



CELEBRATING WOMEN'S BODIES. DEMANDING THEIR PROTECTION FROM ALL FORMS OF DISCRIMINATION
 NON-CONSENSUAL DISTRIBUTION OF SEXUALLY EXPLICIT MATERIAL
 #DON'T PUNISH THE VICTIM
 #STOP REVENGE PORNO WHY AND PERPETRATOR. #HER NUDE'S HER BUSINESS

TO REVENGE PORNOGRAPHY

According to the 2014 McAfee Love, Relationships and Technology Survey⁴, 98% of respondents said they use their mobile device to take photos, 54% send or receive intimate content including video, photos, emails and messages. Of those surveyed, 69% are securing their smartphone with a password or passcode, a 30 percentage point increase from last year's result, perhaps in response to this growing problem.

Seventy percent of 18 to 24 year olds receive sexually suggestive content from someone, the largest percentage of all age groups. More men are likely to use their mobile device to send and receive similar content (61% men vs. 48% women). 45% of U.S. adults say they stored intimate content that they have received in comparison to 40% who store risqué photos, videos or messages they have sent. Of those who have sent intimate or racy content, 77% have sent this content to their significant other, while 1 in 10 individuals have sent similar content to a total stranger.

According to the survey, more men than women protect their mobile devices (74% men vs. 65% women). Given the desire to protect their mobile devices and its content more than two-thirds of men are interested in purchasing biometric security embedded capabilities (e.g. face recognition, voice recognition, fingerprint recognition, etc.).

While 96% of U.S. adults surveyed trust their significant other with intimate content or otherwise private information they have sent, only 32% have asked their partner to delete the information when ending the relationship. In addition to sharing passwords, 50% share mobile phone content and 48% share email accounts. Yet, a quarter of respondents have taken their partner's mobile device to see other content stored on it, including messages and photos. One in five people are likely to log into their significant other's Facebook account at least once a month, and only 30% of those surveyed admitted to stalking their significant other's ex on social media, with 18 to 24 year olds being the top age group.

There are also lots of websites dedicated to earning money from the sharing of revenge pornography and this perpetuates demand. However, in the Zimbabwean setting, it typically takes one message forwarded on a whatsapp platform or on facebook to get the entire nation abuzz.

Several countries have enacted laws to criminalize revenge pornography. These include Israel, Germany, the United Kingdom, twenty-three states of the United States, and the Australian state of Victoria. These laws send a strong message that such conduct is unacceptable. It allows victims without the resources for private legal action to get redress through the criminal justice system and signals that the police and courts are starting to take online abuse as seriously as they do physical abuse.



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being naked is normal.
 do not inhibit women's
 freedom of expression
 but protect them from
 violence. **criminalise
 revenge pornography**

Non-consensual distribution
 of sexually explicit material.





Katswe Sistahood Submission on the Non- Consensual Distribution of sexually explicit material/Revenge Pornography in the proposed bill on Computer Crime and Cyber Crime in Zimbabwe.

Katswe Sistahood is a feminist’s movement that works towards the full attainment of Sexual and Reproductive Health Rights (SRHR) by women in Zimbabwe.

Since November 2015, the organisation has been running a campaign to criminalise the distribution of private images without consent.

This trend, that mostly affects women, was initially prominent in the state owned tabloid newspapers, the H & B Metro. However, with the increase in the use of information communication technologies , social networking applications and access to the internet, the trend has shifted and has taken a wider and quicker form.

The absence of a criminal law protecting the privacy of communication involving sexual expression from publication without a subject’s consent makes it hard for, particularly, Zimbabwean women to seek recourse, as they are stigmatised on moral grounds and there is a law that criminalises pornography.

PORNOGRAPHY LEGISLATION IN ZIMBABWE

Section 26 of the Censorship and Entertainment Control Act [Chapter 10:04] criminalises possession of indecent, obscene or prohibited articles. The sentence for that offence is a level six fine or imprisonment not exceeding one year or both such imprisonment and fine.

PORNOGRAPHY IN THE DRAFT BILL

The Bill criminalises both pornography and child pornography by treating them both alike. However, it must be noted that under international law, is not listed as one of the types of expression that can be prohibited.

According to the UN Human Rights Committee restrictions on freedom of expression for the protection of public morals must be based on broad understanding of what ‘public morals’ and not device exclusively from one social, philosophical or religious tradition.¹

The new provisions in this Cyber Crime Bill criminalise, among other things, possession of pornography in a computer system or computer data storage unit. It also criminalises procuring pornography from a computer system and producing pornography for distribution through a computer system. The sentence is a level twelve fine or imprisonment for a period not exceeding ten years. It is a giant leap from the provisions of the Censorship and Entertainment Control Act [Chapter 10:04]. It is highly punitive and unduly harsh.

ANALYSIS

The Constitution of Zimbabwe protects the right to freedom of expression² and the right to privacy in terms of which the privacy³ of communications must not be infringed.

The provision on pornography can be subjected to constitutional challenge as it makes it an offence for people to produce and share intimate images on a computer system even as consenting adults or a married couple. The provision has a chilling effect on individual sexuality and the sentence replicates an offence already in existence in the Censorship and controls act. This as witnessed in consultative meetings held on the bill, stifles any debate on the important subject of non-consensual distribution of intimate images taken in private.

The provision is not justifiable and must be removed and replaced with the offence of violating a person’s computer system by invading privacy and/or breaching trust.

However, the provision relating to child pornography can be justified in line with the Cyber Crime Convention, and should therefore be retained. There is however, need to define ‘sexually explicit conduct’ that is referred to in the interpretation under definition of child pornography.

NOTES

¹ Human Rights Committee, General Comment No. 34, note 4, para 32.
² (Section 61 – (a) freedom to seek, receive and communicate ideas and other information)
³ Section 57
⁴ Available at <http://promos.mcafee.com/offer.aspx?id=605366&culture=en-us&cid=140612> ;last accessed on 15/10/15 at 1522 hrs

RECOMMENDATIONS

The state should criminalise:

• CHILD PORNOGRAPHY

Sexually explicit conduct means any conduct, whether real or simulated, which involves:

- (i) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between children, or between an adult and a child, of the same or opposite sex;
- (ii) bestiality;
- (iii) masturbation;
- (iv) sadistic or masochistic sexual abuse; or
- (v) the exhibition of the genitals or pubic area of a child.

• NON-CONSENSUAL DISTRIBUTION OF INTIMATE IMAGES/ REVENGE PORNOGRAPHY

Any person who, with the intent to cause harm or distress or realising that there is a real risk or possibility to cause harm or distress, discloses private sexual or nude photographs and/or films without the person’s permission shall be guilty of an offence and liable to a level six fine or imprisonment not exceeding six months or both such imprisonment and fine. It shall be an aggravating circumstance if the photographs and/or film are of a minor.



THE LAW RELATING TO REVENGE PORNOGRAPHY

The phenomenon commonly referred to as ‘revenge pornography,’ involves non-consensual publication of privately captured sexually explicit material. The term ‘revenge pornography’ has emerged due to the prevalent practice by embittered former lovers to put images and footage in the public domain to cause distress, harm and/or ruin to their former lovers. A perpetrator discloses a private sexual image or footage without the subject’s consent, that is, turns it from being a private image into a public one, with the intent to cause distress. The victim may have consented to the image creation but will not have consented to it being made public.

This is not to be confused with victims of hacking or extortion. A hacking case for instance would not be classified as revenge pornography as these were persons with no direct relation with the subjects. A person threatening to release images or footing in lieu of payment or reward is also not covered by the subject as they are guilty of the crime of extortion in terms of Section 134 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

The adverse effects of revenge pornography are psychological, social and can be pecuniary. People suffer humiliation, isolations, stress, stalking, loss of employment and employability. Due to the ubiquity of cameras in the form of mobile phones, watches and even visual goggles, it is now very easy to capture a sexually explicit image of video of a person whom one is in an intimate relationship with. This is fast becoming an entrenched part of the sex and relationships culture.