

## Digital Sexual Exploitation and Its Psychological Impact on Women: The Need for Safer Online Environments

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### INTRODUCTION

On the 20th of November 2019, the Nigerian cyberspace was abuzz with the video of what appeared to be two young people having sex<sup>1</sup>. The video itself began with the propping of the smartphone used to film by the male partner with what appeared to be the full consent of the female partner.

A slew of reactions trailed the video, ranging from disgust to amusement and by the end of the day, it had been uploaded on various pornographic websites. Curiously, the headlines of numerous blogs and porn sites which carried the news focused on the female partner rather the male with titles such as “Babcock girl swallows cum” trending. By the end of the week, the young lady in question had been expelled from her school, Babcock University.

There were two major conflicting views on the expulsion of the lady. The first being that, the school was justified because the actions of the two students, the lady in particular, since the male partner had been earlier suspended, had brought disrepute to it. On the other hand, there were clamours that the actions of the school were biased, unfair and discriminatory towards the lady since she was not responsible for and ignorant of the distribution of the video. Holders of the second view called upon the University to locate the original sharer of the video and purge itself

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<sup>1</sup> Michael, Isaac. “Twitter Users React To Leaked Sex Tape Of Babcock Students.” Informationng.com <https://www.informationng.com/2019/11/twitter-users-react-to-leaked-sex-tape-of-babcock-students.html> (accessed December 23, 2019)

of disrepute by proving to be an institution which cared about the welfare of its students who were of cyber abuse.

This second view, forms the basis of the reasoning behind this article.

## REVENGE PORNOGRAPHY

Revenge pornography has been defined to mean, “[t]he practice of disclosing nude or sexually explicit images and videos, often along with identifying personal information, of former romantic partners without their consent.”<sup>2</sup>

However, it is important to note that the term, “revenge pornography” is often used as a synonym for various forms of non-consensual image-based abuse.<sup>3</sup> In their article on the non-consensual sharing of images, Walker and Sleath seem to acknowledge the inadequacy of the term as they suggest, “...it is not only ex-partners seeking revenge who non-consensually share, but a variety of other people who do this for different reasons e.g., a joke, money or indeed for no particular or specified reason”.<sup>4</sup>

McGlynn and Rackley who coined the more inclusive term, “image-based sexual abuse”, have this to say about its importance: “Terminology frames options for law reform, as well as playing a vital expressive role in our public debates. A major purpose of the criminal law is to express societal condemnation of specific activities with the hope of changing people’s behaviour. The law can only achieve these purposes if the label applied to a crime is the right one.”<sup>5</sup>

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<sup>2</sup> Bambauer, Derek. “Exposed”. *Minnesota Law Review*. 98 no. 6 (2014): 2025-102

<sup>3</sup> McGlynn, Carol, and Erika Rackley. (2016). “Not “revenge porn,” but abuse: Let’s call it image-based sexual abuse.” *Inherently Human* (blog), Gender & Law at Durham (GLAD), 2016 <https://inherentlyhuman.wordpress.com/2016/02/15/not-revenge-porn-but-abuse-lets-call-it-image-based-sexual-abuse/>

<sup>4</sup> Walker, Kate and Emma Sleath. “A systematic review of the current knowledge regarding revenge pornography and non-consensual sharing of sexually explicit media.” *Aggression and Violent Behavior*. 36 (2017): 9 – 24. doi: 10.1016/j.avb.2017.06.010

<sup>5</sup> McGlynn, Carol, and Erika Rackley. “Image-Based Sexual Abuse: More than Just ‘Revenge Porn’”. Birmingham: University of Birmingham, 2016 (accessed December 23, 2019). <https://claremcglynn.files.wordpress.com/2015/10/imagebasedsexualabuse-mcglynnrackley-briefing.pdf>

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Additionally, distinction must be made between revenge pornography and other forms of pornography. For one, revenge pornography is often distributed without the consent of the victim involved even though it is often made by them or with their consent<sup>6</sup>. Besides, the sexually explicit nature of a thing does not necessarily make it pornographic. According to Rea:

Despite the fact that sexually explicit pictures, performances, and literature can be pornographic, it seems clear that not all such items must be. Photos of naked people—even some depicting human genitalia, sexual arousal, or violence against the subjects—can appear non-pornographically in works of art, documentary films, or reputable magazines such as *Life* or *National Geographic* ... Furthermore, I take it that if a husband or wife were to have sexually explicit photos or videos taken of himself or herself for the private viewing of his or her spouse, or if he or she were to perform live in sexually explicit ways for his or her spouse, none of this would necessarily be pornographic ... there would be nothing pornographic about it despite the sexually explicit nature of the “performance” or photograph, and despite the fact that the performer or photograph would no doubt arouse (and even be treated as pornography by) some of its viewers<sup>7</sup>.

Under the Nigerian legal system though a plethora of legislations exist, there is no formal recognition of any offense known as revenge pornography or image-based sexual abuse<sup>8</sup> and therefore no official definition exists for them. Additionally, the majority of these laws are designed to shield the public from what the State determines to be obscene or unwholesome rather than individual privacy protection<sup>9</sup>.

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<sup>6</sup> Bedor, Emma Celeste. “The Politics of Revenge (Pornography)”. *Screen Bodies* 1, no. 1 (Spring 2016): 32–50 © Berghahn Journals doi: 10.3167/screen.2016.010103 (accessed December 23, 2019)

<sup>7</sup> Rea, Michael C. “What Is Pornography?” *Noûs* 35 no. 1 (2001): 118–145.

<sup>8</sup> The Obscene Publications Act (1961), Children and Young Persons (Harmful Publications) Act (1961), Constitution of the Federal Republic of Nigeria (1999) (as amended), Information Technology Act (2000), The Criminal Code Act (2004), ECOWAS Directives on Fighting Cyber Crime (2011), African Union Convention on Cyber security and Personal Data Protection (2014), Cybercrimes (Prohibition, Prevention, etc.) Act (2015)

<sup>9</sup> Ikpeze, Nnamdi G., Oyebanke Apará, “The Rise of Non-Consensual Pornography in Nigerian Cyberspace: Imperatives for Statutory Criminalisation”. *African Journal of Law and Human Rights* 3 no. 2 (2019); 79-85 <http://journals.ezenwaohaetorc.org/index.php/AJLHR/article/viewFile/795/764> (accessed December 23, 2019)

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A few exceptions to this exist such as the provision for the offence of Criminal Defamation, for instance. It is provided for in Sections 373-381 of the Criminal Code Act, where it is defined as a matter likely to injure the reputation of a person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation<sup>10</sup>. However considering the fact that an acceptable defence to the offence of criminal defamation is the veracity of the defamatory material itself, it is not a viable defence for victims of image-based sexual abuse.

Section 170 of the Criminal Code Act similarly provides that anyone who sends objects or words of an obscene or indecent nature are guilty of a misdemeanour and liable to imprisonment for one year. Sadly, the provisions of this Section are explicitly qualified to be merely by post and no other means.

However, the Cybercrimes (Prohibition, Prevention etc.) Act of 2015 has proved to be more effective for prosecutorial purposes of the offence. Section 24 provides that any person who sends by means of computer systems and networks - in clear contrast to the above section of the Criminal Code - any message of an indecent, obscene or menacing character or one that is grossly offensive and pornographic shall be liable to a fine of not more than seven million naira or imprisonment for a term of three years or both. Indeed, under the Act, there has been a record of one conviction by the Court of a jilted lover who, after unsuccessfully attempting to blackmail his former lover into paying a sum of money, uploaded her nude pictures online<sup>11</sup>.

While criticism about what is meant by computer systems and networks and if it includes phones as well as if said obscene publications were simply published on the internet rather than sent to one or more persons abound, it remains clear that this Act and its provisions remain the most relevant as it concerns image-based sexual abuse on the internet in Nigeria today.

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<sup>10</sup> Nigerian criminal jurisdiction is divided into the North and South and governed by two substantive Acts, The Penal Code Act and Criminal Code Act respectively.

<sup>11</sup> State v Ayan, FHC/AD/17c/2017

## REVENGE PORNOGRAPHY IS VIOLENCE AGAINST WOMEN

Research has shown that women are victims of 90% of revenge pornography<sup>12</sup>. Revenge porn affects the right of women to dignity uniquely in a way men are not. Steeped deeply in our culture are elements of blame accorded to women for failing to be responsible for the preservation of their dignity thereby making revenge pornography a very (un)unique form of victim blaming rooted in a focus on autonomy; that the individual was somehow in a position of control to negotiate the boundaries of what was revealed or not revealed about them.<sup>13</sup> In many cases, female victims are blamed for placing themselves in such a vulnerable position, not unlike many arguments made by rape defendants in their own defence with nothing said about her partner who is very often the poster, lashing out in revenge.

In the case of the Babcock student, while the University equally condemned both parties – for having sex – nothing was said about the poster, another student of the school, not even after a belated public apology, which was promptly taken down following huge outrage<sup>14</sup>.

Revenge pornography has been described as a form of cyberbullying which degrades women sexually and professionally<sup>15</sup>. Cyberbullying itself has been defined as “any behaviour performed through electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others”<sup>16</sup>.

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<sup>12</sup> Citron, Danielle Keats and Mary Anne Franks. “Criminalizing Revenge Porn.” *Wake Forest Law Review* 49 (2014): 345–91

<sup>13</sup> Austin, Lisa. (2012). “Privacy, Shame and the Anxieties of Identity.” Available online: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2061748](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2061748) (accessed December 23, 2019)

<sup>14</sup> Michael, Isaac. “Babcock Sex Tape: Twitter User Tenders Apologies For Sharing The Video (Photo).” Informationng.com <https://www.informationng.com/2019/11/babcock-sex-tape-twitter-user-tenders-apologies-for-sharing-the-video-photo-html> (accessed December 23, 2019)

<sup>15</sup> Filipovic, Jill. “‘Revenge Porn’ Is about Degrading Women Sexually and Professionally,” *Guardian* (U.K.). <http://www.theguardian.com/commentisfree/2013/jan/28/revenge-porn-degrades-women> (accessed December 23, 2019)

<sup>16</sup> Mc Mahon, Ciaran. (2014). “Why We Need a New Theory of Cyberbullying. Working Paper Series #14.3.cb.” Available online: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2531796](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2531796) (accessed December 23, 2019).

In an article for The Guardian, Cadwalladr writes about Hunter Moore, described as “the Internet’s most hated man”,<sup>17</sup> for his website dedicated to the uploads of photos of nude women in the following words:

It’s pure misogyny. It’s about hating women. It’s about hurting them. That’s the whole purpose of the site. It wasn’t about the pictures. There were hundreds of people self-submitting photos, but they’re not victims because they are saying: “Hey, you can post my nude picture.” But that wasn’t interesting. The thing is humiliating people. The kind of people who would never post their photo on a site like that, and who have a lot to lose. Who have high-profile jobs, or could have their entire life destroyed. That’s what he found enjoyable. That’s what his followers found enjoyable.<sup>18</sup>

For a long time, it has been shown that the Internet is a safer space for men than women as technology merely offers new avenues for the perpetration of age-long biases and harms against women<sup>19</sup>. This startling state of things, when combined with the fact that access to the Internet has been declared a human right by the United Nations, clarifies the need to accept revenge porn and other forms of image-based sexual abuse as a gendered form of violence against women<sup>20</sup>.

## THE WAY FORWARD

Several recommendations have been put forward as ways to protect women in digital spaces. One of such recommendations is the need to implement a better legal framework for these offences. This would include lengthier jail terms and explicit definitions which would serve as deterrent to would-be offenders. New legislation should also extend to cover threats to distribute without consent. One of the current failings of the Cybersecurity Act is the way it appears to trivialise revenge porn by classifying it with other non-sexual

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<sup>17</sup> Lee, Dave. “IsAnyoneUp’s Hunter Moore: ‘The Net’s Most Hated Man.’” BBC. <http://www.bbc.co.uk/news/technology-17784232> (accessed December 23, 2019).

<sup>18</sup> Cadwalladr, Carole. 2014. “Charlotte Laws’ Fight with Hunter Moore, the Internet’s Revenge Porn King.” The Guardian. <http://www.theguardian.com/culture/2014/mar/30/charlotte-laws-fight-with-Internet-revenge-porn-king> (accessed December 23 2019).

<sup>19</sup> Powell, Anastasia. “Configuring Consent: Emerging Technologies, Unauthorized Sexual Images and Sexual Assault.” *Australian & New Zealand Journal of Criminology* 43 no 1 (2010) 76–90.

<sup>20</sup> Human Rights Council Resolution 32/3, U.N. Doc. A/HRC/32/L.20

internet crimes and treating it as a misdemeanour with an imprisonment term of 3 years. Considering the effects which the unwanted sharing of these images cause to the victims, ranging from suicide, to depression, to loss of income, sterner punishments should be awarded to those found guilty.

In furtherance of this and being cognisant of the fact that being forced to withdraw off the internet is a violation of many human rights such as the right to association<sup>21</sup>, the right to dignity<sup>22</sup>, the right to privacy<sup>23</sup> and use of the internet, the scope of the Fundamental Rights Enforcement Procedure (FREP) Rules 2009 should be enlarged to accommodate proceedings which entail image-based sexual abuse. The discriminatory nature of these acts should also be taken into note<sup>24</sup>.

Victim support which should also be made available to include automatic anonymity for all complainants and a civil remedy to provide victims with alternative options.

## CONCLUSION

The need to protect women and affirm a commitment to their safety becomes ever more glaring as more and more Nigerians begin to spend time on the internet, carrying over already held prejudices into new environments which in themselves provide more reach than was previously possible. The phrase, the internet never forgets, comes to mind.

Challenges in the implementation of the above recommendations are many. General societal attitudes to sexual offences that happen off the internet such poor enforcement of laws in Nigeria such as victim blaming and their emotional manipulation coupled with low conviction rates serve as obstructions<sup>25</sup>. Added

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<sup>21</sup> Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>22</sup> Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>23</sup> Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>24</sup> Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the right against discrimination based on sex.

<sup>25</sup> Adebajo, 'Kunle. "FACT CHECK: No, it is not true Nigeria has recorded only 18 convictions in rape cases." Icirnigeria.org. <https://www.icirnigeria.org/fact-check-no-it-isnt-true-nigeria-has-recorded-only-18-convictions-in-rape-cases/> (accessed December 23, 2019)

to this is the unwillingness of victims due to perceived misplaced guilt over the actions of the perpetrators themselves enabling them to go scot-free.

In addition, the view that the right to free speech permits individuals on the internet to say or do whatever they want stalls attempts to curb online sexual abuse<sup>26</sup>. This is akin to the common defence used by rapists that their victim were asking for it.

Much remains to be done to ensure that women are better protected from all forms of image-based sexual abuse online. The onus remains on the lawmakers, community leaders, educators and legal institutions to ensure that women are not prevented and discouraged from living their full lives both physically and virtually.

## **Biography**

Favour Borokini is a lawyer interested in female rights and the digital innovation.

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<sup>26</sup> Chen, Adrian. “Unmasking Reddit’s Violentacruz, The Biggest Troll on the Web.” Gawker.com. <http://gawker.com/5950981/unmasking-reddits-violentacruz-the-biggest-troll-on-the-web> (accessed December 23, 2019).