

## **Revenge pornography on the internet: The case of social media in Kenya**

### ***ABSTRACT***

Revenge pornography, which is mainly understood as the publication of nude or intimate pictures of another person without their consent, is a phenomenon that is increasing in occurrence and constantly changing in the manner in which it is carried out. In Kenya, due to the absence of a proper regulatory mechanism, perpetrators continue to carry out their activities with resounding impact and devastating effects on the victims. This article uses discourse analysis to explore the motivations behind non-consensual pornography, reasons and motivations for its prevalence, which include revenge and punishment, entertainment/fun, the sexual objectification of women, “slut shaming”, and denigration of the victim’s character. The paper also looks at the legal and gendered aspects that allow the vice to continue being perpetrated. These include the lack of clearly defined laws that capture the various forms that revenge pornography can take and the lack of well-trained legal officers and law enforcers who can handle reported cases of revenge pornography. The article argues in favour of reform of the current legal framework in order to address non-consensual pornography as mediated by the tools of digital technology. This includes a clear legal definition of revenge pornography.

**Keywords:** Toxic masculinity, non-consensual pornography, hegemonic masculinity, deep fakes, cyber rape, fapping

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## **INTRODUCTION**

The publication of nude or intimate pictures of another person without their consent, or what is commonly referred to as “revenge pornography” or “non-consensual pornography”, is just one of the several negative and unintended consequences of the growth in the use of internet and social media (Ngwa et al., 2008). Available documented evidence in the Kenyan context points to a deficit in knowledge of the new and sophisticated permutations of revenge porn. Incidents of revenge pornography are seen as isolated cases and reported as mere occurrences that are not gendered. This points to a lack of appreciation of the nature of revenge porn, and the harm and implications it can pose to individuals, gender relations and development. While several countries have made efforts to criminalise and distinctively address revenge pornography on the internet, the Kenyan penal code, Sexual Offences Act of 2006, the Computer Misuse and Cyber-crimes Bill of 2018 in Kenya, and the Kenya Information and Communications Act of 2012 all continue to suffer a legislative indistinctness in addressing revenge pornography. This study is a way forward in framing and making visible revenge pornography and the manner in which it is carried out, the harm it causes to its victims, reasons for its prevalence, and legal measures that can be used to curb it.

### **1. REVENGE PORNOGRAPHY**

Revenge pornography is a global internet phenomenon and is also called “non-consensual pornography”, “cyber rape” or “involuntary porn” (Bloom, 2014). The various terms will be used interchangeably throughout this paper. According to Citron and Franks (2014), Franks (2016) and Bloom (2014), revenge pornography includes the circulation of images originally obtained without consent (such as hidden recordings or recordings of sexual assaults) as well as images originally obtained with consent, usually within the context of a private or confidential relationship, but distributed without consent. In some instances, it involves a personal breach of trust, for others, lack of knowledge by the person being filmed and in other cases, a deliberate placement of devices such as spy cameras in hidden locations specifically for peeping or voyeurism. In other instances, it involves accidental clips which turn out to be sexually titillating for some people and are therefore circulated (Hughes, 2007). As Franks (2016) points out, it could also involve rapists who film their acts in order to further humiliate their victims or discourage them from reporting the act.

Patil (2015) and Dickson (2016) indicate that it may also involve vulgar manipulation of photos known as “morphing”, where images of women are manipulated to show them as the victim in a rape, pornographic or consensual sex situation. Robert and Citron (2018) point out that revenge pornography could also involve creating degrading drawings and images of rape or sexual assault with the victim’s likeness which can be achieved through use of digital photography tools. They also indicate that artificial intelligence, through a process known as deep learning, is being used to train algorithms to recognise actual visual or audio

characteristics of a particular person Through this process, fake videos depicting the victim in pornographic situations can be produced in what is being referred to as “deep faking” (Robert & Citron, 2018).

Furthermore, Dickson (2016) indicates that harmless social photographs of victims could also be stolen, copied and uploaded onto pornography sites. This is referred to as “parasite porn”. Parasite pornography can be used by pimps and traffickers to trap their victims into their trade (Franks, 2016). Revenge pornography also presents itself as a release of hacked photos which are shared by the hacker simply for fun or for the sexual satisfaction of those that derive pleasure from the very nature of the leaked photos being private (Lawson, 2015).

The degrading images are sent as messages to the victim or circulated on social media, blogs and other online platforms with messaging capabilities. The perpetrator may also make these images appear in search results for the target’s name as a way of attacking their online reputation. In most cases they remain in circulation for a very long time (Hughes, 2007). Hasinoff (2014) adds that such inappropriate images may then be used to blackmail a woman or as leverage for other forms of harassment, manipulation and intimidation.

## **2. MAPPING TRENDS**

Citron (2014) and Roffer (2017) indicate that revenge pornography is a phenomenon that disproportionately affects women. In fact, Halder and Jaishankar (2009) argue that women are the second most vulnerable online group after children.

According to Eikren and Ingram-Waters (2016), revenge pornography started gaining visibility after an internet entrepreneur, Hunter Moore, owner of the website IsAnyoneUp.com, invited the website’s users to post nude photos of their ex-partners alongside personal identifying information such as name and contact details. The site is said to have attracted about 350 000 individual visitors per day (Roffer, 2017).

On August 31, 2014, the world woke up to hundreds of nude photos of world famous celebrities that had been released by hackers to the internet. Since then, the phenomenon has become a global issue disproportionately affecting women (Lawson, 2015). In 2016, the phrase “revenge porn”, now increasingly common, was added to the Merriam Webster Dictionary Kenyans have not been spared this trend. Below are examples of some of the cases that got a lot of attention and popularity on the social media platforms (the names have been left out to protect the privacy of the victims):

- January 2018: Photos of a woman appointed Cabinet Minister in Kenya’s government re-emerge after the initial posting in 2011 (<https://cnyakundi.com>)

- April 2018: A lengthy video of a male Deputy Governor and his female lover, both of them nude, was circulated on WhatsApp platform in what was allegedly a case of extortion
- 2018: A man threatened to expose nude photos of several female Members of Parliament that he claimed to have had affairs with ([www.sde.co.ke](http://www.sde.co.ke))
- 2017: Several women were stripped naked in public on different occasions after being accused of being indecently dressed. Videos and images of them were circulated across the internet and social media forums, particularly on WhatsApp.
- 2016: Miss World Kenya 2016 was stripped of her title by Ashleys Kenya Ltd. after nude photos of her were leaked by a former boyfriend (*Roshanara Ebrahim v Ashleys Kenya Limited & three others*, 2016).
- September 2015: A 19-year-old committed suicide after her boyfriend threatened to leak her nude photos online (*Daily Nation*, 28 September 2015).

Mainstream media houses seeking viewership of their online editions have also hosted non-consensual pornography, albeit implicitly. An example was Kenya's second leading newspaper, The Standard, whose digital edition positions itself as a citizen journalism website ([www.sde.co.ke](http://www.sde.co.ke)). Revenge pornography nuances are frequently used to lure followers to its page.

For most victims of revenge porn, it is intimate photos saved in their devices that find their way out through hackers or "crackers", as Lawson (2015, n.p.) refers to them. "Crackers" are cybercriminals who "break open your computer and sneak inside, for their own purposes". Lawson (2015) further explains that such crackers do it purely for enjoyment, vigilantism in the pursuit of sexual gratification, a satiation of male dominance and subjugation of the female body. He further argues that hacking is a heavily gendered practice which is largely dominated by men, much more than any other job in the IT sector. Bloom (2014) in turn observes that the owners of revenge pornography websites are predominantly male, and their victims are usually female.

Oftentimes, the victim may not even be aware that their photos are being circulated. In Kenya, one of the most popular avenues where this takes place is the "Mafisi Channel" found on Telegram, an instant messaging app that supports group chats and is seen as an alternative to WhatsApp ([www.telegram.org](http://www.telegram.org)). The membership of Mafisi Channel currently stands at close to 100 000. On this channel, photos and videos of women accompanied by identifying information are posted for consumption of the members on an almost daily basis (<https://telegram.me/mafisichannel>).

### **3. METHODOLOGY**

The research employed a discourse analysis whereby various websites and social media platforms that host revenge pornography were visited. The aim was to examine the manner in which hegemonic masculinity was invoked in various online discourses, to trivialise revenge porn, absolve the perpetrator of guilt, and place the blame on the victim. Several forms of online discourses were considered, including productive, narrative and interactive. The pages were identified using Google search whereby a combination of words like “leaked photos” and “nude photos” were searched. The sites considered were those that host Kenyan content, and are presumably generated by Kenyans. A range of social media platforms, such as Facebook, Twitter and Telegram were included in the study. A total of 200 cases of revenge pornography were observed across the various platforms. Out of these, 198 cases involved female victims, while 2 involved male victims.

For this study, the written electronic data of the selected websites, blogs, and social media profiles are reproduced verbatim as regards spelling and punctuation. Bearing in mind ethical considerations, the researcher considered what textual data to reproduce. Specifically, the researcher used the guidelines of Haimson, Andalibi and Pater (2016), who contend that if social media content is identifiable, researchers should aim to get consent from the person or de-identify the content (e.g. by deleting the name or blurring the photo or using ethical fabrication) even though the information is already in the public domain. In this case, where giving a full web address reference would identify the photos or names of the victims, the specific page identifiers are left out and only the general web page address is given. This was deemed important in order to prevent a double victimisation of the victims as well as ethical de-identification of subjects. Dots have been used after the web address to show the web address in incomplete form so as to protect the identities of the non-consensual victims.

It was not possible to access each of the commenters, bloggers or social media users for permission to reproduce their data. As for the bloggers, where it was perceived that the page was public and the blogger over the age of 18, the content of their pages was fully reproduced and accredited for copyright purposes. A good faith attempt was made to reach some of the bloggers but none responded. The written electronic data/text of both people who posted the information and audience’s comments are reproduced verbatim and in full for analytical purposes. The data was coded under emerging themes and analysed for perceived motivation to engage in revenge porn using the theory of hegemonic masculinity.

The relatively small sample used gives insightful findings into how hegemonic masculinity plays out in cases of non-consensual pornography. The sample cannot be used to generalize, but it points us in a direction where we can begin to understand trends in non-consensual pornography.

#### **4. FINDINGS: MOTIVATIONS BEHIND REVENGE PORN**

##### **4.1 “FAPPENING”**

In most incidences, globally and also in Kenya, revenge pornography has been dismissed as what Moloney and Love (2017) refer to as “fappening”. “Fappening” is slang for an event that occurs when someone on the internet releases a large amount of nude/semi-nude pictures of famous people. The incident is seen as just a way of promoting entertainment, and the pain experienced by the victims is completely ignored.

Dismissing revenge pornography as “fappening” can be demonstrated by the following post that followed the leaking of nude photos of a Kenyan musician by a former lover:

This whole saga has left me thinkin? mmmm? Seems like its the inn thing with celebrities these days to up their status. You either create beef if there is none or be exposed in a sex/ nude scandal. All in all for the few pics I have seen. They were done with artistic pose and purpose. They dont seem as the work of spontaneousness. this was aimed at marketing her album and as the saying goes, there is nothin like bad publicity. What sells is super hot publicity and shes achieved it. Kudos!!! (<https://hownowz.wordpress.com>).

It is herein observed that the author assumes consent on the part of the victim. By using the words, “artistic pose”, he suggests that the photos must have been deliberate and as such, the victim must have wanted or invited the public gaze. The author goes on to congratulate the victim for what he perceives to be a self -promotion job well done. All this is done against a backdrop of the victim having openly declared that the photos were leaked by an ex-lover and requested the public to stop sharing them. In fact, the preamble to the posted pictures read as follows:

Now how do you expect hownowz not to have an opinion on this matter, PEOPLE the gal’s bearing it all. In all fairness, she did request that raia stop forwarding the pics – and in all fairness we shan’t forward you the pics, nor shall we condone the said action on our site. BUT!!!! in all fairness to the public which we at hownowz believe we serve (ok in this case its just so good a “muchene” we can’t pass it up), we shall link you to the pics. So is it art, erotica, tacky, porn? You be the judge Ps. After answering the above do let the world know by posting (<https://hownowz.wordpress.com>).

The author of the preamble seems to acknowledge that there is some sort of harm that has been done when he says that he does not condone the act. At the same time, he feels that the thrill of sharing private photos surpasses his concern for the harm. “Muchene” refers to juicy gossip. In that case therefore, being a news website, he feels it is his duty to share the nudes. Referring to it as

“muchene” diminishes the victim’s pain and makes it a mere case of “fappening” which he then invites the public to comment on and share. The victim’s pain and concern seem to be completely ignored.

Similarly, the reaction below is drawn from reactions on social media after nude photos of a woman, appointed to a senior government position in 2018, resurfaced online. The victim was about to undergo parliamentary vetting when her nude photos, initially posted in 2011, were promoted online to discredit her suitability for the post. In this case again, the morality, judgement and character of the victim are put up for public questioning for a violation in fact committed against her.

X\*\*\* should be shot down in parliament, that’s the character of socialites she’s classified with .... She has no principal in Moral Values, which kind of love that makes you take your nudes and share it on mobile, what was she advertising? To me I say “Crucify her, crucify her” [laughing emojis] ([www.facebook.com](http://www.facebook.com)).

While it seems to be clear to most people that the photos in question were posted by an ex-lover, it is her character and morality that come to question, and not those of the ex-lover. In this post, the author equates the victim to a well-known Kenyan socialite, and asks what she was “advertising”, suggesting that she posted the photos online for self-promotion. The author certainly sees this as “fappening” and feels the victim deserves no empathy, saying “crucify her” and concluding with “loud laughter” emojis.

Dismissing revenge pornography as “fappening” has the potential to leave the issue of non-consensual pornography unexamined, unproblematised and constructed as no legal issue at all. With this in mind, Hassinoff (2014) argues that it is important to distinguish between consensual and non-consensual image sharing via social media and other digital tools, which is a delicate area that calls for more careful consideration of what people do or do not consent to. It should be generally understood that consent in one context does not confer consent in a different context. Therefore, in these cases, it would appear that the victims posed for the photos to be used in the context of the relationships but not to be shared with the public.

#### **4.2 OUTING TO PUNISH “UNACCEPTABLE” BEHAVIOUR**

The following post is a reaction to a famous athlete posting a video of him engaging in sexual activities with his friend’s wife. In his explanation, in a video interview, he said that he exposed the lady because she lacked virtue and slept with a lot of men. The use of the words “prostitute” vs “wife” suggests that there is a way women are supposed to behave and that contrary behaviour should be punished. His explanation and actions show a disapproval of the woman’s actions and thus a justification for sharing the content. While he is a married man, he does not provide an account of his own promiscuity, but only that of his friend’s wife. In his case, promiscuity among men is seen as normative. The athlete is able to take the moral high ground and punish the woman for behaviour he sees as unbecoming of a woman and invite the public

to judge and punish her.

I don't see any problem with the guy X\*\* was exposing this to his close friend so that he get assured that he doesn't have a wife but a prostitute ... kama angemwambia life angeona ni porocho [if he had told him face-to-face, he would have thought it was gossip] but watch the space ([www.facebook.com](http://www.facebook.com)).

The author of the above post justifies the athlete's post, saying that it was in good faith as the athlete was just passing on information with evidence. He appears to suggest that the video was necessary, so that the woman's husband believes what the athlete was claiming.

"You dress scantily, i will either personally undress you or sponsor your undressing. Lets not be pretenders here. #scantily dressed" ([www.twitter.com/@RobertAlai](http://www.twitter.com/@RobertAlai)).

The above tweet comes from a time when it was common for women in Nairobi to be undressed by mobs, the videos of the incidents taken and circulated on online spaces. The above author, who is a leading Kenyan blogger of high influence, having even attained a head of state commendation, reacted with this justification. In the statement, he appears to believe there is a way women should dress and anything contrary should be punished.

Non-consensual pornography in these two cases can thus be seen as just another way of normalising women to the requirements of "appropriate female behaviour" especially as dictated by men.

#### ***4.3 "SLUT SHAMING" AND CHARACTER ASSASSINATION TO DISCREDIT WOMEN'S ACHIEVEMENTS***

The woman whose nude pictures you are savour free of charge here, is the new Cabinet Secretary in the Ministry of X\*\*\*. When we say that Jubilee, Uhuru and Ruto are low-life's, we know what we mean. Her nude pictures were revealed by her trusted lover after countless rounds of sex in a hotel room. While we encourage young ladies of good physique to share nudes with their lovers, it is totally prohibited for old women of X\*\*\*'s age to share them. My eyes are bleeding. Now Kenyans, do you see how things work in Nairobi? You have to sleep with the boss if you want a job. Merit is no longer a consideration. Issa flashback Friday because these photos first leaked back in 2011. As we celebrate her new appointment (despite her obvious lack of expertise or experience in the field of \*\*\*), let's also take a trip down memory lane.

Remember how you said people are sleeping around for promotions? See the girls in the images attached. One was outed on the mafisi channel, and the other sent nudes to X\*\*\* group CEO and X\*\* group human resource director. Guess what? They have been rewarded



with promotions (<https://cnyakundi.com/...>).

The woman in question in the first quote is seems to be presented as an achiever in professional circles. However, the leaked photos were used to cast doubts on her character and her ability to perform in her position, perhaps even suggesting that her achievements were due to her sexuality. In both cases, the nude photos are shared to showcase women as “sluts” who only get their jobs by sleeping with their superiors at work. The context in which the photos were taken seems to be ignored. Questions on consent before sharing the photos don’t arise, and neither are there questions on the morality of those who originally leaked the photos. What comes out is the “slutty” behaviour that is framed as deserving of shame. Again, revenge pornography is dismissed as self-promotion and something that the women willingly engaged in so as to get ahead. In line with this, Citron and Franks (2014) contend that revenge pornography seeks to diminish opportunities that are linked to a woman’s online and offline reputation. It thus appears that the authors feel the women are undeserving of the positions. Their online reputation is made out to be a sign of who they are offline and they should therefore be shamed.

#### **4.4 ENTERTAINMENT AND SEXUAL OBJECTIFICATION**

The following is a quote from “Team Mafisi” YouTube channel. The post would suggest that owning photos and perhaps sharing them serves to elevate men to “real man” affirmation:

If you are a man and you have never convinced a random lady to send you nudes, your Fisi club membership should be withdrawn ([www.youtube.com](http://www.youtube.com)).

While most of the non-consensual pornography online is posted so as to harm, shame and humiliate the victim, a lot of it, as seen on “Mafisi Channel” and the previously mentioned blogs, is posted because there is a large audience that is willing to look at the involuntary pornography. The internet creates an open avenue through which entrepreneurs of desire incite a culture of pleasure in private photos. Cooper (2016) opines that the motivation behind some of the perpetrators is simply notoriety, entertainment, desire for profit and sometimes no reason at all.

Mafisi Channel is an example of how online syndication has the effect on bringing like-minded people together to consume and create content that appeals to them, in this case, non-consensual pornography. The interactions on this platform show another cyber effect referred to as online disinhibition, which explains why individuals taking part in online discourse in these platforms are bolder, less inhibited, and where they assume anonymity, they also assume invincibility and are thus judgment-impaired. The two cyber effects are expounded on in the studies of Aiken (2016), who explains why individuals in cyber spaces act differently from how

they would outside cyber space.

On a Facebook incident of revenge pornography, the following comments were observed:

A: Na anajua kutwist waist [She knows how to twist her waist]

B: Hii siwezi acha” [I can’t leave this one] [loud laughter emojis]

C: Yaye waist bila morals [Yeah, waist without morals]

D: Nice bedminton machine very flexible too

E: The lady has a nice tummy ([www.facebook.com](http://www.facebook.com)).

In the above posts, there appears to be no particular motivation except entertainment and simple curiosity. The “loud laughter” emojis used here suggest that the consumers of the content find a lot of fun in the content. They also enjoy scrutinising the victim and alluding to her sexual skills. In this “fun” context, it is hard to imagine that consumers for a second consider the pain, consent or lack thereof of the victim. The victim is seen as mere object of sexual gratification, and is dehumanised and degraded. This could be as a result of cyber disinhibition as discussed by Aiken (2016)

#### **4.5 ONLINE DISINHIBITION**

The online disinhibition effect allows individuals to dissociate themselves from their online selves, almost as if the online self becomes a compartmentalised self, different from the offline self (Aiken, 2017). It allows individuals to suspend their normal selves as they enter the virtual realm which is the internet. Their judgment in this realm is impaired and they can thus engage in activities they would normally not engage in themselves in offline spaces. In such instances, Hall and Hearn (2017) observe that the consumers of revenge pornography are able to avert guilt or absolve themselves of responsibility by convincing themselves that it is not them who hurt the victim, rather it is the original poster of the content. They tell themselves that they are only viewing or passing it on to others. This can be seen in the example below:

A: I normally choose to mind my business but the damage seems to have already been done [Goes ahead to post an offensive video].

In response:

B: He had the guts to record it what was he expecting? Tom and Jerry, let him deal with his

consequences.

C: I don't blame A [for reposting]. Its part of the news we are only consumers.

In the first case, the author suggests that posting revenge pornography content is something he would normally not do, however since the content was already posted by someone else, then he himself is doing nothing wrong. Those reacting to his comment seem to agree by saying they are only consumers of what the "guilty person" posted. After all, the content is merely news for anyone to share and consume.

#### **4.6 COMPETITION AMONG WOMEN**

**"A\*\*\*'s womb broom** has been sweeping **B\*\*\*'s** womb and the excitement of the Sexcapades has continuously led her to sending **A\*\*\*** Nude Pics. Because **A\*\*\*** is a **shared commodity** within Company **X\*\*\*'s** prostitution industry, one of the girlfriends has been **monitoring his whatsapp** through a secret application she installed in his phone when they were having **pillow moments**. We will not mention the name of this disgruntled lover who says she installed the application at midnight when **A\*\*\*** was a sleep after a single exhausting round. She says she has many nude pictures from **A\*\*\*'s** Phone but could only share the following after **A\*\*\*** Elevated **B\*\*\*** to a **Central Team Leader position** (<https://badnewsanalytica.com>).

From the above post, competition can be seen through the author's description of how the photos were obtained. The male blogger describes how the lady got the photos from her lover who we can deduce has several other female lovers. The author does not tell us why the woman in question is disgruntled. We can only suspect that the trigger for the outing could be jealousy where the man promotes a woman she perceives to be a rival or it could also be the woman feels that outing the other woman will make her leave him. It could also be purely to shame and show the woman as having been promoted for other reasons but not merit. The author, on the other hand, sensationalises the story using figures of speech like "pillow moments" and "womb sweeper" and puts them in bold letters to make sure he captures the appetite of his revenge pornography consumers. "Monitoring his whatsapp" (WhatsApp) is also in bold to capture the attention of those thirsty for photos obtained without consent.

#### **4.7 REVENGE AND EXTORTION**

... **A\*\*\*** was trending in the Kenya's Mafisi Channel. Mafisi Channel is a favourite Chanel for Kenyan men ... **A\*\*\*** turned her guns to **X\*\*Group's** CEO **B\*\*\***. After offering

her services to B\*\*\*, the fraud CEO planned to secretly sack her for fear of his name being dragged to #KOT. **Kumbe B\*\*\* sio mjinga sana.** (is not a fool) He also took photos of the unsuspecting home breaker and forwarded them to Mafisi Channel. A\*\*\* threatened to also expose B\*\*\* badly and now she has been given a promotion and is on her way to the head office to collect huge salaries every month (<https://badnewsanalytica.com/2018/05/26/...>).

The victim is portrayed as a promiscuous “home breaker” with a vengeance against the said CEO. While we are not privy to why she “turned her guns on him” a power struggle is apparent. The CEO uses nude photos to humiliate the woman and the woman in turn threatens to expose the CEO. A motive of revenge is apparent. The woman uses her “secret” to blackmail the man to give her a lucrative job.

## **5. DISCUSSION**

The above analysis has focused on how individuals accounted for and justified their engagement in revenge pornography. The various situations show the intersection between nonconsensual pornography and traditional views of gendered violence. The analysis has shown how revenge pornography ties to hegemonic masculinity, gendered practices of men and masculinity and aspects of masculinised interpersonal relationships. In all the incidents, the consumers and the perpetrators downplay their responsibility/culpability by absolving themselves from the harm caused and placing blame on the victim. Revenge pornography is seen as an equalising reaction to the “bad behaviour” of the victims involved.

It can be observed from the words of the perpetrators and the consuming and reacting audience that revenge pornography stems from skewed gender relations that put women’s sexuality in the custody of men. Hegemonic masculinity has been observed in all the cases where men attempt to assert control over the female body through the humiliation and the public shaming inherent in revenge porn. Revenge pornography is seen as the punishment women should come to expect when they engage in private expressions of their sexuality or the joyous celebration of their bodies.

The various reactions pointed out perpetuate popular rape myths that squarely place the blame on the victim and asserting that victims wished it upon themselves or that they could have done something to avoid being targeted (Eikren & Ingram-Waters, 2016). In such a context, the crime of the perpetrator is diminished as a hazard of using the internet that a woman should have seen coming when they consented to having their images taken, or when they took photos of themselves and saved them in their computers or phones. This puts the perpetrator completely out of the equation and again places the blame solely on the woman. Rarely do people question the morality of the perpetrator as they heap blame of immorality on the victim and make assumptions about her consent. This is further analysed by Trout (2014), who observes how

young girls and women are told “don’t send nude photos” yet rarely are men told “do not violate the privacy of a woman who trusted you enough to share herself with you in a playfully sexual context.” Roffer (2017) observes that while a woman is labelled “a shameless slut” for taking such images, the man who shared them is rarely questioned or included in the picture. In this case, men are seen as “studs” and are applauded.

Online disinhibition can be attributed to the lack of guilt on the part of the audiences and the perpetrators. The bloggers who seek out and post revenge porn, thus becoming perpetrators themselves, may not know the victim and therefore the impact of their actions may not be apparent. In other cases, as discussed, the revenge pornography may not be seen as harmful especially by men who engage in it as part of homosocial relations where having and sharing nude photos of a non-consenting woman is seen as an affirmation of “a real man” as is observed on the “Mafisi Channel” quote, “If you are a man and you have never convinced a random lady to send you nudes, your Fisi club membership should be withdrawn.” The homosocial relations may be guided by what Aiken (2017) refers to as “cyber syndication”, where the internet makes it easier for like-minded people to find each other online and share content that is approved within that circle. Of interest in some of the examples given is that the audience interacting with revenge pornography content by sharing and commenting was gender varied. Both men and women were found to equally congregate in social media forums, to share and view the leaked images. This cyber syndication is what leads to the increase in revenge pornography consumers and posters around pages like “Mafisi Channel”.

Usually, revenge pornography is just the beginning of more abuse and victimisation of a victim, both offline and online, and it leads to sustained ridicule and harassment both online and offline. Non-consensual pornography eventually leads to another form of violence against women in what has now come to be popularly referred to as “slut shaming” as observed in the analysis and equally observed by Gong and Hoffman (2012). This is an act where women are shamed for their bodies, ridiculed for their perceived sexual availability or history. The main purpose is to humiliate and shame women. Additionally, Waldman (2015) explains that the Internet offers perpetrators a free and permanent weapon to continuously harass their victim, to perpetuate a cycle of control and to wage power over the victim. Additionally, as in the case of the CEO, the images may be used to blackmail and force a victim to submit to a perpetrator’s demands. Bloom (2014) observes that non-consensual pornography also limits women’s freedom to live their lives and punishes them for engaging in activities that men would normally engage in with little or no chance of negative consequences, for example, in this case, the taking of nude selfies, or sharing nude pictures with an intimate partner.

Brownmiller (1993) sees traditional rape as “a conscious process of intimidation by which all men keep all women in a state of fear”. The same can be said of revenge porn. “Cyber rape” can be seen as a tool for intimidation of women who engage in digitally mediated sexual activities. The entry of artificial intelligence and morphing make every woman a potential victim.

### **5.1 EFFECTS OF REVENGE PORN**

Victims of revenge pornography have been reported to commit suicide, lose jobs and suffer other emotional and psychological harm. This can be seen in the case of Miss World Kenya, who lost her title in 2016, as well of Mercy Bundi, a teenager reported to have committed suicide in 2015 (Daily Nation, 28 September 2015). Citron (2008) explains instances where women may have their chances of employment diminished, not because employers necessarily believe that the victim of revenge pornography is to blame, but simply because it is easier to hire someone who doesn't come with the extra "baggage". It is also easier to hire a person with a more attractive online reputation. Software Company Microsoft, in a 2010 study, observed that almost 80% of employers used online reputations to decide on whether to hire or not hire a candidate.

Roffer (2017) and Franks (2011) opine that revenge pornography is particularly devastating because of its permanence and the difficulty in removing images once posted online. They also allude to the amplification effect of revenge pornography posted online. Unlike offline violence, which may have a limited audience, revenge pornography invites a global audience to participate in humiliating the victim. Unlike victims of offline crimes, victims of revenge pornography cannot relocate or change jobs in order to avoid confronting the perpetrator or the people known to them. The posted photos can follow them to any corner of the world. Franks (2014) refers to this as virtual captivity and publicity.

Another factor that gives revenge pornography so much power is the fact that society gives it power. Feminist scholars have long argued that the body is both socially shaped and colonised (Brownmiller, 1993). As such the female body, viewed under the influence of western culture, carries negative bodily associations. By her sex, a woman represents the temptations of the flesh and the source of man's moral downfall (Bordo, 1993). This in a way gives men reason to assume control over female sexuality, to determine appropriate female behaviour and to punish deviant behaviour.

### **5.2 REVENGE PORNOGRAPHY AND THE LAW**

Revenge pornography should be understood to be as harmful as physical assault for it is indeed sexual use without consent. Franks (2014) explains that when sexual use without consent happens physically it is given the name rape. The lack of physical touch in the virtual world shouldn't mean that the harm is any different. In fact international criminal law, under the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), has provided a precedent in defining sexual assault in their rulings that it does not require physical contact and that forced nudity is a form of sexual violence. The ICTR in the Akayesu case, defined sexual violence as not necessarily requiring physical harm:

... any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact ... coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.

Similarly, in the Furundzija case, the ICTY found that international criminal law punishes not only rape, but that “all serious abuse of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force, intimidation in a way that is degrading and humiliating for the victim’s dignity”.

Several states have also recognised revenge pornography for the harm it causes, and criminalised it. They include the Philippines, which was the first to criminalize it in 2009. This was followed by Victoria State in Australia, Israel, Canada, England and Wales, New Zealand, and by several states in the USA, such as New Jersey, Florida, Hawaii and California.

While perpetrators may be known to the victims, as in the ex-lovers and the athlete mentioned in the analysis, it is still difficult to actually prove culpability due to the anonymous interactions the internet offers. For this reason, revenge pornography is rarely reported and prosecuted, and as a result the problem persists.

Whereas the efforts being made to address abuse of digital spaces in Kenya deserve to be applauded, the area of revenge pornography still remains ambiguous under Kenyan Law. A victim is forced to fit the offence under broad terms that cannot capture the damaging effect of revenge porn. Section 37 of The Computer Misuse and Cybercrime Bill (2018) states that:

A person who transfers, publishes, or disseminates including making digital depiction available for distribution or downloading through a telecommunications hardware or through any other means of transferring data on a computer, the intimate or obscene images of another person commits an offence and is liable, on conviction to a fine not exceeding 200,000ksh or imprisonment for a term not exceeding 2 years or both.

The broad terms used in this law have larger implications for freedom of speech as they may be seen to be criminalising even intimate consensual filming or photography among consenting adults. As it is, the bill is too broadly defined and lacks clarification of consent and presents both “content discrimination” and “viewpoint discrimination” which are all affronts to the freedom of expression as defined by Humbach (2014).

To avoid this, the bill needs to be so clearly defined, and narrowly focused as to not punish innocent activity and activity to which the public has legitimate interest. This, according to Citron (2014), would require clarifying the mental state of the person sharing the image. That is to say, an offence of revenge pornography can only be said to have happened if the defendant knowingly disclosed the image knowing that the person/victim did not consent to the photo being disclosed. This focuses the law to punishing only intentional betrayals of trust and privacy.

To emphasise this, in the case of *Geoffrey Andare v Attorney General and 2 others* (2016) eKLR challenging the constitutionality of section 29 of the Kenya Information and Communication Act, Cap 411A, the judge raised questions as to what is meant by some of the broad terms used to describe the offence in the said act including the term “obscene”. He concluded that the words were broad and vague and their definition and meaning is left to the subjective interpretation of the courts. He further added that “the principle of law with regard to legislation limiting fundamental rights is that the law must be clear and precise enough to enable individuals to conform their conduct to its dictates”. He went on to quote Chaskalson, Woolman and Bishop in the Constitutional Law of South Africa, who stated that: “Laws may not grant officials largely unfettered discretion to use their power as they wish, nor may laws be so vaguely worded as to lead reasonable people to differ fundamentally over their extension.”

This “broadness” of terms has also been criticised by civil society, including Article 19, who analysed the Computer Misuse and Cybercrimes Bill (2018) and opined that “the bill provides for incredibly broad speech offences that could have a devastating effect for freedom of expression in online platforms in Kenya.” This “broadness” can be addressed by clear and narrow drafting that includes enough specifics.

Franks and Citron (2014) observe that revenge pornography in itself should be seen as an affront to freedom of expression as it does indeed chill the private expression of individuals based on the fear that their images would be shared without their consent. It should be clear that without any expectation of privacy and confidentiality, women would not share their naked images and thus a breach of trust and privacy should be punished so as to allow this private expression that can actually be useful in enhancing intimacy in relationships. Speech such as revenge porn, which inflicts harm, causes emotional distress and financial loss.

## **6. CONCLUSION**

Given that there are millions of pages of consensual pornography available online, yet the viewers of nonconsensual pornography keep seeking it out, Franks (2014) concludes that it is that very lack of consent and the intrusion into private spaces that gives nonconsensual pornography the erotic charge which excites and attracts the viewers and consumers. Franks



(2016) argues that revenge pornography should be seen as a violation not because nudity and taking nude photos are seen as inherently immoral, but simply because divulging a person's private information or nudity without the person's consent is wrong. Equally, Cooper (2016) adds that a person should have a right to be virtually clothed, be able to choose who sees them naked and in what circumstances.

It can thus be argued that women should have a right to engage in consensual acts even those that are digitally mediated such as nude photo exchange, nude photography and filming. This freedom to enjoy themselves can only be guaranteed by punishing the breach of trust and abuse of consent. Sharing nude images or other information with a confidant should not be seen to mean that one has waived all privacy expectations. In fact, such information is shared on the basis of an understanding that it will remain private between the parties involved. Article 31 of the Kenyan Constitution guarantees the right to personal privacy including "the right not to have Information relating to a person's family or private affairs unnecessarily required or revealed", and this should be upheld.

## **REFERENCES**

Article 19, Kenya (2014). Cybercrime and Computer Related Crimes Bill: Legal analysis. <http://www.jkuat.ac.ke/departments/it/wp-content/uploads/2014/02/Kenya-Cybercrime-Bill-129072014-BB-1.pdf>

Bloom, S. (2014). No vengeance for "revenge porn" victims: Unraveling why this latest female-centric, intimate-partner offense is still legal and why we should criminalize it. *Fordham Urban Law Journal*, 42(1): 233.

Bordo, S. (2004). *Unbearable weight: Feminism western culture and the body* (10th ed.). San Francisco: University of California Press.

Brownmiller, S. (1993). *Against our will: Men, women and rape*. New York: Fawcett Books.

Citron, D.K. & Franks, M.A. (2014). Criminalizing revenge pornography. Available at: [http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2424&context=fac\\_pubs](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2424&context=fac_pubs)

Citron, D.K. (2008). Cyber civil rights. *Boston University Law Review*, 89, 61-125. University of Maryland Legal Studies Research Paper No. 2008-41. Available at: <https://ssrn.com/abstract=1271900>

Citron, D.K. (2009). Law's expressive value in combating cyber gender harassment. *Michigan Law Review*, 103(3): 373-415.

Citron, D.K. (2014). *Hate crimes in cyberspace*. Cambridge, MA: Harvard University Press. <https://doi.org/10.4159/harvard.9780674735613>

Cooper, P.W. (2016). The right to be virtually clothed. Available at: <https://digital.law.washington.edu/dspace.../91WLR0817.pdf>

Cyprian Nyakundi blog: <https://cnyakundi.com/>

Dickson, A. (2016). “Revenge porn”: A victim focused response. *Unisa Student Law Review*, 2. <https://doi.org/10.21913/USLRunisaslr.v2i0.1357>

Eikren, E., & Ingram-Waters, M. (2016). Dismantling “You get what you deserve”: Towards a feminist sociology of revenge porn. *Ada: A Journal of Gender, New Media, and Technology*, 10. <https://doi.org/10.7264/N3JW8C5Q>

eKLR Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998. Available at: <http://www.refworld.org/cases,ICTY,40276a8a4.html>

Franks, M.A. (2011). Unwilling avatars: Idealism and discrimination in cyberspace, 20. *Columbia Journal of Gender and Law*, 224, 255–256. Available at: [https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1304&context=fac\\_articles](https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1304&context=fac_articles)

Franks, M.A. (2014). Combating non-consensual pornography: A working paper. Available at: <https://ssrn.com/abstract=2336537> or <https://doi.org/10.2139/ssrn.2336537>

Franks, M.A. (2016). Revenge pornography reform: A view from the front lines. *Florida Law Review*. University of Miami Legal Studies Research Paper No. 16-43. <https://ssrn.com/abstract=2853789>

Geoffrey Andare v Attorney General & 2 others [2016] <http://kenyalaw.org/caselaw/cases/view/121033/>

Gong, L., & Hoffman, A. (2012). Sexting and slut-shaming: Why prosecution of teen self-sexers harms women. *Georgetown Journal of Gender and the Law*, 13: 577–589.

Haimson, O., Andalibi, N., & Pater, J. (2016). *Ethical use of visual social media content in research publications*. *Research Ethics Monthly*. <https://ahrecs.com/uncategorized/ethical-use-visual-social-media-content-research-publications>

Halder, D., & Jaishankar, K. (2009). Cyber socializing and victimization of women. *Temida: Casopis o Viktimizaciji, Ljudskim Pravima i Rodu*, 12(3): 5–26. <https://doi.org/10.2298/TEM0903005H>

Hall, M., & Hearn, J. (2017). *Revenge pornography: Gender, sexuality and motivations*. London: Palgrave Macmillan. <https://doi.org/10.4324/9781315648187>

Hasinoff, A. (2014). *Sexting panic: Rethinking criminalization, privacy, and consent*. Urbana: University of Illinois Press.

Hownowz blog: <https://hownowz.wordpress.com>

Hughes, D.M. (2007). The use of new communications and information technologies for sexual exploitation of women and children. Available at: [http://www.genderit.org/sites/default/upload/Donna\\_HughesNewTech.pdf](http://www.genderit.org/sites/default/upload/Donna_HughesNewTech.pdf)

Humbach, J.A. (2014). The constitution and revenge porn. *Pace Law Review*, 35(1): 215. <http://digitalcommons.pace.edu/plr/vol35/iss1/8>

ICTR, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Chamber 1, 2 September 1998; <http://www.ictr.org>

Kenya Computer and Cybercrimes Bill (2018). Nairobi: Government Printers. Kenya Information and Communications Act (2015). (Revised edition. First published 2012). Nairobi: Government Printers.

Lawson, C.E. (2015). Cascading exploitations: The celebrity nude photo hack as digital phenomenon. *Selected Papers of Internet Research 16*. The 16th Annual Meeting of the Association of Internet Researchers. Available at: <https://spir.aoir.org/index.php/spir/article/view/1119/773>

Moloney, M. E. & Love, T. P. (2017). The fappening: Virtual manhood acts in (homo) social media. *Men and Masculinities*. <http://journals.sagepub.com/doiabs/10.1177/1097184X17696170>

Ngwa, O., Shu, S.J., Kudi, D., Mbarika, I., & Mbarika, V. (2008). The unintended consequences of ICT in sub-Saharan Africa. *GlobDev 2008*. Paper 16. Available at: <http://aisel.aisnet.org/globdev2008/16>

Patil, S.P. (2015). An analysis of the laws relating to victimization of women in cyberspace. *Human Rights International Journal*, 3(1).

Robert, C. & Citron, D.K. (2018). *Deep fakes: A looming challenge for privacy, democracy and national security*, 107 *California Law Review* (2019, Forthcoming); University of Texas Law, Public Law Research Paper No. 692; University of Maryland Legal Studies Research Paper No. 2018-21. Available at: <https://ssrn.com/abstract=3213954> or <http://dx.doi.org/10.2139/ssrn.3213954>

Roffer, J. (2017). Nonconsensual pornography: An old crime updates its software *Fordham Intellectual Property, Media and Entertainment Law Journal*, 7(4). Available at: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article...context>

Roshanara Ebrahim v Ashleys Kenya Limited & 3 others (2016).

The Kenyan Constitution (2010) Article 28, 29 and 31. Nairobi: Government Printers. The Sexual Offences Act of 2006. Nairobi: Government Printers.

Trout, J. (2014). The sexual violence of non-consensual nudity. *Huffington Post: Blog* (2 September 2014). [http://www.huffingtonpost.com/jenny-trout/the-sexualviolence-of-non-consensual-nudity\\_b\\_5745440.html](http://www.huffingtonpost.com/jenny-trout/the-sexualviolence-of-non-consensual-nudity_b_5745440.html)[<https://perma.cc/CP9L-ZLWC>]

Waldman, A.E. (2015). Images of harassment: Copyright law and revenge porn. 23 *Federal Bar Council Quarterly*, 15(Sept./Oct./Nov. 2015). Available at: <https://ssrn.com/abstract=2698720>