

Koliwe Majama

Report

Revenge pornography in Zimbabwe



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THEME: Stakeholders Meeting On Revenge Pornography & other Cyber Crimes

TOPIC: Revenge pornography in Zimbabwe – Trends, Rights and possible remedies

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Definition

Revenge pornography is a broad term usually involving an individual, often an adult ex-partner, uploading onto the internet intimate sexual images of the victim, to cause the victim humiliation, embarrassment or shaming. It is also known as non consensual pornography. And is often also been classified as a form of cyber-bullying.

Outline on revenge pornography

Revenge pornography is a global phenomenon. While in some rare instances men can and do find themselves as targets of revenge porn, women tend to be in the majority of victims of revenge pornography globally¹

Mainstream tabloids, bulk emails, websites and more recently social media are the platforms in which are used by perpetrators. Revenge porn victims usually have their full names and other identifying information—such as their addresses, phone numbers, and links to social media accounts exposed².

While revenge pornography largely occurs online, its effects on the victims go beyond cyberspace. The effects of revenge porn transcend the cyberspace, and like any other ‘publicity’, may have implications on a victims social, political and economic well being. These include;

- Risk of exposure to offline stalking and physical attack – as with correctional rape for gays and lesbians.
- Severe emotional distress and anxiety³

¹ Danielle Keats Citron, Law’s Expressive Value In Combating CyberGender Harassment, 108 MICH. L. REV. 373, 379 (2009) (“From 2000 to 2008, 72.5% of the 2519 individuals reporting cyber harassment were female and 22% were male.”).

² DANIELLE KEATS CITRON, Hate Crimes in Cyberspace 53 (2014) (hereinafter “Hate Crimes”).

³ According to a study conducted by the Cyber Civil Rights Initiative, more than 80% of victims of revenge porn suffer from

- Economic harm. Particularly with the new trend by employers, whose trend is to conduct online searches before hiring new employees. If they are employed, they may lose their job.

Revenge pornography in Zimbabwe

Revenge pornography in Zimbabwe has become a popular particularly for female celebrities and models.

The first case was recorded in 2014, when pictures of former Miss Zimbabwe Thabiso Phiri went viral. She stepped down before the Miss Zimbabwe Trust asked her too. Herald entertainment editor, Jonathan Mbiriya in his report on the incident said that the paper even received phone calls from citizens requesting the pictures.

In December, 2015 Former Miss Zimbabwe, Emily Kachote, was dethroned after nude pictures of her went viral on social media, barely two weeks after she was crowned. A Facebook page was created in her name, and nude pictures posted. The media quoted Emily admitting the images were hers, adding that they were taken by a boyfriend, who she had not seen in over a year. communication and programmes manager, Tendai Chirau,

Nov 2015, Byo based model, Catherine Katakwa nude pictures and video leaked ex-boyfriend scenario.

Other celebrities include former Big Brother housemate, Pokello with then Hip-hop artists, Stunner (Desmond Chideme) and Tinopona Katsande, who was eventually 'fired' at the national commercial radio station, Star FM, where she was a presenter.

No arrests and follow ups have been made in relation to the circulation of the pictures. Raising questions as to whether the fault;

- a) Is of the victim issues who fail (i) voluntarily take the pictures/videos (ii) make a formal police reports- maybe owing to societal view that nude pictures taken by two parties in confidence, and in the 'privacy' of their intimate 'encounters' is not a crime.
- b) Is of the perpetrator who breaches confidence and privacy rights in vengeance

Why we have issues with revenge pornography?

1. It is a violation of the Convention on the Elimination of Discrimination Against Women⁴.

The Convention defines discrimination against women as "*...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*"

It should be noted that the Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.

2. It is a breach of privacy

In a report on discrimination against women⁵ submitted by a United Nations working group in April 2013, it was noted that "*the internet has become a site of diverse forms of violence against women, in the form of pornography, sexist games and breaches of privacy.*"

The report recommended that states ensure "gender-responsiveness in the promotion and protection of human rights on the internet" noting that failure to do so is a failure to "support women's equal participation in political and public life through ICTs".

3. It objectifies women

Objectification is a prominent feminist concept and considered as a central dynamic of gender inequality, and has over the years come to light in relation to advertising. Objectification reduces women to objects existing for enhancing the value as a marketed good (Usually cars, beer, cigarettes etc) and pleasure (The current circulation of womens bodies with the current quail bird craze in the country). In the

⁴ <http://www.un.org/womenwatch/daw/cedaw/>

⁵

http://www.ohchr.org/Documents/Issues/Women/WG/A.HRC.23.50_English.pdf

process women are portrayed as 'things' which can be easily violated and used by strangers.

Public objectification such as this can also be regarded as a form of shame punishment, and extreme objectification often takes the form of rape fantasies where pleasure is derived from the violent violation of a person's autonomy or anatomy if you like.

Due to the harms that can result from objectification, links have been drawn between pornography and discriminatory practices against women. Therefore, it is not unreasonable to suggest that turning women into objects of pornography against their will may further contribute to gender inequality.

4. It is a form of defamation

Defamation is defined as "malicious or groundless harm to the reputation of another by the making of a false statement to a third person."

In Zimbabwe defamation is largely popular with politicians vs. the media. Unauthorised circulation of images, alone, in most cases can be classified as defamatory. It is even worse when it is accompanied by a comment or the publication/exposure of the victims personal information. In that instance, the nonconsensual posting of intimate media strengthen or help establish a defamation claim, and help make this cause of action quite powerful.

5. It is an invasion of privacy

In some jurisdictions intentional intrusion or invasion of privacy, – whether physical or otherwise – in an individuals private affairs or concerns, is recognized as invasion of their privacy; particularly if the intrusion would be highly offensive to a reasonable person."

However, legal experts note that intrusion cases are generally difficult to prove in situations especially in situations where the victim took the photo and distributed it; this limitation means an "invasion of privacy" lawsuit will likely not be the best if the victim originally

However intrusion proves useful in scenarios where the images or videos were taken without the victim's consent and typically without the victim's knowledge. In some countries this form of intrusion

includes eavesdropping, wiretapping, and visual or photographic spying.”

6. It is a breach of confidence

When one sends images to their partner for their own consumption, and the partner in turn shares it, it is a breach of confidence. Again arguments around this note that once a picture is shared, one has no control on how the recipient will use it then and in future. Human beings are very complex!

To criminalise or not to criminalise

While it is clear that revenge pornography presents serious harms on victims, there are debates on whether criminalising the behaviour is the most appropriate method.

The most common argument put forward against criminalisation is whether or not it is unnecessary, since existing remedies could tackle the problem. Nonetheless, it is questionable whether existing offences can be truly effective in providing redress for victims.

Civil Remedies

While civil law can offer modest deterrence and redress, in reality, practical issues render these remedies more theoretical than real. Since such remedies may only be utilised after the event has occurred, they cannot prevent the publication of images from the outset. Additionally, none of the remedies can be truly successful in removing the images from the Internet, which is the outcome that most victims desire.

Criminalisation

The most prominent issue in relation to this is that the “The Internet never forgets.”⁶ Once an image is online, it is virtually impossible to remove, so preventing the conduct from occurring in the first place must be paramount.

The main issue with existing legal remedies, in whatever jurisdiction, is that they may only be utilised *after* content has been circulated online; publication is not prevented from the outset.

⁶ P.J. Larkin, “Revenge Porn, State Law, Free Speech” (2014), *Loyola of Los Angeles Law Review* Vol. 48, p.24.

What is of importance to note is that criminal law plays an expressive function. This is because it creates and shapes social mores, guiding people in their choices by setting out authoritative norms for behaviour. The criminalisation of revenge pornography would send a clear message that violations of an individual's sexuality is unacceptable and deserves punishment.

In the case of Zimbabwe, the lack of legislative action thus far could be said to imply that such behaviour should be tolerated.

Recommendations and proposed action

- Analysis and understanding of the Cyber crimes law developments in relation to pornography in general
- Examining the impact of the new law and what further action needs to be taken to tackle revenge porn specifically and not in the ambit of simple pornography.
- Raising Awareness of Revenge Porn as a violation of rights
- Draw up a strategy/partnership as the women's movement to support victims – (Allowing them to share their stories, offering support and helping them retain and rebuild their lives)
- Run an campaign as the women's movement on changing public attitudes, educating young people on respect, equality and consent in relationships, and encouraging responsible use of technology
- Cultivate a victim-focused culture among professionals, providing legal advice and guidance to victims, and working with media companies to remove content where possible
- As with domestic violence strengthening police responses – developing a robust framework, recording incidents and improving training to better support and protect victims