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SCHOOL OF LAW

**A CRITICAL EXAMINATION OF THE LAW IN ZAMBIA ON THE NON-
CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT: DRAWING LESSONS
FROM SOUTH AFRICA**

By:

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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN
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2025

DECLARATION

I, **WANA MARTHA KAPAMBWE**, do hereby declare that this dissertation titled **A CRITICAL EXAMINATION OF THE LAW IN ZAMBIA ON THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT: DRAWING LESSONS FROM SOUTH AFRICA** which is hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws (LLB) degree, is solely of my own and that it has, to the best of my knowledge, not been previously submitted at this university or any other tertiary institution. Other people's work and sources used in the study have been acknowledged. I hereby declare that I have read and understood the regulations governing the submission of the Bachelor of Laws Degree (LLB) dissertation including those relating to length and plagiarism, as contained in the rules of the University and that this dissertation conforms to those regulations. The errors or omissions in this work are solely mine.

WANA MARTHA KAPAMBWE

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2025

SUPERVISOR'S RECOMMENDATION

I, **LUMBIWE MWANZA** recommend that this dissertation prepared under my supervision by **WANA MARTHA KAPAMBWE**, entitled **A CRITICAL EXAMINATION OF THE LAW IN ZAMBIA ON THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT: DRAWING LESSONS FROM SOUTH AFRICA** be accepted for examination, I have checked it carefully and I'm satisfied that fulfills the requirement pertaining to the format laid down in the regulations governing directed research.

.....

L. MWANZA

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DEDICATION

This dissertation is dedicated to my Parents, Mr Dennie Kapambwe and Mrs Gladys Kasoka Kapambwe. My first and greatest teachers who worked tirelessly so that I could have the opportunities they never had. Their endless sacrifices and unconditional love for me have been my bedrock upon which this achievement lies. This dissertation is the fruit of the foundation you built. I dedicate this accomplishment to them. This work is much yours as it is mine. I love you

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Criminal Law (Sexual offences and related matters) Amendment Act 32 of 2007

The Computer Misuse and Cybercrimes Act, 2018

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1981

The Constitution of Zambia 1996

The Council of Europe on preventing and combating violence against women and domestic violence 2011

The Cyber Security and Cyber Crimes Act No.2 of 2021

The Cyber Crimes Act No.4 of 2025

The Cyber Crimes Act 19 of 2020

The Cyber Security Act No.3 of 2025

The Electronic Transactions and Cyber security Act of 2016

The Films and Publications Amendment Act 11 of 2019

The International Covenant on civil and political rights 1966

The Penal Code of Zambia Chapter 87 of the laws of Zambia

The Universal Declaration of Human Rights 1948

ABSTRACT

This thesis was premised on the non-consensual distribution of intimate content: Drawing lessons from South Africa. The study focused on the laws in Zambia which provide for non-consensual distribution of intimate content and the protection of victims of this crime. The purpose of this research was to ascertain how victims can seek redress and if the law adequately protects the victims in Zambia. The methodology of this research was as follows; this research was a qualitative mode of research as data was collected from both primary and secondary sources which include, legislation, local and foreign, textbooks, journal articles, internet sources and text books. The design of this research was an evaluative approach drawing comparative insights from South African legislation as to the effectiveness of the subject matter. The data collected was secondary data such as case law, legislation, journals, articles, newsletters and scholarly writings published from works of notable authors on the said topic analysed using narrative data analysis. The major findings of the research were that Zambia does not have laws that protect victims of the non-consensual distribution of intimate content. And as such, it has been very easy to abuse this power because the law that governs the non-consensual distribution of intimate content is weak when it comes to the protection of the victims. This has resulted in law case reports and injustice for the victim.

CHAPTER ONE

1.0 INTRODUCTION

This chapter provides a summary of the research conducted during the entire study and acts as an introduction. It describes the essential elements that serve as the basis for analysing Zambia's legislation regarding the non-consensual dissemination of private information, providing guidance for South Africa's legal system. This chapter will highlight the background, statement of the problem, objective and the significance of the study as it adds to the already existing body of knowledge while also serving as future reference for the remaining portion of research in similar topics or interests.

1.1 BACKGROUND OF THE STUDY

The development of the modern world has been greatly aided by technology, both positively and negatively. Technological advancement has sparked societies to function at a higher social and economic plane. Electronic communication and the internet have pressed societies to unimaginable social transformation. But the internet has also splashed negative social behaviours across societies.¹ Numerous harmful behaviours, like the unconsented dissemination of private information from gadgets like computers, cell phones, and tape recordings, are bound to come along with these technological advancements. Unconsented sharing of private information is a harsh fact that still affects a lot of people's lives in the modern digital world. It alludes to the non-consensual distribution of photos or videos depicting nudity, partial nudity or sexually explicit acts.²

Social media and digital pornography have made it easier for private photos to be shared quickly and frequently without permission. As a result, there are now more instances of "revenge porn" and image-based sexual abuse. Overtime, the non-consensual dissemination of private information has evolved significantly due to changes in society and technical breakthroughs. In the case of **FGX v STUART GAUNT**, the claimant sued her former partner for recording naked images of her and publishing them on a pornographic website without her knowledge and the court

¹ Jordan Tembo, and Patricia Mambwe 'Increasing Cases of Online Non-consensual Posting of Adult male Nude Pictures and Videos in Zambia: Views from rural and urban dwellers' (2021) <https://dx.doi.org/10.47772/IJRISS.2021>.53

² Citron, Danielle Keats and May Anne Franks. 2014 "Criminalizing revenge porn." Wake Forest Law Review 49" 345-91

clarified that revenge porn is better termed as image- based abuse to avoid a victim-blaming culture.³

This research paper aims to provide a comprehensive overview and thorough analysis of the law guiding the non-consensual distribution of intimate content in Zambia, while examining the factors contributing to its ineffectiveness. The study seeks to identify patterns of non-consensual distribution and assess a way forward for legislative reforms. Lessons will be drawn from South Africa.

1.2 STATEMENT OF THE PROBLEM

The recent passage of the Cyber Crimes Act, 2025 specifically makes actions similar to the non-consensual distribution of intimate content (NCDIC) illegal, and this is a big step in the right direction. Punitive actions against the offender continue to be the main emphasis of this legislative. Cybercrimes can be defined as computer-assisted crime in which technology, like computers, are used to assist in committing a crime.⁴The main issue is that the Cyber Crimes Act 2025, is inadequate in providing a comprehensive suite of victim-centered civil and non-penal penalties. It lacks procedures for the quick and swift removal of content that has been shared, protection orders to protect victims from persistent harassment, and defined channels for reimbursement. As a result of this, victims are left without enough legal remedy to lessen the significant and ongoing harm to their reputation, economy, and psychological well-being. On the other hand, South Africa has enacted specific legislation that directly addresses this particular issue. This highlights the critical need for a comprehensive review of Zambia's laws to address this Legal gap.

1.3 RESEARCH OBJECTIVES

The general objective of this paper is to assess the laws and policies governing the non-consensual distribution of intimate content in Zambia. The specific objectives to facilitate this are:

1. To examine the human rights issues arising from the issue of non-consensual distribution of intimate content.

³ FGX and Stuart Gaunt [2023] EWHC 419 (KB)

⁴ Adam M. Bossler & Tamar Berenblum 'Introduction: new directions in cybercrime research' (2019) 24:5 Journal of Crime and Justice 495.

2. To analyze the Zambian legal framework and establish the extent to which the law protects individuals from the non-consensual distribution of intimate content.
3. To analyze the law on non-consensual distribution of intimate content in South Africa and draw lessons therefrom for Zambia.

1.4 RESEARCH QUESTIONS

1. What legal challenges arise from the issue of the non-consensual distribution of intimate content under Zambian law?
2. Does Zambia's legal framework explicitly criminalize the distribution of intimate content without consent and what gaps exist in Zambia's legal framework regarding the protection of victims of non-consensual distribution of intimate content?
3. What lessons and practical examples can be drawn from countries like South Africa in relation to the laws on the non-consensual distribution of intimate content?

1.5 SIGNIFICANCE OF STUDY

The importance of this study is to analyse the legal framework governing the non-consensual distribution of intimate content. This remains a persistent challenge globally with detrimental effects on victims of such crimes due to the law in Zambia and its inadequacies in protecting the victims.

Drawing insight from South Africa's laws and how they have evolved overtime to accommodate the non- consensual distribution of intimate content and how victims are protected under their laws can provide valuable lessons for Zambia. South Africa has implemented specific laws that effectively address the non-consensual distribution of intimate content. By examining these laws, policy makers in Zambia can gain valuable insights into developing their laws further. Additionally, a comparative study of South African statutes and case law can help identify gaps and areas that need clarification or revision of the law by shedding light on best practices for interpreting and applying the law regarding the non-consensual distribution of intimate content.

1.6 SCOPE OF THE STUDY

The Penal Code of Zambia which deals with the non-consensual sharing of intimate content in general and the Cyber Crimes Act 2025, will be examined in this study. In

accordance with South African regulations, including the Films and Publications Amendment Act, the investigation will examine the Cyber Crimes Act. Additionally, it will briefly explore global best practices to address the identified loopholes in Zambia's laws.

1.7 DEFINITION OF KEY TERMS

I. Non-consensual pornography- refers to sexually explicit images disclosed without consent and for no legitimate purpose. The term encompasses material obtained by hidden cameras, consensually exchanged within a confidential relationship, stolen photos, and recordings of sexual assaults.⁵

II. Obscene- refers to a legal concept used to characterize certain particularly sexual material as offensive to the public sense of decency⁶

III. Revenge porn- revenge porn refers to situations where a sexually explicit image and/or video of a person is posted online and/or throughout other mediums of media without that persons consent and is typically motivated by the perpetrator's desire for revenge or harassment⁷

1.8 LITERATURE REVIEW

Authors both from Zambia and abroad have written on the subject of non-consensual distribution of intimate content. How this particular topic in terms of the Zambian law is inadequate compared to south Africa and this inadequacy may have an effect on the victims of these crimes. This research paper therefore seeks to add to the already existing body of knowledge created by the following authors:

Jordan Tembo and Patricia Mambwe discuss the rise of non-consensual distribution of intimate content in Zambia. They note that the internet and digital platforms have facilitated the non-consensual distribution of nude images, leading to significant reputational damage for victims. The authors were of the view that sharing of nude images and videos depicting other individuals without their consent is an emerging social problem in Zambia. The problem is urgent in nature therefore, it demands extensive academic inquiry and cure because adult males who in the traditional Zambian culture are the custodians of social norms and cultural values for the country,

⁵ Franks, M.A. (2015) Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators. Social Sciences Research Network. <https://ssrn.com/abstract=2468823>

⁶ <https://www.britannica.com/topic/obscenity>

⁷ <https://www.merriam-webster.com/dictionary/revenge%20porn>

are falling prey to non-consensual dissemination of their utterly confidential photos and videos online.⁸ The authors emphasize the need for comprehensive legal frameworks to address the issue effectively. The author of this dissertation agrees with this view as these challenges are true and existing in Zambia.

Citron and Franks: Revenge porn has been described as the distribution of compromising (often nude or sexualized) images without a person's consent.⁹ The author of this dissertation agrees with the above and will take the meaning of the term throughout this dissertation.

Rackley and McGlynn propose that the more appropriate term is IBSA and not revenge pornography because revenge centres on the motives of perpetrators, as opposed to the harm caused to victims. They further argue that the term pornography is misleading as people equate pornography with consensual sexual gratification. As such, they are of the view that this poses challenges both to the public and to lawmakers as they engage in legislative debate in that they are unable to see that sharing intimate images without consent amounts to abuse.¹⁰ The author of this dissertation agrees with this view as these challenges are true and existing in Zambia.

Melody Musoni was of the view that the criminalisation of revenge porn breathes fresh air into the development of the legal system, enabling it to catch up with technological advances. The majority of victims who could not afford to bring take-down notices against internet service providers, or sue third parties for copyright infringement and privacy infringement, can now find the most effective way to obtain justice. The possibility of arresting and imposing a fine on convicted criminals is likely to stop many people from publishing the intimate data of others for fear of the criminal sanctions surrounding revenge porn.¹¹

Sarai Chisala and Monica Kirya posit that revenge porn/non-consensual pornography require specific legislation or a nuanced interpretation of existing laws to

⁸ Tembo, J, Mambwe, P "Increasing Cases of online Non-consensual posting of Adult male nude pictures and videos in Zambia View from Rural and Urban dwellers" (2021) <https://dx.doi.org/10.47772/IJRISS.2021.56>

⁹ Citron, Danielle Keats and May Anne Franks. 2014 "Criminalizing revenge porn." Wake Forest Law Review 49" 345

¹⁰ McGlynn, C and Rackley, E Image-based sexual abuse 2017 oxford journal of legal studies

¹¹ Melody Musoni. "The criminalization of "Revenge Porn" in South Africa. (2019) <https://obiter.mandela.ac.za/article/view/11308/16592>

curb their incidence rates and to ensure redress for victims.¹² Therefore, the gap lies in the lack of specificity in the law regarding the non-consensual distribution of intimate content.

Zimkitha Dyantyi explained that the Films and Publications Amendment Act, 2019 makes it illegal to share sexually explicit videos and images of others without their consent. Despite the law prohibiting such content sharing on social media, social media users continue to share and re-share NCP. This author explored the justifications users who engage in this behaviour employ and the importance of understanding these justifications is imperative to assist in policy and legal reforms, and educational initiatives to minimise the impact this behaviour has on its victims.¹³

Brienna L. Webb expressed that the various physical, psychological, relational, social, and economic effects are explicated and the impact of minimising and victim blaming attitudes is elucidated, with emphasis being placed on the absence and requirement of sufficient legal remedies and community-based education strategies. In this regard, community-based education on the nature and impacts of IBSA is essential, in order to mitigate negative effects. Moreover, efficacious legal measures are necessary to assist community members in understanding virtual sexual consent and to provide victims with appropriate restitution.¹⁴

Lakshane provides an overview of the non-consensual distribution of intimate content in the Global South, noting Africa's lag in victim-centered laws compared to Europe.¹⁵

This dissertation will take this position throughout in relation to the impact that non-consensual distribution has on victims.

¹² Sarai Chisala-Tempelhoff, Monica Twesiime Kirya "Gender, law and revenge porn in Sub-saharan Africa: A review of Malawi and Uganda" Palgrave communications, Vol 2, 2019 available at <http://dx.doi.org/10.1057/palcomms.2016.69>

¹³ Zimkitha Dyantyi 'Justifications for re-sharing non-consensual pornography on social media platforms: A case of South Africa' 2024 Faculty of commerce, Department of Information systems <http://hdl.handle.net/11427/40892>

¹⁴ Webb, B. L. (2019). "Image-based Sexual Abuse: A Qualitative Exploration of the Lived Experience and Perceived Consequences for Women." Honours Thesis, Edith Cowan University

¹⁵ Lakshane.R 'Non-consensual intimate imagery: An overview' (2024) SSRN eLibrary, APC

1.9 RESEARCH METHODOLOGY

1.10 RESEARCH APPROACH

This research shall take the qualitative methodological approach. This is in order to analyse and understand the different views on the subject so as to better explore the topic and generate new insights on the subject where possible.

1.10.1 RESEARCH DESIGN

This researcher will employ an evaluative approach to critically examine the legal framework in Zambia concerning the non-consensual distribution on intimate content, drawing comparative insights from South African legislation as to the effectiveness of the subject matter this is in order to fulfill the research objectives. This study will involve the examination of articles, statutes, journals, case law, internet sources and other publications that have been published with regards to the topic.

1.10.2 RESEARCH TYPE

The research will be formulated in such a way that it will draw lessons from South Africa and other international countries, that have specified and contextualized the non-consensual distribution of intimate content and will be compared and contrasted with the Zambia legal framework in terms of the subject matter because Zambia's current laws do not provide specificity and adequate victim-centered mechanisms.

1.10.3 STUDY POPULATION

Zambia has a population of more than 18million people therefore this study's population will only encompass, law firm associates and Zambia Information and Communications Technology Authority members.

1.10.4 SAMPLING TECHNIQUE

This researcher will employ a convenience sampling approach for this research, interviewing the targeted population through their preferred mode of communication either physically or electronically and their place of convenience.

1.10.5 DATA COLLECTION

Secondary data shall be gathered through case law, legislation, journals, articles, newsletters and scholarly writings published from works of notable authors on the said topic.

1.10.6 DATA ANALYSIS

This research will have a qualitative data analysis. The researcher will find already existing datasets that have been collected from sources such as research organizations.

1.11 ETHICAL CONSIDERATION

The researcher is dedicated to adhering to various ethical principles throughout the study. This includes properly acknowledging and citing all sources used to prevent plagiarism, in accordance with both university regulations and ethical standards within the legal profession while using the OXFORD referencing style. The research will strictly follow the ethical guidelines approved by the University of Lusaka, ensuring the maintenance of the highest standards throughout the research process.

RESEARCH OUTLINE

CHAPTER ONE

This chapter is the general introduction of the study. It provides the background of the study, the statement of the problem, the research objectives and the research questions.

CHAPTER TWO

Chapter two examines the legal issues arising from the issue of non-consensual distribution of intimate content.

CHAPTER THREE

Chapter three analyzes the Zambian legal framework and establish the extent to which the law protects individuals from the non-consensual distribution of intimate content

CHAPTER FOUR

Chapter four analyzes the law on non-consensual distribution of intimate content in South Africa and draw lessons therefrom for Zambia.

CHAPTER FIVE

This chapter will give a summary of the findings of the chapters and also bring out recommendations on how our law on the non- consensual distribution of intimate content can be combated and how protection of victims can be improved.

CHAPTER TWO

THE HUMAN RIGHTS ARISING FROM THE ISSUE OF NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT

2.0 INTRODUCTION- THE VIOLATION HUMAN RIGHTS IN RELATION TO THE NON- CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT

This chapter will endeavour to examine the human rights framework that bring out the rights affected by the non-consensual distribution of intimate content. This will be done by analyzing the provisions of the International and regional instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the international covenant on civil and political rights and the Universal declaration of Human Rights. This chapter will further explain the impact that the non-consensual distribution has on the victim's human rights.

In the digital era, distributing content without consent is a serious breach of one's dignity and liberty and personal autonomy. A law's existence does not always translate into full justice, even if Zambia's Cyber Crimes Act No.4 of 2025, which was just passed and contains articles 19–23, gives lawmakers the ability to penalize some aspects of this behavior. The legal difficulties surrounding the non-consensual distribution of intimate content have changed, according to this chapter. They are now focused on the insufficiency of victim-centered remedies and protection within the new legal framework rather than the absence of criminality.

The underlying legal argument is the need for a particular, victim-centered legal response to the non-consensual distribution of intimate content and it is established in this chapter, which also looks at the legal challenges raised by this practice. The chapter makes the case that the fundamental flaw in such laws is their disregard for quick, easily available remedies, which are just as important to obtaining justice as criminal penalties. It also emphasizes how injustice can result from a lack of targeted or particular legislation and how the victim may experience social and cultural repercussions.

2.1 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

International laws provide for human rights that individuals have, such as the right to life, right to liberty and right to freedom of expression and the violation of these rights is an offence. With reference to the non-consensual distribution of intimate content, the distribution of such content is a violation of the victims right to privacy. The distribution of such content violates the principle that individuals should have control over the disclosure of their personal information. The main issue of the non-consensual distribution of intimate content is the violation of the victims right to privacy. The right to privacy is provided for in international instruments such as Article 17 of the International covenant on civil and political rights states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.¹⁶ The Universal Declaration Human Rights' Article 12¹⁷ and the ICCPR's Article 17 demonstrate the interconnectedness of human rights law by contrasting "arbitrary interference with privacy" with "attacks upon honour and reputation." By distributing intimate content, the perpetrator violates the victims right to privacy and exposes it to public view without consent. This makes the victim a public topic, stripping them of their bodily autonomy.

One of the most essential international instruments with respect to women's rights and gender-based violence is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which some call "the international bill of women's rights. CEDAW is relevant to this discussion because it places obligations on Zambia with respect to gender-based violence. CEDAW notably does not have provisions on non-consensual distribution of intimate content, which is understandable because CEDAW came into force in 1981, long before technology was as widespread as it is now. Despite this, the CEDAW Committee published General Recommendation No. 35 in 2017, in which it expanded violence against women to include violence that is perpetrated in the digital sphere and on online platforms.¹⁸ Additionally, the CEDAW Committee in General Recommendation No. 36, brought to light the prevalence of the dissemination of images and videos of a sexual nature without consent.¹⁹

¹⁶ International Covenant on civil and political rights, Article 17

¹⁷ Universal Declaration of Human Rights, Article 12

¹⁸ Reddock 'CEDAW and Violence Against Women: Reflections After 40 Years' (2022) 28(2) Violence Against Women 1723-1727 at 1723. 100 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 35, Updating General Recommendation No. 19: Violence against women, 2017, available at: <https://digitallibrary.un.org/record/1305057?ln=en> [accessed 3 September, 2025].

¹⁹ General recommendation No.36, 2017

Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) obliges Zambia to respect and to ensure to all individuals the rights recognised in the ICCPR without distinction based on, inter alia, sex.²⁰ Article 2(2) of the ICCPR goes a step further and gives Zambia the positive obligation to, in compliance with its constitutional processes and provisions of the Covenant, adopt laws or other measures necessary to give effect to the rights in the Covenant.²¹ Although Zambian laws do not explicitly link the right to privacy to the non-consensual distribution of intimate content, the Constitution's guarantee of privacy gives people who wish to take action against infringement of their right to privacy a legal foundation and a remedy.

Article 2 of the ICCPR also places obligations on states to ensure that individuals whose rights under the ICCPR are violated have an effective remedy; to ensure that such a remedy consists of “competent judicial, administrative or legislative authorities”; and to develop judicial remedies. As discussed previously, when analyzing Zambia’s obligations under CEDAW, Zambia’s legal remedies under its domestic laws for victims are not effective because law enforcement officers have patriarchal attitudes and the legal process itself can be traumatizing for victims by forcing them to recount their experiences and because of the discriminatory attitudes within the judicial system.

Another right that is important to this dissertation is the right to freedom of expression. States appear to be reluctant to interfere and limit the right where a matter is considered to be of a private nature.²² Limiting the right to freedom of expression is critical because without doing so, individuals will feel even more entitled and justified in disseminating images without consent.²³

The importance of the right to freedom of expression is emphasised by various courts. The African Commission in the case of ***Sir Dawda K. Jawara v The Gambia Communication*** explains its importance, stating that freedom of expression is important for one’s personal growth and development, and boosts one’s participation in public affairs.²⁴ Additionally, the High Court of South Africa in ***Economic Freedom***

²⁰ International covenant on civil and political rights, Article 2(1)

²¹ International covenant on civil and political rights, Article 2(2)

²² Snyder v Phelps (2011) 131

²³ J D Dawkins IV ‘A Dish Served Cold: The Case for Criminalising Revenge Pornography’ (2015) 45 Cumberland Law Review 395-447 at 439.

²⁴ Sir Dawda K. Jawara v The Gambia Communication 147/95-149/96

Fighters v Minister of Justice and Correctional Services stresses that democracy and freedom of expression are connected, emphasising the importance of the right in holding those in power accountable.²⁵ Freedom of expression is provided for in various international and regional instruments. Article 19 of the UDHR²⁶ protects freedom of expression by providing: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Freedom of expression is further protected in Article 19 of the ICCPR.²⁷ Although Article 19 of the ICCPR and Article 19 of the UDHR have similar wording, it goes further in providing limitations to the right. Article 19(3) of the ICCPR states: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary; For the respect of the rights or reputations of others; For the protection of national security or of public order, or of public health or morals.”²⁸ In the Canadian Case of ***R v SA***, non-consensual pornography is the main focus. SA, the accused, had been in a relationship with KD on again off again bases over the period of four years. During a time where KD and SA were not together, KD had a relationship with another man. 10 months later, on 6 March 2021, when SA found out about the relationship, they had an argument telephonically. SA followed up this call by calling KD approximately 200 times and sending her approximately 50 text messages. The text messages contained threatening messages that ranged from him saying he is going to kill the man KD had been ‘cheating with’ to him threatening to exposing intimate images of KD on every platform. After these threats, SA posted approximately 15 intimate images of KD on his personal Twitter account. SA had about 434 followers on Twitter, meaning that SA had some reach and the posting of the intimate content was posted for a group of at least 434 people to see. SA also tweeted the photos directly to KD. KD approached the police immediately and within five hours, just after midnight the following day, the police arrived at SA’s residence to arrest him. The photos were deleted from the Twitter account during this time. SA was released on an undertaking that morning,

²⁵ Economic Freedom *Fighters v Minister of Justice and Correctional Services* [2021] ZACC 1

²⁶ Universal Declaration of Human Rights, Article 19

²⁷ International covenant and civil and political rights, Article 19

²⁸ International covenant on civil and political rights, Article 19(3)

where after he sent KD a message, asking her to drop the charges. By doing so, he breached the no contact condition of the agreement. SA proceeded to admit to criminal conduct by pleading guilty to the publishing of intimate images without consent of KD and to breaching his undertaking agreement. The Crown approached the court, asking the court to impose a one-year sentence of imprisonment for the distribution of intimate images without the consent of the person depicted in it.²⁹

The Council of Europe on preventing and combating violence against women and domestic violence also known as the Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011, ratified by 35+ countries) explicitly includes cyber forms of violence, requiring states to criminalize acts like non-consensual sharing of intimate images and provide victim protections, such as rapid content removal. The Council also supports initiatives like the “One in Five” campaign against cyberviolence and tutorials on sextortion and revenge porn.³⁰ Initiatives like the StopNCII.org operated by UK’s helpline allows victims to have platform to report cases of the non-consensual distribution of intimate content.³¹

The Resolution on the Protection of Women Against Digital Violence in Africa (African Commission on Human and Peoples’ Rights, 2022) urges member states to enact laws against digital GBV, including NCII, cyber-harassment, and doxing, with emphasis on gender-sensitive training for law enforcement.

In Kenya, victims have the option to either initiate civil action, aiming to obtain damages for breach of privacy, or criminal action, seeking sanctions against those responsible for the wrongful sharing of intimate images. To provide a comprehensive understanding of these mechanisms, we will focus on the three keys statutes that play a vital role in understanding such offences: The Computer Misuse and Cybercrime Act, 2018; The Constitution of Kenya, 2010; and The Data Protection Act, 2019.³²

According to section 37 of the Computer Misuse and Cybercrimes Act a person who transfers, publishes, or disseminates, including making a digital deception available for distribution or downloading through a telecommunications network or through any

²⁹ R v SA, 2022 MBPC 28.

³⁰ The Council of Europe on preventing and combating violence against women and domestic violence

³¹ Stop non-consensual intimate image abuse <https://stopncii.org>

³² Exposed and Vulnerable: Non-consensual sharing of personal images in Kenya <https://cipit.org/exposed-vulnerable-tackling-non-consensual-sharing-of-personal-images-in-kenya/>

other means of transferring data to a computer, the intimate or obscene image of another person commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or to both.³³ Section 27 (1) of the Computer Misuse and Cybercrimes Act A person who, individually or with other persons, wilfully communicates, either directly or indirectly, with another person or anyone known to that person, commits an offence, if they know or ought to know that their conduct (a) is likely to cause those persons apprehension or fear of violence to them or damage or loss on that persons' property; or (b) detrimentally affects that person; or (c) is in whole or part, of an indecent or grossly offensive nature and affects the person.³⁴

Notably, these provisions, in particular section 37, criminalize sharing of all intimate images, a framing that could have the unintended effect of deterring victims from reporting cases of non-consensual distribution of intimate images.

2.2 MORAL POLICING AND RIGHT TO VICTIM'S PRIVACY

The immorality of the photos may be the main focus of legal reactions rather than the violation of consent. Moral policing in Zambia perpetuates victimization, impedes the administration of justice, and highlights the necessity for a gender sensitive and rights-based legal response to the unconsented distribution of private information. In order to provide victims with genuine protection, laws and law enforcement must prioritize harm and consent over moral judgments. These laws do not clearly define or address issues of consent, victim identity or distribution platforms. The easy and quick discoverability and searchability of non-consensual intimate imagery increases the distress of the victim, while providing the perpetrator(s) validation, avengement, or monetary benefit. The cost to the victim increases in places where of non-consensual intimate imagery is a flourishing and lucrative industry and/or where there are desirable social gains from perpetrating of non-consensual intimate imagery.³⁵

In the case of ***Roshanara Ebrahim v Ashleys Kenya Limited & 3 others (2016)***³⁶ involving the non-consensual distribution of the petitioner's nude photographs by an ex-boyfriend, resulting in her dethronement as Miss World Kenya 2015. The Court

³³ Section 37 of the Computer Misuse and Cybercrimes Act

³⁴Section 27 (1) of the Computer Misuse and Cybercrimes Act

³⁵ Rohini Lakshane' Non-consensual intimate imagery an overview'

³⁶ Roshanara Ebrahim v Ashleys Kenya Limited and 3 others[2016] KEHC 8330 (KLR)

held that Ebrahim had a legitimate expectation of privacy, that she did not waive her right to protection of privacy by taking nude photographs and did not consent to their dissemination to third parties, and as such, her right to privacy under Article 31 of the Constitution of Kenya had been violated. It further ordered the ex-boyfriend to pay damages and directed the organizers of the Miss World Kenya not to publish the nude photographs in their possession.

Additionally, in the case of **MWK v Attorney General**, a female minor whose intimate images were forcefully taken and shared on social media by Kenya police officers as a form of punishment for alleged drug abuse. In 2017, the court delivered a judgment in favor of MWK, deeming the actions of the police officers a gross violation of her constitutional rights to dignity, privacy, and protection against degrading treatment. MWK was awarded four (4) million Kenyan shillings in damages.³⁷

In **Khadija Ismayilova v Azerbaijan**³⁸ the European Court of Human Rights (ECtHR), it was held that Azerbaijan had violated the right to privacy and freedom of expression of a journalist in a matter involving the online dissemination of intimate videos recorded covertly in her bedroom. The Court held that the failure by the state to properly investigate the crimes constituted a failure in its positive obligations to protect her journalistic freedom of expression and her private life. The legal emphasis is shifted from the violator's act of distribution without agreement to the content's alleged "immorality" when Section 177(1) of the Penal Code is used. This moral policing approach makes the victim stand trial because of their images rather than in addition to them. Whether the image is "obscene" and "tending to corrupt morals" is what the court is looking at, not whether the person in the picture gave their permission for it to be shared publicly.

In **Leco Limited v the People** ³⁹it was held (among other things), that the word "obscene" in the above section imports more than something shameless or indecent or even lewd. The standard for determining whether a publication of this kind has the potential to deprave and corrupt those whose minds are susceptible to such immoral

³⁷ MWK v AG ([2017]) KEHC 1496 (KLR)

³⁸ Khadija Ismayilova v Azerbaijan (2019) 65286/13 57270/14

³⁹ Leco Limited v The people (1975) Z.R 16 (H.C) P.17

effects is known as the obscenity test. "What is or is not obscene varies from place to place and indeed from generation to generation," the court further noted in the same case that the phrase "to any other object tending to corrupt morals" is used in the section itself. Was a broader net intended by the legislators to include "any other object" in the examples that came before? If so, then a picture that was just indecent would be captured inside the confines of one section, whilst a carving that was simply indecent would not. It is important to keep in mind that this is a punitive provision, and the court has no authority to declare something illegal that Parliament did not expressly declare to be illegal.

The court stated that a merely indecent carving of obscene things would not be covered by the legislation, indicating that it clearly recognized the rule requiring strict construction of penal acts. However, the wording of this section is open to a second interpretation. The court in the Leco Limited case, which was previously mentioned, believed that the phrase "tending to corrupt morals" in section 177 of the Penal Code applied to "any other object" rather than the specific items that came before it and were classified as merely obscene.'

Other jurisdictions have moved past the term obscenity and are focusing on the non-consensual part of the offence such as; South Africa's incorporation of the non-consensual distribution of intimate content in the Film and Publications Act Amendment (2019) which specifically criminalizes the distribution of private sexual photographs and films without consent.

2.3 IMPACT OF THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT: VICTIM-BLAMING CULTURE AND THE RIGHT TO DIGNITY

Society today tends to shame victims of the non-consensual distribution of intimate content for taking or sharing intimate images, even if they were meant for private use in a consensual relationship, rather than condemning perpetrators, for further distributing the material shared to them in confidence. This has not only increased the feeling of stigmatization in victims but has also led to their discouragement in seeking legal recourse over such matters prior to the scorn they face from society which in turn

violates the right to dignity. Victim blaming, in essence, is when a victim is held responsible, to whatever degree, for what happened to them.⁴⁰

The right to dignity for non-consensual intimate image distribution (often termed as “revenge porn” or online gender-based violence) is frequently violated in Zambia through societal devaluation, leading to psychological trauma, social isolation, cyberbullying, and economic losses like job opportunities. Both urban and rural dwellers explained that the victim of non-consensual pornography suffered social shaming, social stigma, ridicule, rejection and desertion. Consequently, the victim lost social acceptance, social respect, social status, social influence, identity, dignity and self esteem. He was a disgraced figure with lost freedom and liberty to interact with others freely or express himself as it were. Society treated the victim as a perpetual social outcast while his wife filed for divorce or taunted him all the way to the day of his death.⁴¹ Online violence has potential to have very severe effects on not only the victim’s reputation but their dignity, self-esteem physical and psychological health⁴²

The cultural factors in Zambia such as traditional norms that view victims are "immoral," "promiscuous," or "indecent" serves to uphold restrictive gender norms. While men's behaviour is accepted or disregarded, women are expected by society to maintain morals. In these situations, men typically do not experience any kind of social censure or repercussions. Telling victims that they caused it by "behaving indecently" deters others from reporting.

The fear of victim blaming discourages reporting, as victims are told “they brought it upon themselves”.⁴³ This results in underreporting and lack of justice, reinforcing a culture of impunity for perpetrators.

⁴⁰ Claire R. Gravelin, Monica Biernat, Caroline E. Buchner ‘Blaming the victim of Acquaintance Rape: Individual, Situational, and Sociocultural Factors’ available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6348335/>, accessed on September 13, 2025

⁴¹ Tembo. J, Mambwe. P “Increasing Cases of online Non-consensual posting of Adult male nude pictures and videos in Zambia View from Rural and Urban dwellers” (2021) <https://dx.doi.org/10.47772/IJRISS.2021.56>

⁴² Online Gender Based Violence Among Women and Girls in Zambia; An Assessment of the Nature, Extent and Effects of Online Gender Based Violence among Women and Girls in Zambia Pg 28

⁴³ African Leadership Institute Why do we blame women for rape? <https://aliinstitute.org/news/why-do-we-blame-women-for-rape>

To address the legal issues, Zambia shift its focus from moral policing and a right-based reform must clearly criminalize non-consensual distribution based on lack of consent and harmful intent⁴⁴

In the case of ***Mrs X v Union of India***, the court held that intermediaries have a social obligation to take proactive steps to ensure that the non-consensual intimate images are removed and make reasonable effort to ensure that their users do not post content that does not belong to them or obscene, not just the specific URL's a victim provides.⁴⁵

In the case of ***Wilson V Ferguson***, it was stated that the conduct of the defendant in posting the photographs and videos of the plaintiff to his Facebook page, involved a breach of his equitable obligation, owed to the plaintiff, to maintain the confidentiality of the images. Additionally, a permanent injunction was granted to restrain the defendant from any further publication of intimate images⁴⁶

In places where laws against obscenity and/or pornography do not acknowledge the private and consensual nature of intimate images, victims tend to be criminalised for “making pornography” or for obscenity and Zambia is an example of countries that do not explicitly acknowledge.⁴⁷ Shooting one’s own intimate images, even when done privately and consensually, is frequently considered unacceptable by social norms, religious beliefs or moral codes in most places. Victims such as children suffer things like harassment, threats, and abuse. The victim may be teased or bullied by their peers, and this could potentially follow them for years. One child reported, “now the whole school has seen it (nude), so I get called a lot of words and don’t go to school anymore. I can’t even go out of town without people yelling at me.” Additionally, offenders see this as another reason to further abuse and harass the child.⁴⁸

When an incident of the non-consensual distribution of intimate content occurs, religious groups or individuals with a vigilante sense of protecting public and private morality may blame, harass, defame or otherwise try to harm the victim. They view the consensual shooting/sharing of intimate images as damage to public morality, as an act of obscenity/indecency or pornography, and as an encouragement to women to

⁴⁴ Cyber-Crimes Sub-Saharan Africa <https://www.mediadefence.org/resource-hub/cybercrimes-sub-saharan-africa/>

⁴⁵ Mrs X V Union of India (2023) SCC

⁴⁶ Wilson V Ferguson [2015] WASC 15

⁴⁷ Rohini Lakshane' NCII Non-consensual intimate imagery: an overview pg15

⁴⁸ 'The Consequences of sharing non-consensual content recap'
<https://inhope.org/EN/articles/the-consequences-of-sharing-non-consensual-content-recap>

shoot and distribute their own sexually explicit images. In cases where the non-consensual distribution involves persons not married to each other, they also view it as a violation of the social and religious diktats against sex before or outside marriage. The focus on the victim and what they should have not done often leads to the perpetrator continuing with this deviant behaviour. Moreover, laws that blame victims do not help eradicate the spread of intimate content without consent, as perpetrators are absolved of any responsibility.⁴⁹ The psychological impacts of the non-consensual distribution of intimate content extend far beyond immediate distress, often manifesting as severe, long term mental health challenges that parallel those experienced in physical sexual abuse.⁵⁰ For instance the studies on revenge porn victims indicate that initial responses involve intense humiliation and a loss of control, contributing to sleep disturbances and appetite challenges.⁵¹

2.4 CONCLUSION

Through specific legislation adequately protecting victims the law can provide clarity, enforce deterrence, and uphold the rights of victims. A law would shift focus to consent and digital rights, helping change public perception and reducing tolerance for victim-blaming. Clear legal protections can override moral judgement by the non-consensual distribution of intimate content as a legal violation and not a moral failing. Zambia must abandon its moralistic framework and enact a specific, victim-centred law that defines the crime by the absence of consent and the presence of intent to harm. A dedicated law would shift societal attitudes through education that emphasizes consent and places blame squarely on the perpetrator, not the victim.

It is evident from the preceding discussion that Zambia does not have laws that protect victims in relation to the non-consensual distribution of intimate content. However, it has been noted from the preceding discussion that the legal framework on the non-consensual distribution has many inadequacies; such as the lack of proper recourse for victims and a generalized definition of the obscene material. Zambia's lack of protection bases laws is not only discriminatory to the victims but also makes it hard for the victim to get justice because of fear of being condemned.

⁴⁹ Zimkitha Dyantyi 'Justifications for re-sharing non-consensual pornography on social media platforms: A case of South Africa' Pg 16

⁵⁰ Outcomes of Image-based sexual abuse among young people: a systematic review <https://pmc.ncbi.nlm.nih.gov/articles/>

⁵¹ Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors

CHAPTER 3

THE ZAMBIAN LEGAL FRAMEWORK ON THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT AND ITS EFFORT TO PROTECT VICTIMS

3.0 INTRODUCTION

The development of technology in the digital space has made social interactions easier but nevertheless made it easier for new kinds of exploitation and abuse against women. Victims of the widespread violation known as the non-consensual distribution of intimate content suffer grave psychological, social, and financial consequences. This Chapter analyses the adequacy of Zambia's legal framework in addressing the non-consensual distribution of intimate content.

3.1 THE PENAL CODE

Section 177⁵² of the Penal Code provides (1) Any person who makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals; or imports, conveys or exports, or causes to be imported conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals; is guilty of a misdemeanour and is liable to imprisonment for five years or to a fine of not less than fifteen thousand penalty units nor more than seventy-five thousand penalty units.

(2) If, in respect of any of the offences specified in paragraph (a), (b), (c) or (d) of subsection (1), any constituent element thereof is committed in Zambia, such

⁵² The Penal Code, Section 177 (1)

commission shall be sufficient to render the person accused of such offence triable therefor in Zambia.⁵³ (3) A court, on convicting any person of an offence against this section, may order to be confiscated or destroyed any matter or thing made, possessed or used for the purpose of such offence.⁵⁴ (4) Any court may, on the application of a public prosecutor, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing.⁵⁵ (5) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.⁵⁶ While it was the primary legislation, its 'obscenity' and 'corrupt morals' focus is problematic and irrelevant to the non-consensual distribution of intimate content, and it is now superseded by the more specific Cyber Crimes Act that provides for digital offences. As seen in the provisions above, this law does not contain any provision for redress for the victim and requires the prosecution to prove that the perpetrator had specific intent and the lack of specificity within the law makes prosecution difficult.

3.2 THE CYBER CRIMES ACT

The Pre-2021 Legal Framework: A Mixture of Inadequate Provisions

Prior to 2021, Zambia lacked specific legislation criminalising the non-consensual distribution of intimate content. Victims and law enforcement were forced to rely on a patchwork of existing laws such as the Penal Code, which proved largely inadequate and ill-suited to the unique nature of the crime.

The enactment of the Cyber Security and Cyber Crimes Act, marked a paradigm shift in the cyber space. Section 56 provided for the prohibition of pornography (1) A person shall not produce or participate in the production of pornography using a computer system. (2) A person convicted of an offence under subsection (1) is liable, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not commits an offence and is liable on conviction.⁵⁷ (3) A person who knowingly (b) offers, circulates or makes available, pornography through a computer system commits an offence and is liable on conviction, to a fine not exceeding five hundred thousand

⁵³ The Penal Code, Section 177 (2)

⁵⁴ The Penal Code, Section 177 (3)

⁵⁵ The Penal Code, Section 177 (4)

⁵⁶ Ibid

⁵⁷ The Cyber Security and Cyber Crimes Act, section 56

penalty units or to imprisonment for a period not exceeding five years, or to both. However, this Act was repealed and replaced by the Cyber Crimes Act No. 4 of 2025 and the Cyber Security Act No.3 of 2025 and what is necessary to this dissertation is adequate protection for victims the non-consensual distribution of intimate content.

The Cyber Crimes Act No. 4 of 2025⁵⁸ and the Cyber Security Act No.3 of 2025⁵⁹, came into force on 17th April 2025. The Enactment of the Cyber Crimes Act represents a legislative attempt to modernize Zambia's response to digital crimes. The current Act provides that (1) A person shall not use a computer or computer system to (a) publish or transmit electronic data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate, harass or cause substantial emotional distress to another person or (b) repeatedly send to another person electronic data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate or harass the other person to the detriment of that person's health, emotional well-being, self-esteem or reputation, this is pursuant to section 22.⁶⁰

According to Section 19(1) A person shall not intentionally and without lawful authority (a) use a computer or computer system to relay or retransmit electronic communications to deceive or mislead users of a computer or computer system as to the origin of such communication; (b) initiate the transmission of multiple electronic messages from or through a computer or computer system for purposes of causing harm or disrupting the computer or computer system; (c) establish a software application system with the intent to deceive or mislead a visitor to the software application system as to the authenticity of the software application system for the purpose of gaining unauthorised access to information to commit an offence; or (d) falsify header information in an electronic communication and initiate the transmission of such electronic communication to commit an offence, deceive or mislead users.⁶¹ (2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units, or imprisonment for a term of not less than two years and not exceeding seven years, or to both. 20(1) A person shall not use a computer or computer system for an activity which constitutes an offence under any written law. (2) A person who contravenes

⁵⁸ Cyber Crimes Act no.4 of 2025

⁵⁹ Cyber Security Act no.3 of 2025

⁶⁰ Cyber Crimes Act, Section 22

⁶¹ Cyber Crimes Act, Section 19(1)

subsection (1), commits an offence and is liable, on conviction, to the penalty specified for that offence in the applicable written law⁶² 21(1) A person who receives an order relating to a criminal investigation under this Act, shall not without lawful excuse, disclose(a) that an order has been made; (b) anything done under the order; or (c) any data collected or recorded under the order. (2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both⁶³ 22(1)⁶⁴A person shall not use a computer or computer system to (a) publish or transmit electronic data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate, harass or cause substantial emotional distress to another person; or (b) repeatedly send to another person electronic data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate or harass the other person to the detriment of that person's health, emotional well-being, self-esteem or reputation(2) A person shall not use a computer or computer system to disseminate information, statement or image, knowing the same to be false that(a) causes damage to the reputation of another person; or (b) subjects another person to public ridicule, contempt, hatred or embarrassment. (3) A person who contravenes subsection (1) or (2), commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

The new act is a comprehensive piece of legislation and it brings out that no one should publish or distribute data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate, harass or cause substantial emotional distress to another person but, critically, it does not contain a provision protecting victims. The Act moves beyond the moralistic approach of the penal code and explicitly addresses digital harassment. The Act is structured in a manner that entirely focuses on the creation of the offence and imposing penalties on perpetrators. The Act lacks a specific section creating statutory civil claims for victims, speedy takedown orders, any provision for interim protection orders and a clear mechanism for victim compensation from the

⁶² Cyber Crimes Act, Section 20

⁶³ Cyber Crimes Act, Section 21

⁶⁴ Ibid

perpetrator. Thus, victims are not given any form of redress in cases on the non-consensual distribution of intimate content.

3.3 CRITICISM OF THE PENAL CODE

According to Section 177(1) of the penal code Any person who (a) makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals is guilty of a misdemeanour and is liable to imprisonment for five years or to a fine of not less than fifteen thousand penalty units nor more than seventy-five thousand penalty unit⁶⁵. This section therefore criminalizes the production and possession of obscene matter and objects tending to corrupt morals. However, definitions should provide as much clarity as possible by elaborating in detail exactly what is prohibited.⁶⁶

Many of the Obscenity laws in Africa have been criticized as relics of the colonial period that inconsistent with constitutional guarantees and need reform. Zambia in this regard is no exception.⁶⁷ Most countries in the Southern African region have obscenity laws or provisions which are broadly similar in nature. For example, the Malawi Censorship and Control of Entertainments Act, prohibits undesirable publications, defined as material which is indecent or obscene, is offensive or harmful to public morals, or is contrary to the interests of public safety or public order.⁶⁸ South Africa enacted laws suitable to the non-consensual distribution of intimate content which helps victim get justice when their right is violated.

Zambia's reliance on section 177 of the Penal code can be inefficient even though the obscenity law of the land governs illegality of pornography and does not provide a definition for the non-consensual distribution of intimate content. The Penal Code remains profoundly inadequate in the sense that it is narrow in scope and lacks victim-centered remedies. Obscenity laws focus on moral standards of decency rather than the core issue of violated consent and personal autonomy. Personal autonomy can be related to the right to freedom of conscience. Thereupon, cases usually don't go far

⁶⁵ The Penal Code, section 177

⁶⁶ Joanna Stevens, 'Obscenity Laws and Freedom of Expression: A Southern African Perspective'. www.article19.org 17/02/10

⁶⁷ Joanna Stevens, Obscenity Laws and Freedom of Expression: A Southern African Perspective. www.article19.org 17/02/10

⁶⁸ Joanna Stevens, Obscenity Laws and Freedom of Expression: A Southern African Perspective. www.article19.org 17/02/10

and are dismissed or perpetrators barely face any change signaling a failure in the legal system to acknowledge the distinct and severe nature of this violation.

3.4 CRITICISM OF THE CYBER CRIMES ACT

The lack of a clear, swift court process to order perpetrators and Internet Service Providers (ISPs) to remove intimate content from digital platforms. The absence of specific provisions for orders that prohibit the perpetrator from further distribution, harassment, or contact. The lack of a clear legal path for a victim to sue the perpetrator for damages (for emotional distress, reputational harm, and financial losses) directly, without relying on complex and ill-fitting tort laws like defamation. The Act does not adequately provide for measures that protect the victim. The Act only provides for the punishment of the perpetrators stating that they shall be liable if they publish or transmit electronic data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate, harass or cause substantial emotional distress to another person or repeatedly send to another person electronic data that is obscene, vulgar, lewd, lascivious or indecent with intent to humiliate or harass the other person to the detriment of that person's health, emotional well-being, self-esteem or reputation.

The failure to include provisions that protect the victim's identity during legal proceedings to prevent further stigma and harm is the void left when a law criminalizes an act but provides no parallel civil mechanisms for the victim. This gap leaves victims powerless. The repealed Cyber Crimes Act No. 2 of 2021, Section 16, while specific, still primarily offered a criminal penalty, showcasing this very limitation.

In Malawi, the Electronic Transactions and Cyber Security Act 2016 provides for takedown notification and (1) mandates an intermediary service provider offering access to online public communication services to provide and inform its subscribers of the existence of any technical means which permit restriction of access to certain services.⁶⁹ Section 30(2) provides that an intermediary service provider shall set up an easily accessible and visible system to enable any person inform the intermediary service provider of any content which is unlawful or infringes or may infringe, on such person's rights.⁷⁰ This provision entails that intermediary service providers are obliged to take down content that is unlawful and this helps with victim protection. This requires

⁶⁹ Electronic Transactions and Cyber security Act, Section 30(1)

⁷⁰ Electronic Transactions and Cyber Security, Section 30(2)

the platform to have and inform users about technical tools that can block or limit access to certain content and services basically bringing about the remedy of takedown measures.

3.5 CONCLUSION

The non-consensual distribution of intimate content violates certain constitutional rights. Therefore, when bringing legal action legal practitioners could bring cases based on alleged violations of fundamental rights enshrined in the Zambian Constitution, such as: Article 11 (d)⁷¹ and 17⁷² which provide for the right to privacy because the non-consensual distribution of intimate content is a violation on an Individual's right to privacy. Additionally, Article 15 provides that no one shall be subjected to torture, or to inhuman treatment or degrading punishment or other like treatment.⁷³ This right can be argued in terms of the severe psychological trauma inflicted as a form of degrading treatment. Article 19 states that except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience. This provision can be tied to the dignity and autonomy of an individual.⁷⁴

The Zambian legal framework's effort to protect victims of non-consensual distribution of intimate content has suffered a severe setback because there are no alternate provisions for victims as the laws only focus on the punishment of the perpetrator and not protection of the victim.

⁷¹ The constitution of Zambia, Article 11 (d)

⁷² The constitution of Zambia, Article 17

⁷³ Article 15

⁷⁴ Article 19

CHAPTER FOUR

ANALYSIS OF THE LAW ON THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT IN SOUTH AFRICA AND LESSONS FOR ZAMBIA

4.0 INTRODUCTION

The digital age, while offering means of easier social interaction, has also facilitated new forms of interpersonal harm. Among the most destructive ones is the non-consensual distribution of intimate content. The internet is a platform that provides numerous beneficial purposes to users, and is used by almost every individual around the world. Unfortunately, the internet has also given rise to a new platform for criminal activity. The internet is now often used as a platform to assist and facilitate crime. Cybercrime is a global trend that is taking the world by storm and the effects of cybercrimes grow by the day. Cybercrimes can be defined as computer-assisted crime in which technology, like computers, are used to assist in committing a crime.⁷⁵ The proliferation of the internet has given rise to a phenomenon known in the media as ‘revenge pornography’. The term refers to the disclosure of explicit images or videos without the consent of the person who is depicted in the image or video.⁷⁶ Non-consensual pornography (NCP) is a violation of one's privacy and often has a devastating impact on the victims.⁷⁷ Victims of NCP are faced with serious complications after being victims of NCP, some experience mental health consequences such as distress, anxiety, and reduced self esteem, and others lose their jobs.⁷⁸ Victims have reported losing their employment or being forced to leave their work after photographs were shared or being terrified those images might be published⁷⁹

This chapter analyses the law on non-consensual distribution of intimate content in South Africa which provides a robust legislative framework for criminalizing this act. By examining its provisions, definitions, and protections, this analysis will draw critical

⁷⁵ Adam M. Bossler & Tamar Berenblum ‘Introduction: new directions in cybercrime research’ (2019) 24:5 Journal of Crime and Justice 495.

⁷⁶ Mary Anne Franks ‘Revenge Porn Reform: A view from the Front Lines’ (2017) 69 Florida Law Review 1254.

⁷⁷ Ava Schein (2019). When Sharing Is Not Caring: Creating an Effective Criminal Framework Free from Specific Intent Provision to Better Achieve Justice for Victims of Revenge Pornography. Cardozo Law Review, 40(4), 1953-viii.

⁷⁸ Hearn, J., & Hall, M. (2022). From physical violence to online violation: Forms, structures and effects: A comparison of the cases of ‘domestic violence’ and ‘revenge pornography’. Aggression and violent behavior, 101779. DOI: 10.1016/j.avb.2022.101779

Walker, K., & Sleath, E. (2017). A systematic review of the current knowledge regarding revenge pornography and non-consensual sharing of sexually explicit media. Aggression and violent behavior, 36, 9-24. DOI:10.1016/j.avb.2017.06.010

⁷⁹ Cannon, L. (2015). Indecent Communications: Revenge Porn and Congressional Intent of Sec. 230 (c). Tulane Law Review, 90(2), 471-494.

lessons for Zambian lawmakers to consider in the urgent development of their own specific legal response.

4.1 THE SOUTH AFRICAN LEGAL SYSTEM

The non-consensual distribution is an issue that affects victims of such crimes. In South Africa there have been developments with regards to cybercrimes like the distribution of non-consensual content. The following laws address or try to address the growing concerns of non-consensual distribution of intimate content in South Africa;

On 1 March 2022, the Films and Publications Amendment Act 11 of 2019 came into operation.⁸⁰ The Films and Publications Amendment Act 11 of 2019 amends the Films and Publications Act 65 of 1996. The amendment proved to be essential, as the amendment spoke to issues ranging from child pornography, hate speech and importantly to non-consensual pornography.

The Films and Publications Amendment Act gives a very clear definition of non-consensual pornography and the distribution thereof without the consent of the person who is depicted in the intimate photograph or video. According to Section 18F (1) No person may expose, through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made (a) without the consent of the individual or individuals who appear in the photograph or film; and (b) with the intention of causing that individual harm.⁸¹ (2) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.⁸² (3) The prohibition referred to in subsection (1) shall apply notwithstanding that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.⁸³

In order to defend people's right to privacy and dignity in the digital era, Section 18F's primary goal is to establish a particular statutory offense. The section also specifically highlights the issue of disclosure without the individual's consent.

⁸⁰ Films and Publications Amendment Act 11 of 2019.

⁸¹ Films and Publication Act, Section 18 F (1)

⁸² Section 18 F (2) of the Act

⁸³ Ibid

(4) For the purposes of this section and section 24E a photograph or film is 'private' if, judging from the context in which the photograph or film is taken or made, it was not intended by any individual in the photograph or film to be seen by others.⁸⁴ (5) For the purposes of this section a photograph or film is 'sexual' if such photograph or film (a) it shows all or part of an individual's exposed female breasts, anus, genitals or pubic area; (b) it shows something that a reasonable person would consider to be sexual because of its nature; or (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.⁸⁵ (6) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the private sexual photograph or film.⁸⁶

This provision further brings out the principle of intent to have their intimate content to be seen by the public and if that is not the case then the individual's right to privacy is violated. This shows the intention of the courts to combat and prohibit the distribution of intimate content without an Individuals consent.

Section 24E(1) of the Films and Publications Act provides that Any person who knowingly distributes private sexual photographs and films in any medium including the internet and social media, without prior consent of the individual or individuals in the said sexual photographs and films with the intention to cause the said individual harm shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.⁸⁷ In the case of **KS V AM And Another**, it was held that the act of creating a fake Facebook profile of the plaintiff and posting her images and videos without consent violated her privacy and dignity and the courts applied relevant the Films and Publications Amendment Act and the Protection from Harassment Act and the court found that the respondents action constituted harassment and a violation of the applicants privacy and dignity and granted a final protection order.⁸⁸ The consequences for distributing intimate content online when the identity of the victim or the offender is involved are the main subject of this clause. In light of the pervasive

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Films and Publications Act, Section 24E (1)

⁸⁸ KS V AM and Another [2024] ZAGPJHC 2005

harm caused by the internet, it particularly discusses the necessity of increasing and strengthening enforcement and imposing harsher sanctions.

Additionally, the Cybercrimes Act Section 16 states that (1) Any person (“A”) who unlawfully and intentionally discloses, by means of an electronic communications service, a data message of an intimate image of a person (“B”), without the consent of B, is guilty of an offence.⁸⁹ According to Section 2(a) “B” means (i) the person who can be identified as being displayed in the data message; (ii) any person who is described as being displayed in the data message, irrespective of the fact that the person cannot be identified as being displayed in the data message; or (iii) any person who can be identified from other information as being displayed in the data message; and (b) which defines what an intimate image is⁹⁰ “intimate image” means a depiction of a person (i) real or simulated, and made by any means in which (aa) B is nude, or the genital organs or anal region of B is displayed, or if B is a female person, transgender person or intersex person, their breasts, are displayed; or (bb) the covered genital or anal region of B, or if B is a female person, transgender person or intersex person, their covered breasts, are displayed; and (ii) in respect of which B so displayed retains a reasonable expectation of privacy at the time that the data message was made in a manner that(aa) violates or offends the sexual integrity or dignity of B; or (bb) amounts to sexual exploitation.⁹¹

The Cybercrimes Act Section 58 provides for the insertion of Section 11A into the Criminal Law (Sexual Offences and Related Matters) Amendment Act. Section 11A provides for the harmful disclosure of pornography. A person (‘A’) who unlawfully and intentionally discloses or causes the disclosure of pornography in which a person (‘B’) appears or is described and such disclosure (a) takes place without the consent of B; and (b) causes any harm, including mental, psychological, physical, social or economic harm, to B or any member of the family of B or any other person in a close relationship to B, Is guilty of the offence of harmful disclosure of pornography⁹²

(2) A person (‘A’) who unlawfully and intentionally threatens to disclose or threatens to cause the disclosure of pornography referred to in subsection (1) and such threat

⁸⁹ Cyber Crimes Act, Section 16(1)

⁹⁰ Section 16(2) of the Act

⁹¹ Section 16(2) of the Act

⁹² Criminal Law (Sexual offences and related matters) Amendment Act 32 of 2007, Section 11A (1)

causes, or such disclosure could reasonably be expected to cause, any harm referred to in subsection (1)(b), is guilty of the offence of threatening to disclose pornography that will cause harm⁹³ (3) A person ('A') who unlawfully and intentionally threatens to disclose or threatens to cause the disclosure of pornography referred to in subsection (1), for the purposes of obtaining any advantage from B or any member of the family of B or any other person in a close relationship to B, is guilty of the offence of harmful disclosure of pornography related extortion.⁹⁴ This main purpose of this law is that it is preventative and protective and orders the courts to protect complainant against harmful effects of disclosure of pornography.

According to Section 1 of the Protection of Personal Information Act, Processing means 'Any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including (a)The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; (b)Dissemination by means of transmission, distribution or making available in any other form; or (c) Merging, linking, as well as restriction, degradation, erasure or destruction of information.'⁹⁵

The Protection of Personal Information Act 4 of 2013 provides a victim the relief to initiate a civil claim for damages. This provision therefore states that a data subject, in this case a victim of non-consensual pornography, may institute a civil action for damages against a perpetrator for the breach of any conditions for the lawful processing of personal information, in this case it might be any type of intimate content as described in previous definitions of 'non-consensual pornography'. Interestingly, section 99 provides for liability without fault. Typically, under common law, ordinary common law remedies would require negligence. Therefore, the protection against personal protection act provides victims with an avenue for redress because it is clear that a victim can potentially lodge a complaint with the Regulator for an enforcement notice to be issued by said Regulator. However, it is not always easy to identify the perpetrator as there may have been multiple people circulating the content. In the event that a victim is unaware of the identity of the perpetrator or perpetrators who distributed non-consensual pornography of the victim, the victim can rely on Section

⁹³ Section 11 A (2)

⁹⁴ Section 11 A (3)

⁹⁵ Protection of Personal Information Act, Section 1

24 of the Act which states that (1) A data subject may, in the prescribed manner, request a responsible party to (a) correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully.⁹⁶

From these definitions, it is submitted that non-consensual pornography and the distribution thereof classify as processing of personal information. The distribution of such content is clearly a violation of the right to privacy and relating it to this piece of legislation, violation of personal information.

Furthermore, the Protection from Harassment Act provides a civil remedy to stop harassment, in this case the non-consensual distribution of intimate content can be attached to harassment. According to section 1 "harassment" means directly or indirectly engaging in conduct that the (a) respondent knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the (i) complainant or a related person by unreasonably following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where 10 the complainant or a related person resides, works, carries on business, (ii) (iii) studies or happens to be; engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; or (b) amounts to sexual harassment of the complainant or a related person; "harm., means any mental, psychological, physical or economic harm.⁹⁷ The non-consensual distribution of intimate content often causes severe mental and psychological harm, including anxiety, depression, humiliation and trauma. This clearly meets the requirement under section 1(b).

From the provisions and cases set out above, it can be noted that the non-consensual distribution of intimate content is made an offence in South Africa. The law is clear and specific as to what consists of the crime acknowledging the aspect of consent. The

⁹⁶ Protection of Personal Information Act, Section 24

⁹⁷ Protection from Harassment Act, Section 1(b)

non-consensual distribution of intimate content evades a victim's privacy and dignity as such material violates an individual's interest in private sexual information and humiliates, degrades and robs an individual of autonomy to be exercised in respect of such intimate information. Through this Act, victims and survivors can file for protection orders, and in situations when someone's dignity and privacy are wilfully violated, the common law crime of criminal inuria may be invoked. A broader approach to addressing IBSA necessitates the incorporation of efficacious civil legal remedies.⁹⁸ Likewise, the creation of effective guidelines, methods, and practices to be implemented by institutions, such as online and social media networks, educational organisations, service providers, and law enforcement agencies, are essential to ensure the integrity and equality of digital citizenship.⁹⁹

4.2 STRENGTHS OF THE SOUTH AFRICAN LEGISLATION

Victims must have recourse available to them in order to receive justice for the wrong done to them.¹⁰⁰ The harm caused by revenge porn is far from trivial.¹⁰¹ While Zambia depends on more traditional, general rules like the Penal Code and the Cyber Crimes Act, South Africa has its main particular regulations, such as section 16 of the cybercrime's legislation and the Films and Publications (amendment) Act. The Films and Publications Act criminalizes the intentional distribution of a "private sexual photograph or film" of an identifiable person without their consent, and with the intention of causing that person harm. This is powerfully complemented by the Protection from Harassment Act (2011) and the Cybercrimes Act (2020). South Africa's strength stems in its unique and multi-layered legal system. The sharing of data messages including intimate images is covered by Section 16¹⁰² of the Cybercrimes Act, a specific modern cyber legislation. There is minimal opportunity for prosecutors and courts to interpret it in a different way because it clearly identifies and specifies the offense. Proof of distribution without the victim's consent completes the offense.

⁹⁸ Plater, D. (2016). 'Setting the boundaries of acceptable behaviour'? South Australia's latest response to revenge pornography. *UniSA Student Law Review*, 2(1), 77-95. doi:10.21913/uslr.unisa.sl.v2i0.1359

⁹⁹ Henry, N., & Powell, A. (2016a). Sexual violence in the digital age: the scope and limits of criminal law. *Social and Legal Studies*, 25(4), 297-418. doi:10.1177/0964663915624273

¹⁰⁰ Mary Anne Franks 'Revenge Porn Reform: A view from the Front Lines' (2017) 69 *Florida Law Review* 1254.

¹⁰¹ The Cyber Civil Rights Initiative is contacted by an average of 20-30 victims of revenge porn each month; Franks "Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators" 2015 1 <https://ssrn.com/abstract=2468823> 10 – 11 (accessed 2025-09-16).

¹⁰² Cybercrimes Act, Section 16

South Africa's approach is strong, clear and victim-centered. It recognizes the unique psychological and social harm of this digital-age crime and provides clear legal pathways for both criminal prosecution and civil protection. The law explicitly addresses the lack of consent as core element of the crime act while Zambia has no adequate recourse for victims which creates uncertainty for victims.

4.3 EFFECTIVENESS OF THE LAW ON THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT AND REDRESS FOR VICTIMS

South Africa has since adapted to the evolution of technology with its creation of legislation that criminalizes the non-consensual distribution of intimate content in the digital age. The enactment of the Protection from Harassment Act allows Victims to get legal redress and relief under the Protection from Harassment Act without having to wait for a criminal trial. By requesting a protective order, the victim can mandate that the offender take down the private material, cease any further threats or distribution, and avoid getting in touch with them.

The Films and Publications Act also criminalizes the distribution of private sexual content without consent. Because the core legal principle (lack of consent) is required the law is made more effective as there is specificity to the crime. The law does not only state the penalties for the commission of such offence but the law also provides exceptional clarity for prosecutors and police. The elements of the offence being (1) intentional distribution (2) of a private sexual image (3) without consent (4) with intent to cause harm are clear and manageable to prove in court.

The biggest advantage of the South African model is how successful victim protection and redress are there. There are several ways to seek redress under South African law. The victim may pursue criminal action under the Protection from Harassment Act or the Films and Publications Act, which can be swiftly used to force the offender to delete content and stop all communication. Relief is speedier. The victim's lack of permission and the pain they endured are the main emphasis of the law, not outmoded notions of morality or obscenity. As a result, there is less chance of victimization during the legal process. The Protection of Personal Information Act 4 of 2013 also allows for civil remedies. Personal Information refers to an individual's private information thus, the Act helps in relation personal autonomy and the right to privacy.¹⁰³

¹⁰³ The Protection of Personal Information Act

"Distribution" is defined as a technology-neutral concept that encompasses email, messaging applications, social media, and any other digital platforms in the future. In order to combat sextortion and blackmail, the offence's addition of "threats to distribute" demonstrates foresight and the flexibility of the legislation.

The main flaw in Zambia is the inadequacy of the laws when it comes to protecting victims of the non-consensual distribution of intimate content. The extensive psychological impact, the extent of online distribution and the requirement that internet companies remove content are all issues that are frequently left unaddressed by the current piece of legislation. 'Revenge porn', as the non-consensual distribution of private sexual images and videos has been termed,¹⁰⁴ is conceptualised as an inextricably modern phenomenon which the law is not appropriately equipped to deal with¹⁰⁵

Victim Protection and Redress is the most critical failure of the Zambian framework. Being labelled a party to "pornography" within a legal proceeding is profoundly stigmatising and traumatic for a victim, effectively putting them on trial. There is no equivalent to a protection order that South Africa's law provides to secure the immediate removal of content and protection from harassment. Victims are left exposed throughout a lengthy and uncertain criminal process. The complexity and cost of pursuing a case under ill-fitting laws deter most victims from reporting altogether may limit the access to justice.

Additionally, the Penal Code is an old law and has not adapted to the evolving societal changes. While the Cyber Crimes Act is newer, its "harmful content" provision is too vague and not targeted. The legal system is therefore constantly trying to catch up with technology, rather than being equipped to handle it from the outset. Zambia's lack of direct precedent, conversely, is a symptom of a legal framework that is incapable of generating justice, leaving victims without a viable path to redress and perpetuating a culture of impunity for perpetrators. Thus, by passing specific, progressive legislation that prioritizes the victim's autonomy and permission, South Africa has shown that it is committed to tackling technology-facilitated incidents. Its laws are clear, offer complete protection, and have a powerful deterrent effect. Ultimately, it is plain that the law

¹⁰⁴KB Darrell Issues in Internet Law: Society, Technology, and the Law (Amber Book Co, 9th edn, 2014).

¹⁰⁵ S Jeong 'Revenge porn is bad. Criminalizing it is worse', Wired, 28 October 2013.

should act to offer civil redress to victims of revenge porn, just as it ought to criminally sanction those who disseminate such material.

4.4 LESSONS AND BEST PRACTICES FOR ZAMBIA

While South Africa has updated its laws to more precisely define obscenity and offer professional recommendations for such offences, Zambia does not put the protection of the victim at the center of the non-consensual distribution of intimate content. The rules in South Africa are more successful in combating the non-consensual distribution of intimate content because they are more explicit about what constitutes non-consensual dissemination of personal photographs. The topic of consent is specifically covered by South African law, which is important in cases involving the non-consensual distribution of intimate content. An example is the Films and Publications Act which was brought up in the previous chapter which criminalizes the non-consensual distribution of intimate content particularly section 18F which brings up the aspect of consent. This emphasis makes it possible for offenders to face consequences even if they do not make money off of their crimes. South Africa's better developed system for dealing with sexual offences may help reduce victim blaming, hold offenders accountable, and provide information regarding the non-consensual distribution of intimate content.

4.5 CONCLUSION

The information above explains how important the establishment of legislation that is contains victim centered mechanisms and recourse is important. It is indeed commendable that South Africa and its legal system have tried to evolve with the growing concern of non-consensual pornography.

The legislation in Zambia that is available is not victim focused they are more morally focused. The main focus of these laws should always be to put the victim first, to understand what they experienced and to provide them with a level of justice that is sufficient when comparing it to the offence. One main takeaway from this should be that this type of offence is not just another 'cybercrime', but it is a sexual offence that is incredibly harmful to victims and their lives. I do not know whether lawmakers fully understand the issues that come with the offence of non-consensual pornography. The effects on the victim must be understood in order to effectively write law about the offence. Although the Cyber Crimes Act of 2025 is an essential update, it is a lost

chance to provide a comprehensive legal response. Victims are legally recognized but essentially unsupported since it does not incorporate strong, victim-centred civil remedies, making it an insufficient tool for enforcing justice.

The lawmakers in Zambia must address the ambiguous nature of the definitions given to certain terms in the legislation such as “obscene” and “tending to corrupt morals” as the terms may be subject to a second interpretation and shift the focus to adequate protection of victims. In conclusion South Africa provides a far more effective framework for prohibition, prosecution, and victim protection.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This purpose of this study was to critically of Zambia's Legal framework adequacy when dealing with the non-consensual distribution of intimate content with a view of drawing lessons from South Africa's more advanced legal system. The preceding chapters have divided the Zambian legal approach, placed within a human rights framework, and contrasted with South Africa's model. This chapter summarizes the study's findings and offers a series of specific, useful suggestions for bridging the legal gap that has been identified. This paper's main contention is that Zambia's current legal system prioritizes a moralistic, perpetrator-focused approach above victim-centred measures, which are desperately needed.

The legislation in Zambia that is available is not victim focused they are more morally focused. The main focus of these laws should always be to help the victim, to understand what they experienced and to provide them with a level of justice that is sufficient when comparing it to the offence. One main takeaway from this should be that this type of offence is not just another 'cybercrime', but it is a sexual offence that is incredibly harmful to victims and their lives. I do not know whether lawmakers fully understand the issues that come with the offence of non-consensual pornography. The effects on the victim must be understood in order to effectively write law about the offence. Although the Cyber Crimes Act of 2025 is an essential update, it is a lost chance to provide a comprehensive legal response. Victims are legally recognized but essentially unsupported since it does not incorporate strong, victim-centred civil remedies, making it an insufficient tool for enforcing justice.

The lawmakers in Zambia need to address the ambiguous nature of the definitions given to certain terms in the legislation such as "obscene" and "tending to corrupt morals" as the terms may be subject to a second interpretation and shift the focus to adequate protection of victims. In conclusion South Africa provides a far more effective framework for prohibition, prosecution, and victim protection. It would be necessary to incorporate victim centered mechanisms or measures like content take down or protection orders for victims of non-consensual distribution of intimate content as it is often treated as a moral or private matter and not a criminal violation. The courts must provide orders requiring individuals to remove intimate content from the internet.

5.1 GENERAL CONCLUSIONS

This study sought to examine the law governing the non-consensual distribution of intimate content, drawing lessons from South Africa. The study discovered that the law that governs the non-consensual distribution of intimate content is weak when it comes to the protection of the victims of such crimes and as such is prone to abuse. Further, it is evident from the preceding discussion that Zambia does not have laws that protect victims in relation to the non-consensual distribution of intimate content. However, it has been noted from the preceding discussion that the legal framework on the non-consensual distribution has many inadequacies; such as the lack of proper recourse for victims and a generalized definition of the obscene material. Zambia's lack of protection bases laws is not only discriminatory to the victims but also makes it hard for the victim to get justice because of fear of being condemned. The reintroduction of victim- centered remedies to the new Cyber Crimes Act, or a special section under the Anti-Gender-Based Violence Act, is urgently needed in order for the legal framework to adequately protect victims. Victims are left defenseless in the digital age until the effort to safeguard them is drastically diminished. Therefore, it is critical to adapt existing laws to modern realities. Zambian courts could potentially bridge the gap left by the repealed Section 16 through judicial interpretation.

Under the Anti-Gender-Based assault Act of 2011, the judiciary has the authority and responsibility to define the term "psychological and emotional abuse" to specifically encompass acts of technology-facilitated sexual assault such as the non-consensual distribution of intimate content. Judges have used expansive statutory definitions to include novel types of harm in other common law jurisdictions, setting a precedent for this.

It would be necessary to incorporate victim centered mechanisms or measures like content take down or protection orders for victims of non-consensual distribution of intimate content as it is often treated as a moral or private matter and not only a criminal violation. The courts must provide orders requiring individuals to remove intimate content from the internet. The Cyber Crimes Act 2025 was a step forward to criminalization of the crime while section 22 of the Cyber Crimes Act criminalizes the non-consensual distribution of intimate content, but unfortunately the act fails to provide expedited take down mechanisms, protection orders from continued distribution and harassment of the victim and civil remedies or protection, leaving victims with no recourse.

An examination of Zambian legal databases shows a glaring lack of published case law that addresses the non-consensual distribution of intimate content. The lack of a suitable legal framework throughout history and the high level of social stigma that deters victims from pursuing legal action are the immediate causes of the jurisprudential vacuum. The lack of case law emphasizes the practical difficulties that the new Cyber Crimes Act 2025 would encounter in its implementation as well as the inefficiency of the existing legal system.

5.2 SUMMARY OF CHAPTERS

This thesis consists of five chapters which analyses the problem in relation to the non-consensual distribution of intimate content in Zambia, its effects and the protection of the victims of the non-consensual distribution of intimate content.

5.3 CHAPTER ONE

The issue was noted in the first chapter. This chapter focused on the three study goals that had been explained in the previous three chapters. Additionally, this Chapter highlighted the importance of the study. This chapter concluded that the existing law on the non-consensual distribution of intimate content does not protect the victim neither does it provide adequate remedies for them. Additionally, it was stated that the current application of the law is limited because of inadequate definitions in the law. Overall, this chapter highlights the urgent need for reforms that will specifically address the inadequacies of the law on the non-consensual distribution of intimate content in Zambia.

5.4 CHAPTER TWO

This chapter concentrated on the human rights related to the non-consensual distribution of intimate content. This chapter revealed that the non-consensual distribution of intimate content constitutes a violation of fundamental human rights such as the right to privacy, dignity, and freedom from inhuman and degrading treatment. The chapter critiques the aspect of moral policing in Zambia, where victims are condemned and called “immoral”. It concluded that Zambia does not have laws that adequately protect victims in relation to the non-consensual distribution of intimate content and how Zambia’s lack of protection makes it difficult for the victim to get justice because of fear of being condemned.

5.5 CHAPTER THREE

The Zambian legal framework on the non-consensual distribution of intimate content is discussed in this chapter. It was explained that the Penal Code does not adequately define the crime therefore limiting the extent to which victims can get justice. In using terms such as “obscene material” and “tending to corrupt morals” the law can be subject to second interpretation. The Cybercrimes Act was then enacted which provided for this crime, however, the act fails to adequately protect its victims because the provision mainly focuses on persecuting the perpetrator. Victims are left legally recognized but essentially helpless, compelled to suffer continuous suffering while a drawn-out criminal process takes place, because the Act fully lacks procedures for speedy content removal, victim protection orders, or a clear statutory path to civil redress.

5.6 CHAPTER FOUR

The chapter focused on analyzing the law that governs the non-consensual distribution of intimate content in Zambia while drawing lessons and practice from South Africa. The analysis of South African law offered many examples and best practices. The victim-centred, multi-layered legal system in South Africa is its greatest asset. Intimate content distribution without consent is expressly illegal under important laws including the Cybercrimes Act and the Films and Publications Amendment Act. The Protection of Personal Information Act establishes a channel for civil claims for damages, while the Protection from Harassment Act, more significantly, offers quick, temporary legal remedies including takedown orders and protection orders. This framework guarantees that victims, regardless of the speed of a criminal prosecution, have the means to cease the abuse and seek remedy right away. It guarantees that victims receive the resources they need right now to put an end to the abuse and pursue justice. The chapter concluded that South Africa's legislation offers a blueprint for Zambia to evolve from a moralistic approach to a rights-based approach, which enhances victim protection and enforcement.

5.7 RECOMMENDATIONS

Having highlighted the inadequacies of the laws that govern the non-consensual distribution of intimate content in Zambia. The author will proceed to make recommendations. The recommendations will be mainly bordered on how Zambia can

improve its laws with regards to the non-consensual distribution of intimate content with the aim of protecting victims.

5.7.0 ENACTMENT OF AN ACT DEDICATED TO THE NON-CONSENSUAL DISTRIBUTION OF INTIMATE CONTENT

There is an urgent need for parliament a standalone Act as soon as possible modeled on South Africa's Films and Publications Amendment Act but adapted to Zambia's context. This Act should incorporate victim centered remedies. The Introduction of a standalone statute would help avoid the incorporation of the non-consensual distribution of intimate content into the broader frameworks in the statutes such as the Penal Code, Cyber Crimes Act and the Anti Gender Based Violence Act which would increase reports by victims of this form of abuse.

5.7.1 AMENDMENT OF THE CYBERCRIMES ACT

There is an urgent need for parliament to amend Cybercrimes Act so as to provide for comprehensive provisions which pertain to victim centered remedies. This is the most direct and effective course of action. A new section, tentatively titled "Victim Protection and Redress," should be inserted. This section must provide for expedited takedown orders: Empower courts to issue urgent, interim orders directing perpetrators and/or Internet Service Providers (ISPs) to remove, disable, or block access to the intimate content within a strict timeframe (e.g., 24-48 hours).

The alternative provision should also allow victims to obtain orders restraining the perpetrator from further distributing the content, contacting the victim, or engaging in any related harassment. The Amendment should also Create a clear cause of action within the Act that enables victims to sue perpetrators for damages, including compensation for emotional distress, reputational harm, and any financial losses incurred. Alternatively, Parliament could draft a dedicated "Intimate Image Abuse Act." This law would comprehensively define the offence, establish criminal penalties, and crucially, incorporate all the victim-centered remedies mentioned above in a single, specialized statute, avoiding the need to fit NCDIC into broader cybercrime or penal frameworks.

5.7.2 Judicial and Law Enforcement Reforms

The judiciary should adopt a purposive interpretation of the existing laws. The High Court could, for instance, interpret "psychological and emotional abuse" under the Anti-Gender-Based Violence Act to explicitly include NCDIC, thereby opening the door for protection orders under that Act. It would also be necessary for there to be an introduction of mandatory training for prosecutors, police officers and judges on the non-consensual distribution of intimate content. This training must emphasize the seriousness of this crime and focus on victim-centered recourse and avoid moral judgement.

5.7.3 Policy and Public Awareness Measures

The Zambia Information and Communications Technology Authority (ZICTA), in collaboration with the Ministry of Justice, should develop and publish guidelines for ISPs and social media platforms operating in Zambia on their role in responding to reports on the non-consensual distribution of intimate content, including clear and accessible reporting mechanisms for users.

There also needs to be more education on this particular topic. Public awareness is an important part of this crime because the general public will be knowledgeable on the aspects of the non-consensual distribution of intimate content. The government and civil society should initiate nationwide campaigns to educate the public, especially young people, on the concept of consent in relation to the non-consensual distribution of intimate content and the effects that it has on the victims. The awareness of this crime helps victims know their rights and the availability of avenues for seeking help, aiming to get rid of stigmatization of the victim shift societal attitudes away from blame. The non-consensual distribution of intimate content has serious effects on the victim, therefor knowledge on this topic helps build societal knowledge and avoid victim-blaming.

Zambia should ratify or strengthen already existing commitments to instruments like the Istanbul convention and Convention on the Elimination of all forms of discrimination against Women recommendations, incorporating digital Gender Based violence protections. Global best practices enhance local frameworks; alignment would provide resources for reforms. The government could form a task force in order to review compliance of provisions in the instruments within one year in order for these

recommendations to be adequately followed. Adopting global practices helps enhance victim centered remedies that are enforceable by the victims.

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