



Using the law to respond to newer forms of GBV – online freedoms and access to justice for victims of cyber-crimes

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Introduction

Technology-facilitated violence and abuse including image-based sexual abuse (IBSA) is a phenomenon affecting women and girls around the world.

Abusers misuse technology to attack victims and threaten their safety, privacy, and dignity. This abuse is gendered and is a form of domestic and sexual violence.

In this presentation I review the criminal law approaches to tackling IBSA in Malawi and critically analyze the legislative landscape, with a view to assessing the potential for victims to seek and obtain redress for IBSA.

The presentation assesses the role criminal law has to play while acknowledging the limits of criminal law alone in terms of providing redress.



Criminal law as a response to TFVA

The criminal law is often perceived as a crucial tool in combating technology facilitated violence and abuse (TFVA).

In recent years, there has been an increased focus on criminalizing TFVA, with numerous jurisdictions attempting to regulate the digital domain.

IBSA operates as a broad term which captures a range of connected practices and which emphasizes the abusive nature of these behaviours.

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The definition
of IBSA
(McGlynn
and Rackley,
2016)

The **non-consensual** creation and/or distribution of private, sexual images is a serious harm often **resulting in considerable mental and physical injuries.**

It is **a form of harassment** and often part of a pattern of coercive, domestic abuse. It is also a breach of the fundamental rights to privacy, dignity, and sexual autonomy, with women (and victims are mostly women) being forced offline and blamed or targeted for expressing themselves sexually through imagery.

Malawi: Potential for Prosecution of IBSA

The Constitution of the Republic of Malawi (1994) protects rights at the core of tackling IBSA, including rights to privacy, equality, dignity, and the rights of women

Section 137 of the Penal Code creates the offense of “insulting the modesty of a woman” While the language of the provision is clearly archaic, rooted in the patriarchal concept of female “modesty” (Chisala, 2019a), it is conceivable that IBSA could be prosecuted under this provision; intimate images being an “object” which “intrude upon the privacy” of a woman. In a recent IBSA case, a group of men were charged with insulting the modesty of a woman, among other offences.

The Gender Equality Act 2013 presents some opportunity to protect victims of IBSA under Section 5 of the Act states that “a person shall not commit, engage in, subject another person to, or encourage the commission of any harmful practice”


The Electronic Transactions and Cyber Security Act 2016 is a broad piece of legislation which attempts to regulate cyber-crime and data protection. However, in section 3(b), one of the stated objectives of the Act is also “to ensure that information and communication technology users are protected from undesirable impacts of information and communication technology, including the spread of pornographic material, cyber-crime and digital fraud”

Malawi: Challenges for victims of IBSA

Women who are victims of IBSA offences are often subjected to intense societal shaming and are ill-equipped to press for prosecution.

A complaint in WhatsApp case was also lodged by the Young Feminists Network with the Malawi Human Rights Commission, although there has been no response to date. It is unsurprising that the victim concluded from this experience that “[t]he police make it difficult for victims of online violence to report” (Phiri, 2020, Attempted collective response section, para 6).

Examples such as this may indicate a wider problem with police responsiveness to digital offenses against women in Malawi. Prosecutorial guidelines and extensive training are required if we are to ensure that cyber-laws are enforced to protect women in online spaces generally, as well as used to tackle IBSA specifically.




Malawi: Challenges for victims of IBSA

From this brief overview, it can reasonably be concluded that IBSA is not currently being addressed through the existing Malawian criminal law.

Older, archaic pieces of legislation can be weaponized against women and other human rights defenders.

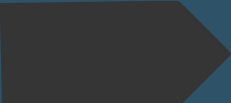
Equally, more modern pieces of legislation which have the potential to protect victims of IBSA are not used to that effect.



Malawi:
What next
for victims of
IBSA?

The current Malawian criminal law clearly has limitations and is undeniably imperfect.

However, there is some potential to use existing legislation to tackle IBSA through “nuanced” interpretation



Malawi: The criminal law is not enough – looking to SIL as a response

The current Malawian criminal law clearly has limitations and is undeniably imperfect.

The criminal law is often used against the vulnerable and therefore cannot be treated as a comprehensive solution for IBSA victims.

THE CIVIL JUSTICE NEEDS OF MALAWIAN WOMEN



A REPORT ON THE CIVIL JUSTICE NEEDS OF WOMEN IN RURAL AND PERI-URBAN AREAS OF LILONGWE



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