

KWDI ISSUE PAPER

Research Title: Ways of Legislative Improvement in Response to Technology-Facilitated Sexual Violence

Principal Researcher: Jeonghye Kim, Associate Research Fellow

Measures to strengthen responses to technology-facilitated sexual violence

Abstract

■ Despite the growing incidence of technology-facilitated sexual violence (TFSV) and ever-evolving forms of gender-based violence, laws and institutions to address the problems are lacking. The existing laws established based on the traditional concept of sexual violence are limited in effectively responding to TFSV. Based on the understanding that TFSV is a crime built upon a sexual double standard rooted in gender discrimination, stigma against victim-survivorized women, and culture that sexually consumes women, it is necessary to examine the characteristics of TFSV, its evolving forms, and the limitations of existing laws in order to devise measures to improve relevant laws and institutions.

The goal of this research is to understand the limitations of existing laws, particularly in regard to punishment and victim-survivor support, and to suggest measures for legal improvements. For this, the paper uses the cases of counseling in order to identify the characteristics of TFSV and review the changes in TFSV-related laws and the limitations of existing laws. It will also analyze the legal cases of other countries. Based on the findings of this research, this paper suggests how to improve laws especially in the following areas: punishing TFSV and making offenders accountable; improving the investigation of TFSV cases and strengthening measures to prevent the spread of abusive content; and strengthening support for victim-survivors.

Table. Measures for legal improvements to strengthen responses to technology-facilitated sexual violence

Punishing TFSV and making offenders accountable

- Revise laws on the crime of taking/faking and distributing non-consensual images
- Revise laws on the crime of taking non-consensual images by using coercion and threat
- Revise laws on the crime of threat and coercion using intimate images
- Introduce the crime of possessing intimate images against the will of victim-survivors
- Expose the sexually violent nature of online sexual harassment
- Increase punishment for the offenders of TFSV combined with privacy violation
- Include the victim-survivors of prostitution as the victim-survivors of non-consensual intimate images taken in the context of prostitution
- Expand the definition of online stalking and increase punishment for offenders
- Expand the scope of the crime of grooming
- Expand the accountability of the offender and the compensation order
- Ease the application of the statute of limitations

Improving the investigation of TFSV cases and strengthening measures to prevent the spread of abusive content

- Check, during the investigation process, if the intimate images were distributed; and if shared, the investigation agency should be required to order internet service providers to delete or block the images
- Search and forfeit data storage devices, including online storage, in addition to cameras used in the crime
- Require necessary forfeiture of data storage devices
- Order the deletion of non-consensual intimate images

Strengthening support for TFSV victim-survivors

- Expand access to victim-survivor support services both online and offline
- Improve support systems for TFSV victim-survivors and provide training for service providers
- Expand image deletion services
- Expand the range of those eligible for support services

1. Research background and issues

- ▶ Technology-facilitated sexual violence (TFSV)¹⁾ is not a new crime. It is misogyny and gender violence moved to digital spaces with the advancement of technologies. The added characteristics of the internet and digital content have expanded the scope of both offense and victimization. As traditional gender violence, such as sexual violence, domestic violence, and prostitution, becomes combined with technologies, the form of gender-based violence is changing. Both offense and victimization in TFSV often seem obscure because they occur in virtual spaces, rendering them to look insignificant. However, online experiences are fully interwoven as part of our lives in today's world and the victim-survivors of TFSV are known to suffer no less than do the victim-survivors of offline sexual violence (Dunn, 2020: 20-21). While TFSV may include physical contact, TFSV without any physical contact can also cause severe mental and physical harms. Such distress can lead to economic, vocational, and academic loss on the part of victim-survivors and even force them to leave their communities. It is also possible that TFSV can lead to offline abuse and aggravate victimization.
- ▶ TFSV shares some of the aspects of stalking. Digital content on the internet is durable, accessible and potentially expandable into an unlimited range of new content. A single act of offense can cause perpetual harms to victim-survivors and spawn a great number of abusers, making victim-survivors vulnerable both online and offline to repeated abuse. The potential for future abuse puts them in constant fear and anxiety, perpetuating their experience of victimization regardless of the length and frequency of the original offense.
- ▶ Since gender-based violence is supported by social norms and internet connectivity is ubiquitous, TFSV is not a distant problem. Rape is often perceived as 'a violent and impulsive attack by a sexually-motivated individual with pathological traits' but in a majority of cases is perpetrated by acquaintances who use methods that could 'practically debilitate resistance' from their victim-survivors. The reality of TFSV is similar. Offenders are not limited to the 'abnormal' few who approach their victim-survivors with concrete plans and intent to gain profits. The act of exercising traditional masculinity against the backdrop of the long history of misogyny and double standard on sexuality can be said to be TFSV.
- ▶ TFSV entails the invasion of privacy. Online shaming and exploitation of personal information with an aim to inflict sexual abuse, the act of combining personal information with sexual content, and revealing a victim-survivor's personal information in a misogynistic and sexual context are gender-based violence in nature and bring negative consequences to women. The potential that personal information can be exploited on the internet with malicious intent, as in TFSV, can make women voluntarily censor their conducts and adopt passive attitudes to 'prevent' potential victimization.

1) Technology-facilitated sexual violence (TFSV) refers to sexual violence that occurs in digital spaces or sexual violence mediated by digital technologies. In South Korea, it is also called digital sexual violence, online sexual violence, or cyber sexual violence.

- ▶ Similar to offline sexual violence, which directly and indirectly limits the behaviors, experiences, and activities of women, TFSV can also restrict the activities of women, silence the voices of women, and eventually expel women from digital spaces. Furthermore, these negative consequences will not be limited to digital spaces but spread into physical lives, sustaining gender-discriminatory and misogynistic social order.
- ▶ Despite the prevalence and harms of TFSV, laws and institutions are lagging far behind. Both substantive law and procedural law are established based on the concept of offline crimes and physical evidence. Even if they are revised, it is only long after significant damages have been afflicted. Existing legal procedures in South Korea do not even have a clear definition of TFSV. A support system for TFSV victim-survivors have yet to be established. As existing support services are mostly focused on the removal of intimate images distributed on the internet, TFSV victim-survivors need to go through many different organizations and systems to receive adequate support for their needs. Going through the stages of reporting, investigation, and trials, victim-survivors have to make tremendous efforts to have their victimization taken seriously by the police and judicial systems. They need to persuade investigators and courts to understand the gravity of their victimization, its implications, and even the technologies involved and how they work. In South Korea's legal environments in which even those inflicted by traditional forms of sexual violence are not properly recognized as victim-survivors, having TFSV recognized as a serious crime is a long and arduous process.

2. Research findings



Characteristics of TFSV identified in the analysis of the cases of counseling

Overview of counseling cases and the characteristics of the crime

- ▶ While the types of TFSV and victimization are increasingly diverse along with evolving technologies, gaps in laws and institutions in preventing the crime and supporting victim-survivors have yet to be narrowed. TFSV is a form of both gender-based violence in which the majority of victim-survivors are women and sexual violence that consumes women as sexual objects. The history of online culture, lack of legal and institutional measures to make perpetrators accountable, and lenient punishment are all contributing to the mass production of victim-survivors.
- ▶ Connection with technologies and relationships between offenders and victim-survivors
 - TFSV often occurs between people in intimate relationships, such as dating or married couples. Taking non-consensual images is more common than taking consensual images. This indicates that men often act as if they own sexual rights over their female partners.
 - As for the cases of TFSV by strangers who encountered their victims on chatting apps or social networking sites, a large number of victim-survivors were women in the 10s and 20s, who are often technologically savvy and considered sexually attractive in society.

- Regarding the cases of TFSV by coworkers or business acquaintances, factors that make women vulnerable to victimization and prevent them from taking proactive responses included: the offender and the victim-survivor share the workplace; it is an exploitation of a trust-based relationship; there is a risk of the incidence being publicly known at work; and the victim-survivor cannot afford quitting the job due to economic needs. If the case does not involve the distribution of intimate images, the victim-survivor may seek remedies within the organization if the organization has good anti-sexual violence policy and procedures.
- When it comes to the cases in which an unknown number of anonymous offenders are involved in the sharing and re-sharing of intimate images, victim-survivors suffer from endless abuse and constant fear. In the investigation process, however, the sharing of images by third parties is considered less significant compared to the original sharing; and there is lack of awareness of the gravity of negative impact on victim-survivors of the redistribution of the abusive content by the anonymous many.

Characteristics of sexual violence combined with technology

- ▶ New forms of sexual violence exploiting technologies and gaps in laws are emerging.
 - One of the main characteristics of TFSV identified in counseling cases is online stalking or stalking combined as part of general harassment mediated by digital technologies. Given that stalking often involves a victim-survivor's social media page and the social media pages of the victim-survivor's acquaintances, it looks similar by nature to non-consensual distribution of intimate images. Stalking controls victim-survivors by putting psychological pressure on them and make them believe that they are under the influence of their stalkers.
 - Due to the ease and convenience of the storage, copying, and distribution of files, the non-consensual sharing of intimate images is nearly impossible to prevent and there is always the potential for redistribution. Redistribution of abusive content can lead to additional harms linked with TFSV.
 - Sometimes the personal information of a victimized woman is distributed along with intimate images of her. The abuser can blackmail the woman that the abuser would distribute her intimate images together with her private information.
 - Minors and those with developmental disabilities seemed particularly vulnerable to TFSV due to their social conditions and lack of experiences. They were more likely to suffer aggravated, exploitative, and prolonged victimization, while their ability to recognize and respond to their victimization was low.
 - There were a number of cases of victimization on private live streaming platforms. Streaming hosts invite victim-survivors with an intent to exploit them in sexual context. However, it is hard to collect evidence. Since victim-survivors are often intoxicated by drug or alcohol, moreover, they often do not recognize their victimization.
 - Search and forfeiture of evidence is not properly conducted by the police. Video clips submitted as evidence can be edited and used to cover up the crime.
 - As intimate images are often distributed on closed platforms, it is difficult to estimate the actual scale of TFSV.
 - In some cases, non-consensual intimate images were used by offenders to attract more people to their websites or online channels. This type of sexual exploitation has the characteristics of prostitution, since it seeks monetary benefits, combined with sexual violence.

- ▶ Media environments and technologies are meeting with the gender-discriminatory culture that uses a double standard on women's bodies and sexuality to create ever-evolving patterns of TFSV. As a result, women are experiencing a diverse range of victimization that is not captured by laws and institutions. While there have been efforts to define TFSV as a crime and to establish laws to address the problem, TFSV has yet to be stopped. It is time to improve laws, institutions, and socio-cultural practices in order to effectively address the problem.

2

Limitations of laws

Limitations in reflecting the characteristics of TFSV

- ▶ The elements of a crime, definition of sexual violence, investigation and management of evidence, legal procedures and management of confiscated items, sentencing standards, and victim-survivor protection and support are all established based on the concept of traditional sexual violence, which involves physical contact. Because of this, TFSV is considered trivial and offenders receive lenient punishment. Laws fail to catch up with the pace of the emergence of novel forms of TFSV, leaving significant gaps in punishment and victim-survivor support.

The laws demanding the sense of sexual humiliation and punishing obscenity

- ▶ The crime of manufacturing and distributing obscene images defined in the Criminal Law, which is the general law for provisions on filming and distribution of images, materials that include the sexual exploitation of children and adolescents, and distribution of indecent materials on IT networks, is based on the concept of obscenity. Both this crime and the crime of obscenity using communication media requires a conduct of inducing sexual desire in viewers or a sense of sexual humiliation in victims.
- ▶ The law is criticized for acknowledging and normalizing only "the sense of sexual humiliation" as a legitimate emotional response of a victim-survivor among a myriad of possible emotional responses and reinforcing the discriminatory double standard for sexuality. Although there have recently been some positive changes in court decisions in the interpretation of "the value that the law is intended to protect" and "the sense of sexual humiliation", the law should be revised so that the changes can be stably implemented. Furthermore, punishment for obscenity prohibits a broad range of sexual expressions. When combined with the social notion of chastity required to women and the victim-survivors of sexual violence, the victim-survivors of TFSV become the violators of moral norms and therefore excluded from protection.

Legal limitations in the punishment of TFSV

- ▶ Omission from the list of behaviors subject to punishment and imbalance in punishment systems
 - The Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes (the Sexual Crimes Punishment Act) and the Act on the Protection of Children and Youth against Sex Offenses (the Youth Protection Act) are written in a way that the specific types of conduct and material subject to punishment regarding the distribution of non-consensual intimate images, faked images, and sexual abuse material involving children and youth are listed. As a result, conducts that are not included in the list even though they are similar in nature to any of those listed in the law can evade punishment.

- ▶ Limitations of the “non-consensual (against the will of a victim-survivor)” requirement
 - The “non-consensual” requirement in TFSV raises questions about the range and validity of consent. During the investigation process, investigators ask questions if the victim-survivor agreed to photographing/filming, editing, and distribution but they often do not ask about consent to the content, purpose, method, and range of the conduct. This leaves gaps in punishment.
 - The definition of a crime that depends on the consent of the victim-survivor creates a challenge when it comes to identifying the victimization of individuals with developmental disabilities. As for consent obtained by using physical and/or verbal intimidation, it is reasonable to decide that the concerned act was done against the will of the victim-survivor. When the consent was made based on hierarchy, however, courts may fail to see the power relations behind the consent.
- ▶ The imbalance between the gravity of a crime and punishment
 - Due to the nature of virtual spaces and digital files, once distributed online the abusive content can be copied and distributed in an unlimited way and/or processed into secondary material, redistributed, and consumed by an unlimited number of anonymous people. Even if deletion services are provided, copies of the content can be redistributed at any time, leaving the victim-survivor perpetually vulnerable to future abuse. In this regard, it can be said that the criminality of non-consensual distribution is greater than that of taking non-consensual images. However, existing laws dictate equal punishment to both the crime of taking non-consensual images and the crime of distributing such images.
- ▶ Limitations in addressing victim-survivors’ perpetual anxiety and fear regarding TFSV
 - There is growing anxiety among women about the possible distribution of intimate images. Once private images fall into the hands of other people, it is almost impossible to stop them from possessing the images even though the images belong to the person depicted in the images. This perpetrates the victim-survivor’s right to self-determination and perpetuates anxiety.
- ▶ Limitations of the crime of threat and coercion using images
 - Article 14-2 (Distribution of False Video Products.) and Article 14-3 (Intimidation or Compulsion by Using Photograph, etc.) of the Sexual Crimes Punishment Act may not be applied to cases in which the abuser threatens to create sexual images of the victim-survivor and distribute them.
- ▶ Online sexual harassment not being treated as a form of sexual violence
 - Online sexual harassment can be made up of text, signs, sounds, pictures, photos, or the combination of all of these. Failing to acknowledge the harmful nature of online sexual harassment, the laws do not consider it as gender-based violence. Unless it includes non-consensual images, fake images, or the sexual exploitation of children or adolescents, sexual harassment cannot be punished by the Sexual Crimes Punishment Act but by other laws such as the laws on the crime of obscenity using communication media, the crime of defamation, the crime of insult, and the crime of distributing obscene materials.
- ▶ Insufficient regulations on the exploitation of private information
 - Offenders who distribute non-consensual intimate images often include the personal information of their victim-survivors in those images. The Personal Information Protection Act fails to address cases in which people other than those responsible for handling personal information use personal information. It is necessary to discuss how to address those who exploit personal information in TFSV.

- ▶ Inability to punish non-consensual intimate images taken in the context of prostitution
 - In a society that has stigma against women's sexual conducts and prostitution, the possible distribution of intimate images and the disclosure of involvement in prostitution is a serious threat to women engaging in prostitution. For a woman who had her intimate images taken during prostitution, there is a dual risk: the possibility of being punished for prostitution and the possible distribution of her intimate images. By taking the images of their female sex partners, sex buyers can secure a tool to control the women and pursue tangible and/or intangible benefits by distributing the images.
- ▶ Limitations in the definition of online stalking and remedial measures
 - Online stalking defined in both the 「Act on the Promotion of Information and Communication Network Utilization and Information Protection」 and the 「Act on the Punishment of Stalking」 is limited to conducts that cause anxiety or fear by “sending information to the other party.” Punishment is also limited to restricting the offender from approaching the other party using IT networks. Although new forms of stalking can emerge at any time empowered by ever-evolving and varied technologies, any act of stalking other than those defined by law cannot be punished at all or punishable only when it involves certain elements separately punishable by other laws.
- ▶ Limitations in punishing online grooming
 - Grooming is a preparatory stage for the sexual exploitation of children for the purpose of monetary and non-monetary incentives, including sexual abuse and the production of abusive content using minors. It is a way to earn trust from a child to lower the child's inhibition to sexual exploitation. The crime of engaging with children and adolescents for the purpose of sexual exploitation defined in the Youth Protection Act is limited to conducts close to sexual exploitation but does not fully encompass the abusive nature of grooming. Since the law covers only online grooming behaviors, offline grooming or grooming behaviors that were initiated online but moved offline in a more malicious form are excluded. In addition, the law is limited to child and adolescent victim-survivors, leaving adult victim-survivors with developmental disabilities.

Limitations in legal procedures addressing TFSV cases

- ▶ Lack of understanding in the justice system of the characteristics of digital content
 - Once created, digital content is perpetual in nature. It can be restored to a certain degree even if deleted. Copies of the content can be made with ease without any quality deterioration. It can be stored in various storage devices. All of these characteristics should be importantly considered in the investigation, trial, and post-trial period of a TFSV case. In the counseling cases we examined for this study, however, search and forfeiture of evidence was insufficiently conducted due to difficulties to obtain a search and forfeiture warrant, lack of knowledge of TFSV in the justice system, and lack of standards on how to deal with intimate images. Another problem is that complete removal of intimate images from digital spaces is not guaranteed.
- ▶ The risk of having the private information and intimate images of the victim-survivor published
 - During legal procedures from investigation to the implementation of a compensation order, the information of the victim-survivor may be publicized or provided to the offender. During court proceedings or through the sentencing statement, the private information or intimate images of the victim-survivor may be exposed. There have been frequent cases of TFSV in which the existing victim-survivor protection system failed to provide adequate protection to the victim-survivor.

Legal limitations in providing support for the victim-survivors of TFSV

- ▶ A TFSV victim-survivor support system has been established as a stand-alone system independently from the existing sexual violence victim-survivor support system, as a legal basis for digital image deletion services was introduced. As a result, the TFSV victim-survivor support system has become separated from the existing victim-survivor support system and the original purpose of the one-stop victim-survivor support system has been weakened. The deletion support service is provided to limited types of TFSV and is difficult to be provided as part of comprehensive support services for the victim-survivors of sexual violence. Moreover, information on support services for TFSV victim-survivors is not included in guidelines or training programs for sexual violence service providers. There has yet to be a legal bases for Digital Sex Crime Victim Support Centers, which started providing support for TFSV victim-survivors in 2018.
- ▶ Since the deletion support service is limited to non-consensual intimate images and sexual abuse material including children and adolescents, so many other types of victimization are excluded from the service. These types include impersonation, sexually implicated messages in which the depicted person's personal information indicated, and sexual content other than intimate photos/videos. In order to receive the deletion support service, a victim-survivor should report her victimization to relevant platform service providers and request them to delete the images. In many cases, however, service providers do not respond, or ask the victim-survivor to provide a legal basis for such deletion or to prove victimization. Ironically, victim-survivors are requested to provide their personal information to receive deletion services from private digital file deletion service providers. In order to receive the deletion support service provided by the government, victim-survivors are required to prove their identities. This can also make victim-survivors balk at receiving the service.
- ▶ A range of laws can be applied to TFSV depending on the age of the victim-survivor, whether or not the victim-survivor is identified in the image(s), the victim-survivor's willingness to state her victimization, interpretation of laws by investigation agencies and courts, and even investigation methods. Depending on the applied laws and if she is considered a victim-survivor of sexual violence, the victim-survivor may or may not be eligible for support services. This is related to the fact that TFSV is not conceptualized as sexual violence but treated as a matter of obscenity or honor. If TFSV victim-survivors are not seen as victim-survivors of sexual violence, the need to protect and support them as victim-survivors of gender-based violence vanishes.

3. Practices in other countries

- ▶ As to non-consensual distribution of intimate images, some governments are seeking the expansion of the elements of crime and statute of limitations given the severity of victimization and the difficulty of complete eradication of shared files. Governments are also recognizing the negative ramifications of online grooming and moving toward punishing any sexual communication with minors.

- ▶ Governments are working to create a comprehensive system to prevent TFSV and protect its victim-survivors. While peace bonds in Canada and civil penalty proceedings in Australia are existing systems, they are more actively pursued in TFSV cases. In order to expedite responses to a TFSV crime, agencies responsible for TFSV are given strong authorities to collect and access necessary information.
- ▶ As shown in Canada and the UK, new systems to restrict abusive behaviors, such as conditional or full digital access restraining order are being introduced in consideration of the characteristics of TFSV. On the contrary, emergency measures and the probation system and related orders in South Korea are still focused around physical contact and have yet to be updated reflecting the characteristics of TFSV. A restraining order that prohibits access to digital networks and devices may be considered in the Korean system as well.
- ▶ In some countries, TFSV investigators are actively applying the preservation of digital evidence and undercover investigations. Because existing search and forfeiture systems require a court-issued warrant, a simplified process to enable search and forfeiture is introduced in regard to non-consensual distribution of intimate images. In Canada, it is explicitly stated in laws that law enforcement officers may collect evidence and other materials without identifying themselves as police or conduct undercover investigations even before any actual victimization takes place when it comes to online grooming or if there is a need to preserve electronic evidence.
- ▶ In designing laws and institutions, governments are considering that TFSV, once occurred, is very difficult for victim-survivors to recover from the harms of victimization. In regard to the non-consensual distribution of intimate images, the Canadian government has established special exemptions in provisions on peace bonds and the preservation of electronic evidence in order to expand protection to situations where there is a reasonable ground to believe that the new offence of the non-consensual distribution of intimate images may occur.

4. Policy suggestions



Ensuring punishment of TFSV and making offenders accountable

Revising the crime of taking, faking, and distributing photographs/videos using cameras, etc.

- ▶ In regard to the crime of threat and coercion using real and faked intimate images in the Sexual Crimes Punishment Act, the following amendments are recommended: include “without the permission of the person depicted in the photographs/videos” as the main element of the crime; change “sexual desire or the sense of humiliation” to a more neutral phrase such as “sexual”; replace “the acts of taking, copying, editing, faking, and processing” with “the act of creating”; and enable the punishment of the act of “creating sexual images without the consent of the person depicted in the images.”

- ▶ It is necessary to expand the definition of the act of distribution and consumption of intimate images in the Sexual Crimes Punishment Act and the Youth Protection Act in order to more comprehensively include the acts of obtaining and using intimate images, making them available to third parties, and/or facilitating their distribution without the consent of the depicted person so that gaps in punishment in existing laws can be narrowed.
- ▶ The act of taking non-consensual images can be included in the concept of unwanted physical contact. Hence, the punishment for the act should be increased to the level of punishment for unwanted physical contact. Punishment for the crime of distributing intimate images should be stronger than punishment for the crime of taking non-consensual intimate images.

Revising provisions on the act of taking intimate images by using physical force and power relations

- ▶ It is necessary to assess the need to include the use of power relations in the crime of taking intimate images. It is recommended that the crime of taking intimate images 'by a deceptive scheme or by force' in the 「Act on the Punishment of Arrangement of Commercial Sex Acts, Etc.」 (Article 18-1-4) be moved into the Sexual Crimes Punishment Act and then the range of those protected by law be expanded. In this way, the use of power relations can be included in the crime of taking intimate images and the presence of consent can be more easily judged.

Revising the crime of threat and coercion by using intimate images

- ▶ It is necessary to revise the crime of threat and coercion by using intimate images in the Sexual Crimes Punishment Act in order to include threat and coercion by using sexual abuse images including children and adolescents.

Introducing the crime of possessing intimate images against the will of the person depicted in the images

- ▶ It is necessary to introduce provisions that define the punishment of the act of possessing intimate images against the will of the depicted person or of the act of continuously possessing without justifiable reasons after being requested by the depicted person to delete the images.

Making it explicit that online sexual harassment is a form of sexual violence

- ▶ The crime of obscenity using communication media in the Sexual Crimes Punishment Act should be replaced by the crime of sexual harassment using communication media in order to punish the act of sexually objectifying and harassing a person.

Strengthening punishment for TFSV combined with the exploitation of private information

- ▶ Stronger punishment is needed as to the act of creating and distributing intimate images in a way that the depicted person is identifiable; the act of including the depicted person's private information when creating intimate images; the act of distributing intimate images with identifiable private information against the will of the depicted person; the act of including identifiable private information in the act of sexual harassment using communication media.

Defining the victim-survivors of non-consensual intimate images taken in the context of prostitution as victim-survivors of prostitution

- ▶ In an environment in which prostitution is not conceptualized as sexual exploitation in laws, it may be able to reduce the chance of prosecuting TFSV victim-survivors for prostitution by including in the definition of “victim-survivors of prostitution” those depicted in intimate images taken by sex buyers or taken in the context of prostitution and those depicted in fake images in the crime of distributing fake images.

Expanding the definition of online stalking and strengthening measures to punish offenders

- ▶ It is advised to include various behaviors of online stalking in the Act on the Punishment of the Crime of Stalking and establish supplementary elements to capture stalking behaviors other than those listed in the law. Sufficient measures to restrain offenders, including victim-survivor protection orders, should be created.

Expanding the range of the crime of grooming

- ▶ Instead of limiting grooming to the act of using IT networks to engage in conversation for the purpose of sexual exploitation, the provisions on the crime of grooming should regulate the act of approaching children, adolescents, or those with developmental disabilities for the purpose of sexual exploitation and the act of luring children, adolescents, or those with developmental disabilities into the acts of sexual exploitation.

Expanding offender accountability and compensation

- ▶ As for the crime of distributing intimate images, it is necessary to order offenders to provide compensation for the cost of image removal services. Compensation orders should be made available to the crime of distributing fake images and the crime of creating and distributing sexual abuse material involving children and adolescents.

Relaxing the application of the statute of limitations

- ▶ At least for the act of distributing intimate images for the purpose of monetary profits, the statute of limitations should be exempted or it should be applied from the date when a victim-survivor came to learn that her intimate images were distributed so that the offender could be made accountable for repeated and continued harms inflicted on the victim-survivor.



Improving the investigation of TFSV cases and strengthening measures to stop the distribution of intimate images

Requiring investigators to check if intimate images have been distributed and to issue removal and blocking orders to IT service providers

- ▶ Law enforcement officers who request IT service providers or webpage operators to delete and/or block abusive content should also cooperate with Digital Sex Crime Victim Support Centers and other related organizations so that the abusive content is recorded in the Public DNA Database and continues to be monitored. Sexual abuse material involving children and adolescents should be included in this effort.

Search and forfeiture of data storage devices, including cloud storage

- ▶ It is necessary to establish a legal basis for search and forfeiture of data storage devices. Furthermore, it should be able to block access to the concerned online storage by third parties if search and forfeiture is needed to cloud storage.

Necessary forfeiture of data storage devices

- ▶ It is advised to establish a provision on the necessary forfeiture of data storage devices that stored nonconsensual intimate images, fake intimate images, and/or sexual abuse material including children and adolescents.

Image deletion orders

- ▶ Upon the conviction of the crime or the issuance of a summary order, it is necessary to require offenders to delete all the intimate images possessed, stored, and posted by them.



Strengthening support for the victim-survivors of TFSV

Improving online and offline access to victim-survivor support services

- ▶ It is necessary to improve victim-survivors' access to counseling on the websites of TFSV support organizations; to abolish the provision that requires victim-survivors to prove identity in order to receive deletion support services; and to secure victim-survivors' offline access to support services so that victim-survivors across the country can conveniently use counseling, medical, legal, livelihood, and housing support in their regions.

Improving TFSV victim-survivor support systems and providing training programs for service providers

- ▶ It is necessary to expand the range of activities and capacities of sexual violence service providers. For this goal, the followings are needed: including support for TFSV victim-survivors as part of their main activities in sexual violence counseling centers and prostitution counseling centers; creating a legal basis for the establishment and operation of Digital Sex Crime Victim Support Centers; and providing training programs for TFSV support service providers; establishing a network of service providers and other organizations in support of TFSV victim-survivors.

Expanding the beneficiaries of image deletion services

- ▶ The victim-survivors of online sexual harassment should be given access to image deletion services. Online sexual harassment may include sexually insulting content with identifiable private information, impersonation, and other ill-intended online content against victim-survivors.

Expanding the beneficiaries of sexual violence support services

- ▶ The definition of sexual violence in the Sexual Violence Prevention and Victim Protection Act should be revised in order for the victim-survivors of sexual violence to be able to receive support services regardless of whether a crime is constituted or not. In the Youth Protection Act, it is advised that provisions defining “the crime of sexual violence against children and adolescents” be abolished; and the “sex crime against children and adolescents” be replaced with the “crime of sexual violence against children and adolescents” or “sexual exploitation of children and adolescents”. This change should be reflected in the crime of sexual violence defined in the Sexual Crimes Punishment Act so that protective measures for the victim-survivors of gender-based violence can be provided in a consistent and integrated manner

References

Dunn, S. (2020), Technology-Facilitated Gender-Based Violence: An Overview, Centre for International Governance Innovation.

Hosting organizations: Criminal Legislation Division of the Ministry of Justice, Women’s and Youth Rights Support Division of the Ministry of Gender Equality and Family, and Children and Youth Protection from Sexual Crimes Division of the Ministry of Gender Equality and Family