

Rethinking the Path Forward: Evaluating the Implementation of CEDAW Article 5(a) in Combating Revenge Pornography across the Global North and Global South

Authors:

Laetitia Arista, an Undergraduate Law student at Udayana University.
laetitiaarista29@gmail.com

Isobel Lawler, an Undergraduate Law student at City St George's, University of London.
Isobel.Lawler@citystgeorges.ac.uk

Shamayel Qureshi, an Undergraduate Law student at City St George's, University of London.
Shamayel.Qureshi@citystgeorges.ac.uk

This work was written as part of a Gender Equality and Law: Transnational learning and co- producing research with students from Udayana University and City St George's, University of London, a year-long funded project by the British Council Going Global Partnerships and Research England Fund for Overseas Development Agency.

1. Introduction

The advent of modern technology has revolutionised communication, social interactions, as well as access to information. However, technological developments have changed and continue to change the ways in which sexual abuses are committed. The anonymity provided by social media and other digital spaces, coupled with new, unregulated technology such as generative AI, has contributed to a wave of new forms of online gender-based violence.¹ Recent data shows that 85% of women who spend time online have witnessed online violence,² and women are 27 times more likely to face digital abuse than men.³

One of the most pervasive forms that online violence has taken is image-based sexual abuse: the ‘non-consensual creation and/or distribution of private sexual images’.⁴ Image-based sexual abuse can take many forms, but the focus of our research is on ‘revenge pornography’: ‘[intimate] images or videos that were self-produced or manufactured with the consent of those depicted, but then distributed without their consent’.⁵ While anyone can be a victim of revenge pornography, women are

¹ Asher Flynn and others, ‘Deepfakes and Digitally Altered Imagery Abuse: A Cross-Country Exploration of an Emerging form of Image-Based Sexual Abuse’, *Brit J Criminol* 62 (2022), 1341; Md Mamunur Rashid Sheikh and Michaela M Rogers, ‘Technology-Facilitated Sexual Violence and Abuse in Low and Middle-Income Countries: A Scoping Review’ (2023) *Trauma, Violence, & Abuse* 25(2), 1614; John Suler, ‘The Online Disinhibition Effect’ (2004) *CyberPsychology & Behaviour* 7(3) 321; Susan Elizabeth Watson, ‘The Role of Social Media Abuse in Gender-Based Violence: The Challenge of Vituperative Communication in the Age of New Technology’ (PhD Thesis, University of York, 2022)

² The Economist Intelligence Unit, ‘Measuring the prevalence of online violence against women’ (2021) <<https://onlineviolencewomen.eiu.com/>> accessed 1 June 2025; Luisa Balaban, ‘Online Violence’, *Amnesty International* <<https://www.amnesty.org/en/what-we-do/technology/online-violence/>> accessed 27 March 2025

³ European Women’s Lobby, *Her Net Her Rights – Mapping the state of online violence against women and girls in Europe* (2017)

⁴ Clare McGlynn and Erika Rackley, ‘Image-Based Sexual Abuse’, *Oxford Journal of Legal Studies* 37 (2017), 534

⁵ Michael Salter and Thomas Crofts, ‘Responding to revenge porn: Challenges to online legal impunity’ in Lynn Comella and Shira Tarrant (eds), *New views on pornography: sexuality, politics and the law* (Praeger 2015), 233

disproportionately affected.⁶ Furthermore, female victims of revenge pornography suffer uniquely, ⁶differently, and more than their male counterparts.⁷ As a result, revenge pornography is not only a legal issue but also a significant gender issue. Moreover, this issue often faces impunity; the transnational nature of digital platforms allows revenge pornography and other forms of online gender-based violence to be disseminated with minimal government intervention due to jurisdictional challenges.⁸ Since this is an international issue, one way it may be addressed is through international law.

Our article will begin with an introduction on the role of International Law in Tackling Revenge Pornography as a Form of Online Gender-Based Violence, establishing the relevance of articles 5(a) and 2(b) of CEDAW to the topic of discussion. We will begin by examining the effectiveness of the implementation of these pieces of legislation and the effectiveness of the CEDAW committee's recommendations. Proceeding by comparing the UK's and Indonesia's implementations of these, this article comes with the goal of contrasting the domestic approaches of the Global North and Global South. In doing so, we highlight the broader tension between adopting universal standards through international law and relying solely on domestic approaches, noting both the utility and the limitations of each. Moving forward, this article analyses the next steps that can be taken to enhance the implementation of this legislation to improve outcomes when combating revenge pornography in the Global North and Global South, which includes various criticisms of CEDAW and the difficulties of reform. Finally, we will conclude with recommendations on how reforms

⁶ Revenge Porn Helpline, 'Revenge Porn Helpline 2023 Report' (2024), 12; Women and Equalities Committee, *Tackling non-consensual intimate image abuse (fourth report)*, (HC 2024-2025, 336) 7

⁷ See Janice Richardson, 'If I Cannot Have Her Everybody Can: Sexual Disclosure and Privacy Law,' in Janice Richardson and Erica Rackley (eds), *Feminist Perspectives on Tort Law* (Routledge 2012); Michael Salter and Thomas Crofts, 'Responding to revenge porn: Challenges to online legal impunity' in Lynn Comella and Shira Tarrant (eds), *New views on pornography: sexuality, politics and the law* (Praeger 2015)

⁸ See Michael Salter and Thomas Crofts, 'Responding to revenge porn: Challenges to online legal impunity' in Lynn Comella and Shira Tarrant (eds), *New views on pornography: sexuality, politics and the law* (Praeger 2015)

may be implemented, with acknowledgment that we live in a new era and the need for an update that provides clarity and support for all.

2. The Role of International Law in Tackling Revenge Pornography as a Form of Online Gender-Based Violence

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), often cited as the ‘international bill of rights for women’,⁹ is the leading international treaty for the protection of women’s rights. In the context of online gender-based violence, two CEDAW articles are particularly relevant.

Article 5(a) CEDAW sets out states’ obligation to ‘modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.¹⁰ Since image-based sexual abuse disproportionately affects women, and its harms are primarily facilitated and heightened by social and cultural gender disparities, the issue of image-based sexual abuse (such as revenge pornography) is most appropriately addressed through this provision.

Additionally, Article 2(b) CEDAW imposes a general duty upon States to eliminate discrimination against women. It demands that Member States ‘adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women’.¹⁰ This means that Member States should implement domestic legislation to deter and prevent online gender-based violence (as a form of discrimination). By taking these steps, Member States should achieve the aims of Article 5(a), which looks ‘to modify the social and cultural patterns of conduct of men and women’,¹¹ through changes in law and, eventually, ideology.

⁹ HM Government, ‘Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Articles’, (GOV.UK, 2014) <<https://www.gov.uk/government/publications/convention-on-the-elimination-of-all-forms-of-discrimination-against-women-cedaw-articles>> accessed 23 March 2025 ¹⁰ Convention on the Elimination of All Forms of Discrimination against Women (1979) 1249 UNTS 13, Article 5(a)

¹⁰ Ibid, Article 2(b)

¹¹ Claudia Giuntra, *International Human Rights Standards on Sexual Violence against Women as They Apply to Pornography* (University of Georgia School of Law, 1997), 58

However, the effectiveness of Article 5(a)'s implementation is limited by the extent to which states have interpreted their obligations under the convention. While the CEDAW Committee has provided guidance in General Recommendation Number 19, rather than proposing stronger measures that states could implement through legislation, they have merely 'urged States to adopt instead educational and public information programs addressing the goal of eliminating discrimination'.¹³ This approach ¹² falls short of advocating for binding domestic legislation, offering a considerably weaker solution instead.

In addition, the CEDAW Committee recommendations themselves are soft law measures that are not legally binding. As a result, Member States are under no legal obligation to implement even these non-legislative proposals to tackle online genderbased violence, instead retaining wide discretion in how they choose to act domestically in fulfilling their Article 5(a) obligations.

3. Domestic Implementation of the CEDAW in the Global North and Global South: Comparing the UK and Indonesia's Approach

We compare the approach taken by the Global North and Global South in fulfilling their CEDAW obligations to prevent revenge pornography, by focusing on two representative jurisdictions, England & Wales and Indonesia. We analyse how they have interpreted international law to fit within their own cultural and legal frameworks. In doing so, we evaluate the success of domestic law in accomplishing the aims of Article 5(a) of the CEDAW with the goal of eliminating online gender-based violence. The United Kingdom and Indonesia, as signatories to the CEDAW, have an obligation to adopt domestic legislation in accordance with the aims set out in the Convention.

A 2018 UK CEDAW progress report outlined recommendations to encourage the UK government to meet its obligations under Article 5(a), including recommendations to undertake research into misogynistic online abuse and develop mechanisms and interventions to tackle this.¹³ The Online Safety Act 2023 was created partly in response

¹² Ibid, 59

¹³ Equality and Human Rights Commission, *Pressing for progress: women's rights and gender equality in 2018* (2018)

to this recommendation (as well as in response to wider calls for general reform of the law on image-based sexual abuse). The 2023 Act amends the Sexual Offences Act 2003, formally establishing ‘revenge pornography’ as a criminal (and priority) offence.¹⁴ The 2023 Act also places a legal obligation on online user-to-user and search service providers to prevent users from encountering illegal content as well as to mitigate the risk of their service being used to perpetrate priority offenses (serious offenses, such as harassment or threats of harm, which companies have a stronger obligation to prevent from occurring on their platforms).¹⁵ The Act has the effect of making these online service providers liable for the failure to take down or effectively mitigate the facilitation of image-based sexual abuse. Failure to comply with this legal obligation can result in a fine.¹⁶

While establishing that sharing media which intimately depicts someone without their consent is an offence, the Act uses specific terminology to ensure that the offence also encompasses digital media which *purports* to intimately depict someone without their consent. This phrasing allows the provision to also apply to photoshopped images or deepfake pornography.¹⁷ Drafting this provision so as to include media which shows digitally altered or falsified sexual images displays that legislators are aware that such images are as damaging as ‘real’ ones. This approach shows an increasing willingness from legislators to amend the law in order to anticipate and address the challenges that new digital tools may bring, particularly when these tools are used to perpetrate misogynistic social practices, such as digital sexual offences. These provisions are, therefore, a clear step in the right direction to achieving the social aims of Article 5(a).

Similarly, Indonesia has adopted legislation to address cybercrimes: Law No. 1 of 2024 on the Second Amendment of Law No. 11 of 2008 on Information and Electronic Transaction (‘Informasi dan Transaksi Elektronik’; ITE Law) and to address pornography: Law No. 12 of 2022 on Crimes of Sexual Violence (‘Tindak Pidana Kekerasan Seksual’; TPKS Law). Under Article 27 Indonesian ITE Law, those who

¹⁴ Sexual Offences Act 2003, s 66B

¹⁵ Online Safety Act 2023, ss 10(2) and 27(3)

¹⁶ Ibid, s 130

¹⁷ See parliamentary discussion: HC Deb 15 May 2024, vol 750, col 298

participate in electronic transmission of inappropriate media may face imprisonment (of up to 6 years) and fines. Similarly, Article 29 Indonesian ITE Law establishes that acts of electronic threats of violence and/or intimidation constitute a crime, resulting in imprisonment (of up to 4 years) and fines for the perpetrator. The ‘victim’ in the context of the aforementioned provision is any person who suffers physical, mental, and/or economic harm as a result of the criminal act, which includes bullying in digital spaces (cyberbullying). A similar provision can be found in the TPKS Law; Article 14(2) criminalises electronic threats of a sexual nature, albeit with different standards of sanctions. Despite the enactment of the TPKS Law, Indonesia’s judiciary has consistently applied only the ITE Law in cases of revenge pornography, thereby addressing the issue primarily as a cybercrime and neglecting its dimension as a form of online gender-based violence.

Both Indonesian and English law fall short of effectively addressing online gender-based violence, despite appearances. Both sets of legislation, especially in the realm of sexual offences, tend to be ad hoc and piecemeal,¹⁸ with both jurisdictions’ legislative bodies failing to develop the law fast enough to keep up with evolving technology, leading to injustice.¹⁹ Furthermore, both sets of legal provisions impose different sanctions²⁰ or evidentiary thresholds (such as proof of intention and evidence of harm),²¹ some of which are excessively high and create further barriers to prosecution.²² For example, a case in Pandeglang, Banten, Indonesia, involved a sentence of 6 years of imprisonment based on Article 45(1) jo. 27(1) Indonesian ITE Law. While the crime was punished, TPKS Law did not come into play at all, despite its

¹⁸ Clare McGlynn, Erika Rackley and Ruth Houghton, ‘Beyond ‘revenge porn’: The continuum of imagebased sexual abuse’, *Feminist Legal Studies* 25(1) (2017), 25; Intan Nur Fauzah, Sunardi, and Arfan Kaimuddin, ‘Perlindungan Hukum Terhadap Korban Pornografi Balas Dendam (Revenge Porn) Berdasarkan Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual’ (2024) *DINAMIKA: Jurnal Ilmiah Ilmu Hukum* 30(1), 9179–80

¹⁹ Ardicha Caterine, Bagaskoro Adi, & Dhimas Wahyu, ‘Kebijakan Penegakan Hukum Kekerasan Berbasis Gender Online (KBGO): Studi Urgensi Pengesahan RUU PKS’ (2022) *Jurist-Diction* 5(1), 31–32

²⁰ See *Judgment of Banten's High Court of 21 August 2023* <<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee3fd389af4eac978731303333437.html>>

²¹ See section 66B of the UK Sexual Offences Act 2003

²² Lucy Stock, ‘Facing the Virtual Reality: The Culture of Sexual Harassment and Abuse in the Digital Age’ (2023) *City Law Review* 43(5), 56

relevance.²³ The sentencing did not reflect the full scope of the offense, as it only criminalised the transmission of inappropriate content, without considering the use of this content as a threat to the victim.

Both jurisdictions also face unique challenges in amending the current legislation to address these issues. For example, legislators in England & Wales are limited by the European Convention of Human Rights (ECHR), to which it is a signatory. Article 10 ECHR provides for the right to freedom of speech and expression, which potentially poses a problem; some may argue that in attempting to prevent the creation and dissemination of sexual images, legislators may inadvertently cause an ‘overzealous policing of speech’,²⁴ contrary to Article 10 ECHR, which the UK is obligated to uphold. However, these concerns fail to consider that ECHR jurisprudence explicitly permits certain restrictions on the Article 10 right, particularly in protecting privacy and personal dignity.²⁵ In this context, stronger legislative measures to prevent revenge pornography can be said to be a legitimate aim that warrants any potential interference with Article 10. Nevertheless, ECHR obligations remain a limiting factor for legislators in England & Wales.

Indonesian legislators also face challenges to amending the law to explicitly criminalise image-based sexual abuse, as it could lead to the wrongful prosecution of victims. The CEDAW Committee has already expressed concerns about the current (limited) law for this very reason.²⁶ Article 27(1) ITE Law provides that those who are involved in the ‘making’ of the images may be punishable. This legislation has implicitly incorporated a criminal law principle introduced by Benjamin Mendelsohn, where the victims of revenge porn are classified as ‘victims with minor guilt’ involved in the production of sexual images,²⁸ inducing an unjust punishment for those who may have taken intimate images of themselves, which were then disseminated without their

²³ n 21

²⁴ Lucy Stock, ‘Facing the Virtual Reality: The Culture of Sexual Harassment and Abuse in the Digital Age’ (2023) *City Law Review* 43(5), 54

²⁵ See *Von Hannover (No 2)* (2012) 55 EHRR 15

²⁶ UN Committee for the Elimination of All Forms of Discrimination against Women, ‘Concluding observations on the eighth periodic report of Indonesia’, UN Doc. CEDAW/C/IDN/CO/8 (2021) 7 ²⁸ Nabila Chandra Ayuningtyas and Subekti, ‘Urgensi Perlindungan Hukum Bagi Korban Pornografi Balas Dendam (Revenge Porn)’ (2021) *Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 10(3) 5

consent. Punishing the victims shifts blame away from the real perpetrator, discouraging victims from seeking justice, in contrast with the goal of articulating and defining such offenses for the protection of the victims in the first place. Due to these concerns, the CEDAW Committee has requested that Indonesia amend the current law to ensure that victims are adequately protected.²⁷ If this is not done, there is a risk that any new legislation which explicitly criminalises revenge pornography could further exacerbate the risk of victims being unjustly prosecuted.

4. Next Steps in Advancing Legal Protection against Revenge Pornography through CEDAW

Neither the Global North nor the Global South jurisdictions we have considered have yet adopted a satisfactory legal approach to prevent revenge pornography, or more broadly, image-based sexual abuse. While some of the restrictions on legislators are unavoidable, these deficiencies highlight the need to create a (stronger) international legal obligation that may push states towards broader, more proactive legislation to combat the creation and dissemination of such images. The goals of Article 5(a) CEDAW can only be fully realised once these issues have been effectively addressed. However, any such reform to achieve this goal will be an uphill battle; a 2015 study conducted by the UN suggested that states tend to be reactive with legislation, often being ‘more concerned with responding to the violence that has already occurred than preventing it in the first place’.²⁸ Furthermore, many have criticised the General Recommendations provided by the CEDAW Committee as insufficient in pushing states to reform domestic legislation.²⁹ Furthermore, some critics suggest that *de facto*

²⁷ UN Committee for the Elimination of All Forms of Discrimination against Women, ‘Concluding observations on the eighth periodic report of Indonesia’, UN Doc. CEDAW/C/IDN/CO/8 (2021) 7

²⁸ United Nations Statistics Division, *World’s Women 2015: Chapter 6 - Violence Against Women* (UN Women 2015) 160

²⁹ Claudia Giuntra, *International Human Rights Standards on Sexual Violence against Women as They Apply to Pornography* (University of Georgia School of Law, 1997) 12

group inequality between men and women continues to be disregarded by tort and criminal law, and any reform must pay heed to this in order to be fully effective.³⁰

5. Conclusions and Recommendations

CEDAW hails from a time before the internet and the increased vulnerability of women in a modern digitalised world. Our research, drawing on experiences from both the Global North and Global South, demonstrates the need for an update that addresses current attitudes and changes in technology. The key issue is whether this should take the form of universal standards that ensure consistency and accountability, or whether domestic approaches alone can provide the necessary flexibility and contextual sensitivity.

A potential solution to this would be the creation of a binding international obligation to eradicate revenge pornography, with clear guidelines on how to achieve this aim (as the current formulation under Article 5(a) remains insufficiently specific), while allowing states the flexibility to legislate in accordance with their legal traditions and practical capacities, acknowledging that the pace and scope of implementation may vary across jurisdictions. In this regard, it should be noted that CEDAW has the power to adopt new General Recommendation(s) specifically related to image-based sexual abuse as a concrete first step in achieving the aforementioned goal. This is a stronger solution than what Article 5(a) currently provides for, while mitigating the risk of imposing a ‘one-size-fits-all’ solution that is unlikely to be appropriate or effective for every state. Ultimately, revenge pornography as a form of image-based sexual abuse is a serious legal and gendered issue, and demands an urgent and enforceable global response

³⁰ Catherine A MacKinnon, ‘Directions in Sexual Harassment Law’ (2007) 31(2) *Nova L Rev* 227

