010) 15 *Journal Of Intellectual Property Rights* 364-373.

and conventions promote international cooperation in pursuing online crimes. The United Nations Convention Against Transnational Organized Crime⁹⁸ is aimed at preventing and combating transnational organised crime, including cybercrime. In general, prosecuting online crimes entails navigating complicated legal challenges relating to conflict of laws. It necessitates collaboration across multiple jurisdictions to ensure that perpetrators are held accountable for their activities. Extradition is a remedy also but extradition is a lengthy and expensive procedure.⁹⁹The enforcement of cybercrime laws is challenged by the nature of the evidence available in the custody of prosecution and the admissibility of it during the course of the trial. The law of evidence governs how facts and proofs are presented in court, including admissibility and exclusionary procedures. In a criminal prosecution, the prosecution must prove its case beyond reasonable doubt before convicting the accused, so the nature of fact or documentary proof adduced as evidence in cybercrime trials is crucial. When it comes to prosecuting cybercrime in Nigeria and getting the offender culpably, establishing *Mensrea* of the crime can be challenging.¹⁰⁰ To establish *mensrea* in these online crimes, the evidence must be given that shows the offender had the intent to commit the unlawful act and for distribution of images that the defendant sent messages to another person without their consent.¹⁰¹ Investigators and prosecutors in cybercrime prosecutions can only employ footprints on criminals' computers and Internet traces, which have evidentiary value but are difficult to prove *Mensrea*. Likewise, the presentation of digital evidence in legal proceedings is a significant issue. Since lawyers and judges may have limited technical knowledge, digital evidence must be presented in a way that is clear and easily understood.¹⁰² To evaluate digital evidence fairly and justly, the courts should have some knowledge of the technologies and applications from which digital evidence is derived, such as computers, the Internet, and email

⁹⁸UN General Assembly, *United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.s 15.

⁹⁹D Johnson, and D Post. 'Law and Borders: The Rise of Law in Cyberspace' (1996) *Stanford Law Review* (1996): 1367-1402.

¹⁰⁰K Mohammed, Y Mohammed, and A Solanke, 'Cybercrime and Digital Forensics: Bridging the gap in Legislation, Investigation and Prosecution of Cybercrime in Nigeria' (2019) 2 *International Journal of Cybersecurity Intelligence & Cybercrime* 1, 56-63

¹⁰¹*Julius V. FRN* (2021) LPELR-54201(CA).

¹⁰²A Flynn and N Henry, 'Image-Based Sexual Abuse: An Australian *Reflection*' (2019) 31 *Women and Criminal Justice* 313 – 326.

services.¹⁰³ Another challenge is securing the funding, resources, and training as police responses are inadequate when officers aren't trained to use technology to investigate crimes.¹⁰⁴ Internal access limitations or poor Internet connections, as well as an increase in demand for forensic analysis, are obstacles. If a computer-related crime is committed, a warrant is required to confiscate the computer, and the device may be analysed for up to eight months.¹⁰⁵ Victims and advocates need to work together with the criminal justice system if justice is to be done and human rights are to be protected.¹⁰⁶

Filing complaints is another challenge for victims of technology-assisted sexual violence. Most law enforcement officers are not trained to recognise the different types of violence affecting victims online and many of them do not know how to handle these procedures.¹⁰⁷ Most victims are unaware that they can record abusive content if accessible to file charges, despite the necessity of doing so. The criminals may delete or hide evidence from the victim. Criminal evidence may be kept in the cloud, abroad, or on private devices. Keeping track of abuse evidence may assist in prosecuting the crime.¹⁰⁸ The Cyber Crimes (Prohibition, Prevention, Etc.) Act protects individuals against internet-related crimes but few sexual offences are provided which is a major challenge. The lack of adequate protection and prevention of sexual offences continues to jeopardise victims' safety.¹⁰⁹

Utilizing Smart Technology to Combat Sexual Violence in Nigeria

¹⁰³ E Ajayi, 'Challenges to Enforcement of Cyber-Crimes Laws and Policy' (2016) 6 *Journal of Internet and Information Systems* 1, 1-12.

¹⁰⁴ L Cook, 'Technology and Victimization: What Prosecutors and Law Enforcement Can do to Support Victims' (2019) <<https://www.ncvctta.org/post/technology-and-victimization-what-prosecutors-and-law-enforcement-can-do-to-support-victims>> accessed 10 May 2022.

¹⁰⁵ *Ibid.*

¹⁰⁶ A Turnbull, 'Onlife Harms: Uber and Sexual Violence' (2022) 19 *Canadian Journal of Law and Technology* 2, 277-305.

¹⁰⁷ S Dunn, 'Technology-Facilitated Gender-Based Violence: An Overview' (2020) Centre for International Governance Innovation: Supporting a Safer Internet Paper No. 1.

¹⁰⁸ T Palmer, 'Rape Pornography, Cultural Harm and Criminalization' (2018) 69 *Northern Ireland Legal Quarterly* 1, 37-58.

¹⁰⁹ T Starr, and T Lavis, 'Perceptions of Revenge Pornography and Victim Blame' (2018) 12 *International Journal of Cyber Criminology* 2, 427-438.

In Nigeria, the use of mobile phones and other technologies has increased, and almost everyone, even in remote regions, has access to the internet. This is because victims now have easier access to essential services and security attributable to information and communication technologies. Digital platforms and applications can be made using smart technology to prevent sexual assault. The advancement of digital technology has facilitated the development of innovative Web and mobile applications targeted toward eliminating sexual abuse in recent years.¹¹⁰ Applications include tracking sexual crimes using drones, linking people directly and trustfully with law enforcement agencies, and panic buttons to help victims in peril.¹¹¹ As a sexual violence e-pocket guide application, smartphones enable digital access to legal aid, medical care, sexual violence referral services, and other social services.¹¹² Numerous smartphone-compatible web applications aggregate similar information. Websites offer guidance on recognising warning signs of abuse and breaking the cycle. It may motivate individuals to discuss attitudes and behaviours that lead to sexual abuse. By addressing the limits of standard sexual violence mitigation strategies, these interventions can be more effective.¹¹³

After confronting numerous obstacles to getting their voices heard in traditional media, awareness efforts through smart technology may make it easier for survivors to reach safe places in mainstream media and speak out for themselves.¹¹⁴ Using cutting-edge technologies in a larger effort to alter cultural norms, social media can be utilised to effectively and economically convey a campaign's messages.¹¹⁵ The Mirabel Centre, Nigeria's first sexual assault referral centre, partnered with Bolt and Aabo to develop an emergency reporting application to combat sexual violence.¹¹⁶ Through public education programmes, social networking is used to eliminate sexual

¹¹⁰C Onyemelukwe, (n 46).

¹¹¹ J Calero and others, 'Bindi: Affective Internet of Things To Combat Gender-Based Violence' (2022)9 *IEEE Internet of Things Journal* 21, 21174-21193.

¹¹²B Leiner, and Others, 'A brief history of the Internet; (2009) 39 *ACM SIGCOMM Computer Communication Review*, 5, 22-31.

¹¹³ K Blakeslee, D Patel and M Simon, *Communications and Technology for Violence Prevention: Workshop Summary* (The National Academies Press, Washington D.C. 2012)1.

¹¹⁴ V Banyard, E Plante and M Moynihan, 'Bystander Education: Bringing a Broader Community Perspective to Sexual Violence Prevention' (2004) 32 *Journal of Community Psychology* 1, 61-79.

¹¹⁵*Ibid.*

¹¹⁶R Ejifoma, Nigeria: Mirabel Centre Leverages Technology to Curb Rise in Sexual Violence in Nigeria, This Day Newspaper 27 August 2020.



violence in Nigeria. These programmes raise public awareness of sexual assault by providing resources, refuting myths, or sharing information that facilitates in-depth conversations and behaviour modification. The effectiveness of social media safety measures can be reduced if parents are aware of their children's privacy settings¹¹⁷. Preventive techniques should be used to strengthen children's resilience to internet dangers rather than strict security and control procedures. The best preventative measure is to promote social media literacy and awareness.¹¹⁸

Conclusion and Recommendations

Digital technology has enabled new forms of sexual violence, making it necessary to provide global protection from online sexual abuse and harassment. This requires new legislation to criminalise and regulate the Internet environment, as well as adequate financial and human resources. The ongoing evolution of the digital environment requires the creation of new strategies to combat online sexual violence, which includes digital literacy and equitable digital citizenship. Nigerian legislators should enact laws criminalising all forms of TFSV to facilitate this preventative agenda. The new law must provide new infrastructures, such as a central point of contact for referrals, specialised police and prosecutorial units, access to forensic laboratories, victim support services, and training for relevant professionals. Online communities and social media platforms must have mechanisms to report harassing or hateful content, monitor and remove it, and counter-speech. Legal protection for victims of online sexual violence should include criminal and civil culpability and legal protection.

¹¹⁷L Baughman, 'Friend Request or Foe? Confirming the Misuse of Internet and Social Networking Sites by Domestic Violence Perpetrators' (2009) 19 *Widener Law Journal* 3, 933-966.

¹¹⁸S Duncan, 'My Space Is Also Their Space: Ideas for Keeping Children Safe from Sexual Predators On Social-Networking Sites' University of Louisville School of Law Legal Studies Research Paper Series No. 2008-13(2008) *Kentucky Law Journal* 96.