



2<sup>nd</sup> Edition, 2013

# Women and Cybercrime: The Dark Side of ICTs

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Githaiga Grace | Kapiyo Victor | Munyua Alice  
2nd Edition, 2013



## Women and Cybercrime: The dark side of ICTs

*Women and Cybercrime: the dark of ICTs 2<sup>nd</sup> Edition* is an update of the 2010 study, which has been informed by the evolution and vibrancy of Kenya's digital environment that has continued to experience immense growth as demonstrated by the increasing number of mobile phone subscribers and Internet users.

2<sup>nd</sup> Edition, 2013

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# Table of Content

Women and Cybercrime: .....	2
1.0 Introduction.....	2
1.1 Objectives and research questions .....	3
1.2 Methodology .....	4
.....	5
2.0 Case Studies .....	6
2.1 Caroline Mutoko, Queen of Kenya’s Radio.....	7
2.2 Karungari Mungai (Miss Karun of Camp Mulla) .....	11
2.2.1 Miss Karun humiliated over poor English.....	11
2.2.2 Celeb drinks herself SILLY!! ... Camp Mulla’s MISS KARUN.....	13
2.2.3 Naked Photos of Miss Karun of Camp Mulla on the Internet .....	13
2.3 Beth Mugo, Kenya’s Minister of Public Health .....	16
2.4 Alice Munyua, Chair, Kenya’s Internet Governance Forum Steering Committee	19
2.5 Observation.....	21
3.0 Legal Framework.....	26
3.1 Constitution of Kenya, 2010 .....	26
3.2 Sexual Offences Act, No. 3 of 2006.....	27
3.3 Penal Code, Cap 63 (Rev. 2009).....	27
3.4 Children Act, No. 8 of 2001 .....	28
3.5 Kenya Information and Communication Act, Cap 411A (Rev. 2012) .....	28
3.6 National Cohesion and Integration Act, No. 12 of 2008 .....	29
3.7 Evidence Act, Cap 80 .....	29
3.8 Criminal Procedure Code, Cap 75 (Rev. 2009).....	30
3.9 National Gender and Equality Commission Act, No.15 of 2011.....	30
3.10 Kenya National Commission on Human Rights Act, No. 14 of 2011 .....	30
3.11 Mutual Legal Assistance Act, No. 36 of 2011 .....	31
3.12 Prevention of Organised Crimes Act, No. 6 of 2010.....	32

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3.13	National Police Service Act, No 11A of 2011 .....	32
3.14	Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009 .....	32
3.15	Data Protection Bill, 2012.....	32
3.16	International Convention and Treaties.....	33
3.16.1	Universal Declaration of Human Rights (UDHR).....	33
3.16.2	International Covenant on Civil and Political Rights (ICCPR) .....	34
3.16.3	International Covenant on Economic, Social and Cultural Rights (ICESCR) 34	
3.16.4	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).....	35
3.16.5	The Declaration on the Elimination of Violence Against Women (DEVAW)	35
3.16.6	African Charter on Human and Peoples’ Rights (Banjul Charter) .....	36
3.16.7	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003. ....	37
3.16.8	Vienna Declaration and Programme of Action (VDPA) .....	37
3.16.9	Beijing Platform for Action of 1995 (BPfA) .....	38
3.16.10	Victoria Falls Declaration Of Principles For The Promotion Of The Human Rights Of Women, 1994 .....	38
3.16.11	Convention on the Rights of the Child (CRC) .....	39
3.16.12	African Charter on the Rights and Welfare of the Child .....	40
4.0	Users Policies .....	42
5.0	Organizations/Institutions dealing in technology based VAW.....	47
5.1	The Coalition on Violence against Women (COVAW).....	48
5.2	The Centre for Rights Education and Awareness (CREAW) .....	48
5.3	Kenya Police.....	48
5.4	African Women Development and Communication’s Network (FEMNET) .....	49
5.5	Africa Unite Kenya Chapter .....	49
5.6	Federation of Women Lawyers, (FIDA) .....	49
6.0	Approaches to Online VAW in Other Regions .....	51
6.1	European Union .....	51
6.2	United Kingdom .....	52
6.3	United States.....	53

---

7.0	Recommendations .....	55
7.1	Legislative .....	55
7.2	Policy makers .....	56
7.3	Women groups engaged in VAW (individuals and community leaders).....	57
7.4	Tech companies.....	57
7.5	Women users .....	58
7.6	General users.....	58
7.7	Media .....	59

## Annex

**Cases reported through the [takebackthetech.net](https://ke.takebackthetech.net/mapit/) map  
(<https://ke.takebackthetech.net/mapit/>) by the end of the Take Back the Tech  
2012 campaign period**

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The study targeted primarily the government and governmental agencies, international organizations, women organizations and media.

# 1.0 Introduction

The Kenya ICT Action Network (KICTANet) in 2010 conducted a study *Women and Cybercrime: the dark of ICTs*<sup>1</sup> which documented examples of cybercrime against women in Kenya. The aim of the study was to provide evidence for development of cyber security/crime policy and regulatory framework that acknowledges and considers cyberspace violence against women, and create awareness on cybercrime against women amongst various stakeholders.

The study targeted primarily the government and governmental agencies, international organizations, women organizations and media. It established that there was a growing trend in spamming, email scams, impersonation, theft of personal data, among others, which seemed to go hand in hand with women and girls lack of knowledge of the risks they run, and the extent of the damage that some continued to sustain.

The study identified various challenges related to dealing with cyber-crime against women, which included inappropriate policy and regulatory frameworks related to addressing cyber-crime offences, inadequate training of legal and law enforcement professionals on cyber-crime, insufficient resources for cybercrime prevention, and enforcement and use of classical investigative methods to handle online crime.

*Women and Cybercrime: the dark of ICTs 2<sup>nd</sup> Edition* is an update of the 2010 study, which has been informed by the evolution and vibrancy of Kenya's digital environment

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<sup>1</sup> [http://www.kictanet.or.ke/documents/Activities/Women-and-CyberCrime-in-KE/Women\\_and\\_Cybercrime\\_in\\_Kenya\\_Literature\\_Review\\_report\\_working\\_ver4.pdf](http://www.kictanet.or.ke/documents/Activities/Women-and-CyberCrime-in-KE/Women_and_Cybercrime_in_Kenya_Literature_Review_report_working_ver4.pdf)

that has continued to experience immense growth as demonstrated by the increasing number of mobile phone subscribers and Internet users. By September 2010 Kenya had 8.96 million internet users and 22 million phone subscribers.<sup>2</sup> The number increased to 17.38 million Internet users and 30 million<sup>3</sup> mobile subscribers by end of 2012.<sup>4</sup> This increase in access to ICTs, while providing immense opportunities for socio-economic, cultural and political development and empowerment for women also provides increased avenues for stalking, abusing, intimidating and humiliating women in Kenya. There is still lack of specific legislation on online violence against women, and therefore the need to develop policy and regulation that address this.

## 1.1 Objectives and research questions

This study maintained the same objectives as those of the 2010 study. The result is the new information reflected in this study. The objectives are to:

- Investigate the prevalence of cyber crime against women.
- Explore how cyber crime affects women differently.
- Examine measures to address cyber crimes toward women (what are the measures in place or being developed by authorities, regulators, globally etc).
- Determine mechanisms of engaging stakeholders to begin to address cyber crime against women.

The research questions are:

- What is the prevalence of cyber crime against women in terms of degree, level, quantity, and distribution?
- How does cyber crime affect women differently?
- What are the current measures and gaps (technological, legal, social, and psychological) to address cyber crime against women (local, regional, and global
- What mechanisms are appropriate for addressing cyber crime against women?

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<sup>2</sup> Mobile subscribers hit 22 million in September 2010. [http://www.cck.go.ke/news/2011/Mobile\\_subscribers.html](http://www.cck.go.ke/news/2011/Mobile_subscribers.html)

<sup>3</sup> *Mobile penetration in the country continues to increase*. January 31, 2013.

[http://www.cck.go.ke/mobile/news/index.html?nws=/news/2013/Mobile\\_penetration.html](http://www.cck.go.ke/mobile/news/index.html?nws=/news/2013/Mobile_penetration.html)

<sup>4</sup> CCK releases sector [http://www.cck.go.ke/news/2012/sector\\_statistics.html](http://www.cck.go.ke/news/2012/sector_statistics.html)



## 1.2 Methodology

This is a descriptive qualitative study to demonstrate the phenomena of cyber violence against women in Kenya and how it is manifested. Primary data was collected through exploratory desktop research and documentation of 4 real life stories identified through purposive sampling and a focus group discussion conducted in March 2013 in Nairobi.

A person is seen in profile, working at a computer workstation in a dimly lit room. Several computer monitors are visible, with the person's hands on a keyboard. The background is dark, and the lighting is focused on the person and their work area.

In Kenya, tech-based violence against women cases take the form of:

- Digital manipulation of photos
- Circulation of intimate photos (they go viral)
- Harassment through cell phones
- Cyberstalking
- Hate crimes.

## 2.0 Case Studies

The Kenyan cyberspace continues to be dynamic, enjoy growth and vibrancy as demonstrated by the increasing number of mobile phone subscribers and internet users. The space has seen more ordinary people embrace the internet which has been particularly enhanced by the uptake of mobile phones and special tariffs and promotions offered by the service providers. Further, there is now more use of social media in particular among the youthful population.

Moreover, between 2010 and 2013, an increase in the number of people participating in online hate campaigns as is demonstrated by the selected case studies was witnessed. It is not clear whether those who participate realize that they are committing an act of violence using the ubiquitous online platforms. However, what is clear is that their actions are guided by hate sometimes misguided, anger, and the need to bring down or intimidate their victim(s) All the cases invoke demeaning, gendered stereotypes, some reducing women to their sexual body parts. Most make it clear that the women are targeted due to their gender.

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- Digital manipulation of photos
- Circulation of intimate photos (they go viral)
- Harassment through cell phones
- Cyberstalking
- Hate crimes.

The common tools and platforms used are:

- Cell phones,
- Social media e.g. Internet forums, Blogs, Social Networks, etc.,
- Email,
- Mailing lists.

The following four case studies were selected.

## 2.1 Caroline Mutoko, Queen of Kenya's Radio

Caroline Mutoko<sup>5</sup> is a radio presenter and hosts the 'Big Breakfast Show' on Kiss FM in Kenya. The show happens to be one of the very popular ones in the morning, and commands huge following from audiences. Mutoko is regarded as the queen of radio and commands a huge following both online and offline. She is known to advocate for civil rights and very good at campaigns on issues that affect ordinary Kenyans in a fearless manner. This has endeared her to her fans as they see her as their champion when it comes to highlighting and articulating their problems.

As such, her followers will from time to time suggest discussion topics for her morning show, or raise concerns which if Mutoko buys into them, will pick and run with them, with the aim of getting the relevant authorities to act or respond. The said authorities have been known to listen to Mutoko and move into some action. She will sometimes solicit for ideas on her Facebook page for her show, an aspect that has encouraged interaction between her and her fans.

It is with this backdrop that in December 2012, some fans wrote on her Facebook wall with requests that she hosts the Safaricom<sup>6</sup> CEO, Bob Collymore on her morning show so that he could address a few consumer issues, including the high charges levied from Safaricom services. Others just ranted about the mobile provider's poor services on Mutoko's wall.

It is not clear how many posts had been made on Mutoko's wall when she decided to respond to and inform her followers that she would not be inviting Bobby Collymore to her show. Her response attracted thousands of negative and angry reactions, with some saying that "she seemed to be trashing an entire group of 'average' people"<sup>7</sup> and is arrogant. Apparently, Mutoko was deemed to have used not so kind words on her fans in communicating her refusal to invite the Safaricom CEO.

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<sup>5</sup> <https://www.Facebook.com/carolinemutoko?fref=ts>

<sup>6</sup> Safaricom Ltd is the most dominant mobile network operator in Kenya by market share. [www.safaricom.co.ke](http://www.safaricom.co.ke)

<sup>7</sup> *Mutoko's Facebook showdown*. Standard Newspaper, December 15, 2012.

[http://www.standardmedia.co.ke/?articleID=2000072935&story\\_title=Kenya-Mutoko%E2%80%99s-Facebook-showdown](http://www.standardmedia.co.ke/?articleID=2000072935&story_title=Kenya-Mutoko%E2%80%99s-Facebook-showdown)

Mutoko gave what appeared to be 'guidelines' of posting on her Facebook wall, which at that time boasted of more than 170,000 likes. Mutoko as a media personality defended one of the Station's biggest advertiser/client, *Safaricom*.

Here is the Facebook Post which she later brought down but the 'damage' as far as her fans were concerned, had already been done.

“Okey - I let the average idle person vent as much as they need to on social media, I'm alright with the fact that you probably have nothing else of value to do with your time.<sup>1</sup> However, here's where I draw the line:

1. You will not use my wall to be mediocre and hide behind your bogus pseudonym to insult the CEO of any organisation, or anyone else for that matter. I don't care what your beef is. You don't get to do that here.
2. Safaricom has a FB page. Use it.
3. Bob Collymore - Mr. Collymore has a twitter handle - use it.
4. It's a freaking free country, you don't like s'thing move on. Don't waste my time and yours posting filth on my wall.
5. Have the basic skill to refer to me by my name. It's at the top of the page for easy reference. I don't know who Caro is.
6. By all means raise issues about our clients/advertisers, what you will not do is apply the same bottom feeder behavior you reserve for bigotry & politics to slander business entities. Not here.

And yes, our advertisers ALL bar none, contribute to our bottom line, therefore I make no apologies for being in their corner. Incidentally, I did ask Safaricom if I should take this nonsense down & they said no.

But this is MY page.

You want to be rude, abusive & base, go elsewhere.  
I don't need you, not now, not ever”.

Just a few hours later, hate Facebook pages popped up, targeting Mutoko. One particular page 'killed' her, and in less than 48 hours this page garnered close to 10,000 likes. This page with a '*Rest in Peace Caroline Mutoko*' finally garnered 23,529 likes.<sup>8</sup> Another one got 6426<sup>9</sup> likes, another 521 likes<sup>10</sup> and still others had over 130 likes. Her haters branded her a new name '*rude parrot*' and were demanding an apology for several things she has written on her Facebook page as well as utterances she has made on radio.

Below is an excerpt from the viral Facebook page showing the intensity of hate on Mutoko:

“By constantly abusing Kenyans who have 'made' her and entitled her over the years, by always calling them "average and idle" for wasting their time listening to her, Caroline Mutoko has debased her brand.

“She is no longer average or idle...she is an angry, hormonal wreck and has lost all emotional there. Radio Africa and their advertisers must sanction her rudeness and hold her on shorter leash”.

“Not even the President. The Kiss 100 brand suffers when its brand leader wears the veil of cockiness and speaks in corrosive tongues of spite and disdain. No business will survive for long with such verbal indiscretion and harlotry”.

There was also another page "*Kenyans against Caroline Mutoko's nonsense and teenage like attitude*" which amassed over 12,000 likes in just below 24 hours<sup>11</sup> and with abusive comments. A similar page got 1,148 likes.<sup>12</sup> A simple aggregation of the 'likes' shows that close to 40,000 people read and agreed with the vitriol while many others may have read but did not 'like' or indicate that they had read any of these pages. Mutoko's major mistake is that she spoke her mind.

<sup>8</sup> <https://www.Facebook.com/RipCarolineMutoko>

<sup>9</sup> <https://www.Facebook.com/pages/RIP-Caroline-Mutoko/425896667477883>

<sup>10</sup> <https://www.Facebook.com/mashdanxa>

<sup>11</sup> <http://www.ghafila.co.ke/news/tv/item/5878-this-is-why-caroline-mutoko-is-being-abused-and-even-killed>

<sup>12</sup> <https://www.Facebook.com/pages/Kenyans-agnst-Caroline-Mutokos-nonsense-teenage-like-attitude/395209077228945?ref=stream>

Mutoko is no stranger to online controversy. She has had several issues with her Facebook fans for example at one time she was accused of plagiarizing<sup>13</sup> a blog and carrying it in her weekly column in the *Star Newspaper*<sup>14</sup> which is owned by the same group that owns KISS 100 FM. However, this particular case where she was even ‘killed’ took the hate campaign to a different level. It is not clear whether Mutoko’s attackers were spontaneous, or had been waiting for the opportune time to launch their heaviest criticism through Facebook.

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**Why case was selected:** Caroline Mutoko has made it in Radio. She commands a huge following and considered a mentor and a role model for young women looking to build a career in Radio. She attempted to respond to her haters, but instead of the hate campaign stopping, more Facebook pages that spewed more vitriol emerged.

**Type of violation:** Online hate campaign.

**Technology Platform:** Facebook, and blogs (Daily Post, Ghafla).

**Violator/abuser:** Both men and women majority of them young people who felt that Mutoko was condescending and had no business abrogating herself the role of their ‘advisor’.

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<sup>13</sup> <http://www.kenyan-post.com/2012/09/kiss-100s-caroline-mutoko-responds-to.html>

<sup>14</sup> The Star Newspaper the third largest newspaper in Kenya and is owned by Radio Africa, which also owns KISS 100 FM.

## 2.2 Karungari Mungai (Miss Karun of Camp Mulla)

Miss Karun whose real name is Karungari Munga was a lead vocalist and songwriter for the Camp Mulla Music group<sup>15</sup> Until mid 2013 when she left the group to pursue further studies in the US. Camp Mulla is a Kenyan award-winning Hip-Hop group group that is doing very well in the local charts, and was nominated for both MTV<sup>16</sup> and BET<sup>17</sup> awards in 2012.

Miss Karun, the youngest member of Camp Mulla turned 18 in July 2012 and is said to be bright and creative in the arts. She had several encounters with her followers online. Three incidents are selected for this study.

### 2.2.1 Miss Karun humiliated over poor English

On August 27, 2012, an article in one of Kenya's Daily Newspaper claimed that Miss Karun had not completed school and that her mother 'controlled' her. "Apparently, her mother is way too strict and cannot tolerate Karun missing school for a concert, no matter how much it is paying...."<sup>18</sup> The story about her mother is in command of her life her got over 46,416 'likes' on the Daily Post blog.<sup>19</sup>

This story seemed to have angered Miss Karun and she took to twitter to set the record straight to her over 10,000 followers.<sup>20</sup> However, instead of the tweet clarifying the situation as she had intended, her poor grammar is what caught the attention of Kenyans. This was the tweet:



"@MissKarun clarifying! today's article was wrong; im a high school grad, was never in braerurn, my mum supports my carrier completely... That's all. :)"

She misspelled the words "Braeburn" "I'm" and "Career". Braeburn is the school that she was assumed to have been attending. Her followers some who have felt that she had a wrong attitude took the opportunity to give her a thrashing.

They made a trending topic on twitter by constructing wrong sentences to make fun of her.

<sup>15</sup> <http://www.reverbNation.com/campmulla>

<sup>16</sup> An MTV Video Music Award (commonly abbreviated as a VMA) is an award presented by the cable channel MTV to honor the best in music videos

<sup>17</sup> The BET Awards were established in 2001 by the Black Entertainment Television network to celebrate African Americans and other minorities in music and acting.

<sup>18</sup> <http://www.kenyan-post.com/2012/08/camp-mullas-miss-karun-humiliated-over.html>;

<http://www.nairobiwire.com/2012/08/camp-mullas-miss-karun-big-twitter.html>

<sup>19</sup> Ibid.

<sup>20</sup> <https://twitter.com/search?q=%E2%80%9C40MissKarun%20&src=typd>



Some tweets read as follows:

@Nextstevejob @misskarun the English is a letdown, its time you hire a social media expert like me

@gpopulation @misskarun oh dear...smh!

Miss Karun will beaten you all.

Miss Karun should took grammar seriously

My mum sent me a gift thru EMS cuz it's the best Kuria service # Miss Karun"

Miss karun went to Bye Brains school.

Miss Karun doesn't want the D. She already has a D in English.

What has miss karun did? Hehe

Mosquitoes are disease careers # Miss Karun

Ati Miss Karun hates going out cuz guys just Stair.

It is not clear whether Miss Karun's tweet was as a result of a typo error, or probably the auto correct from her phone, but she was not allowed to get away with her spelling mistakes.

### 2.2.2 Celeb drinks herself SILLY!! ... Camp Mulla's MISS KARUN<sup>21</sup>

Another story appeared in a blog in September 2012 where it was reported that Miss Karun had started indulging in alcohol since she had turned 18 and yet she was “new to the party World.” The story recounted that she had accompanied her friends to a dance festival party where she over indulged in drinks. As a result, she was sighted misbehaving and “causing total mayhem” which was considered an embarrassment.

The story thus questioned whether she had seen or understood the warning usually labelled on beer bottles ‘*Sale of alcohol to persons under the age of 18 is strictly prohibited, excessive consumption of alcohol can be harmful to your health!*’ The story concluded that she had not seen the warning.

As such, some unsolicited advice was sent her way “*Miss Karun wait till you are 21 to drink responsibly*”.<sup>22</sup> This story got over 46,421 ‘likes’. This means that this number of people had read this story of the young lady.

### 2.2.3 Naked Photos of Miss Karun of Camp Mulla on the Internet

Perhaps this particular story demonstrates the worst humiliation for the young woman as it went viral mostly on entertainment sites. Further, it was shared on twitter and on several other websites including some Romanian ones such as *Penpoint Review Media*<sup>23</sup> which prides itself in offering “*outrageous stories from outrageous people*”. One comment made by “anonymous” on *Penpoint Review Media* website on Miss Karun’s nude pictures read “lovely one...upload more of them”

The purported Miss Karun’s photos were circulated on social media platforms. She denied that she was the one in those pictures but some blogs doubted that she was telling the truth. Some wondered why anyone would do anything of this sort to Miss Karun, and whether it was a case of Photoshop but still posted the pictures. Other blogs simply posted the pictures and asked people to judge for themselves if indeed it was Miss Karun.

Another site that doubted on whether Miss Karun was telling the truth is that of the *Mablizy Official* website.<sup>24</sup> Here, the writer responds to Miss Karun’s denial in a tone that says s/he is not convinced thus “*it is only normal to deny. We are not blind*

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<sup>21</sup> <http://www.kenyan-post.com/2012/09/celeb-drinks-herself-silly-camp-mullas.html>

<sup>22</sup> *ibid*

<sup>23</sup> <http://penpointreview.blogspot.dk/2012/10/nude-photo-of-camp-mullas-miss-karun.html>

<sup>24</sup> <http://mablizyofficial.com/2012/10/22/naked-photos-of-miss-karun-of-camp-mulla-surfaces-adults-only/>

*neither are we bonfools. We know what Photoshop can do, but here we beg to differ. But well let us hope she is saying the TRUTH that THIS IS NOT HER”.*

The *Number one entertainment* website<sup>25</sup> carried the story with the title “*Camp Mulla’s Miss Karun naked photos...adults only.*” Evidently the ‘adults only’ tag was meant to sensationalize the post and attract more people to check out the website. The writer however questioned what would motivate Miss Karun to post her nude pictures online.

Some comments to this story on this website are:

bad pikin: “A beg her address please’

wagura: “fuck with me gal”

hukz: “This is cheap publicity. She only wants to be in the spot light. Wether negative or positive image doesn’t matter cos history has it that as humans, we tend to forget an image photograph of someone with time.

melissa ‘haha this is so stupid..this girl is much fatter than karun. This last comment casts doubts on authenticity of the photo which raises the question of why one would want to photoshop and use her face and circulate the pics’.

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<sup>25</sup> <http://numberoneentertainment.tv/camp-mullas-miss-karun-naked-photo-adults-only/>

Other websites that circulated the nude pictures are:

Kenya Central<sup>26</sup> “Naked photos of Miss Karun of Camp Mulla on The Internet”, and Supremacy Sounds<sup>27</sup> with the same title.

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**Why case was selected:** Miss Karun is a young female musician who has done well for herself despite her age. She was a lead vocalist in one of the leading music groups in Kenya. She stands the chance of making it big in the entertainment Industry. However, such acts as those of circulating online her nude pictures might be detrimental to her career and confidence. Further, making her a trending topic on Twitter to poke fun of her English was meant to humiliate her. She may need to develop a thick skin and not allow haters to interfere with her career, if she has to continue being in the entertainment industry. She must not to give up her career due to much criticism.

**Type of violation:** Online harassment and circulation of nude photos.

**Technology Platform:** twitter and blogs

**Violator/abuser:** Both men and women.

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<sup>26</sup> <http://www.kenyacentral.com/headlines/56990-naked-photos-of-miss-karun-of-camp-mulla-on-the-internet-photos.html>

<sup>27</sup> <http://supremacysounds.com/showthread.php?4795-NAKED-PHOTOS-of-Miss-Karun-of-Camp-Mulla-ADULTS-ONLY>

### 2.3 Beth Mugo, Kenya's Minister of Public Health

Beth Mugo, is Kenya's Minister of Public Health, and has been a Member of Parliament since 1997. In early 2012, Mugo, 73, went public and revealed that she had been diagnosed with breast cancer. She then sought preventive treatment in the United States and has since taken a low profile.

In February 2012, rumours started doing rounds online that she had died.<sup>28</sup> A debate on the Kenyalist.com<sup>29</sup> on whether she had died or still alive went repeatedly. The Kenyanlist.com provides a platform for Kenyans in Diaspora to discuss Kenyan matters of mutual interest. The discussion on her death went on and on with some wishing her the best of health but intimating that "Lisemalo lipo na kaa halipo laja" (loosely translated means whenever there is smoke there is fire). This could be translated to mean that Mugo was going to die soon.

Another attack came on January 12, 2013 when the Jubilee coalition, one of the main political vehicles in Kenya at the time was launching its March 4, 2013 Kenya's General Election bid. Mugo happens to belong to this coalition and was therefore among those invited to make comments during the launch. As she was talking (obviously straining probably due to her illness), a young woman who we will call Jane (not her real name) made a post on Facebook:

**Jane: "Beth Mugo sounds like a sick frog"**

**Responses on this particular post were mostly sympathetic and devoid of venom:**

**"po! Aglass of h2o would sort her".**

**" May be she is sick"**

**"kuwa mpole".(literal meaning please be 'be humble')**

<sup>28</sup> <http://www.kenyanlist.com/kls-listing-show.php?id=81057>

<sup>29</sup> <http://www.kenyanlist.com/kls-listing-show.php?id=81057>

“@ Jane, you know she is sick. Tafadhali kuwa mpole. Nobody chooses to be sick”.

“chungu hate speech!”

“Hebu retract. She is actually sick”.

Jane then responded to the comments above :

Jane: “haiya, nimekuwa mpole. What happened to freedom of expression?”

“@ Jane, freedom of expression is not absolute. Read article 33 of the constitution. Your freedom stops where mine begins. In the case of Beth, i think your comment is insensitive. And thank your God that you have not been able to stare at a terminal illness to know the effects”.

“Thats harsh considering that shes sick ata shes really tried”

“She should resign and let KJ take over her position. Nkt”

“ Mmmh, Jane, my friend, politics aside, Beth has been ailing and it is not a secret. But it is not her choice to be ill. It can happen to anybody else. Lets wish her quick recovery and desist from using demeaning and unkind to her. She is someone's wife, mother, daughter, sister, auntie etc. Please retract that statement”

However, even as friends of Jane impressed upon her to be humble and possibly retract this statement, she was adamant and saw her post as an exercise in freedom of expression.

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**Why case was selected:** Beth Mugo happens to be over 70 years, an astute politician and is respected. She holds a position of responsibility in society but suffered from Cancer which has made her slow down in politics. She has kept a positive outlook on the sickness and continues to conduct herself as a healthy person. However, the hate messages continue with some calling on her to resign from her position and let KJ (this is a young comedian who is interested in the same position as Mugo) take over from her.

**Type of violation:** Online harassment.

**Technology Platform:** Facebook and a blog.

**Violator/abuser:** A young woman for the case of Facebook, and both men and women in a blog.

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## 2.4 Alice Munyua, Chair, Kenya's Internet Governance Forum Steering Committee

Alice Munyua is Kenya's Chair of the Internet Governance Forum steering committee, and sits as a vice Chair in the Internet Corporation for Assigned Names and Numbers (ICANN)<sup>30</sup> Governmental Advisory Committee (GAC). ICANN coordinates the Domain Name System (DNS), Internet Protocol (IP) addresses, space allocation, protocol identifier assignment, generic top level domain name (gTLD) and country code (ccTLD) Top-Level Domain name system management. Alice is influential both at local and international internet circles.

In June 2011, ICANN's board voted to end restrictions on the generic top-level domain names (gTLD) from 22 and allow for use of non-Latin characters (such as Cyrillic, Arabic, Chinese, etc.) in gTLDs. Consequently, ICANN commenced acceptance for applications for new gTLDs in January 2012. Two applications were submitted to ICANN for the gTLD .africa, one by UniForum South Africa and the second one by DotConnect Africa.<sup>31</sup> The African Union Commission endorsed UniForum South Africa to manage both the ICANN application process and implementation of the initiative once the TLD is delegated by ICANN<sup>32</sup>. In June 2012, ICANN released the list of the gTLD applicants, and it emerged that DotConnectAfrica had applied for the .dotafrica TLD, and not .africa. In the same period, Kenya, through the Ministry of Information and Communications and as part of the AUC initiative endorsed the Uniforum's bid to manage the .africa.<sup>33</sup> Alice Munyua was representing Kenya on the AUC project steering committee.

Her involvement in the AUC initiative brought her into a collision course with the Executive Director and Founder of DotConnectAfrica Trust (DCA) Sophia Bekele. This was not the first time Bekele had tried to intimidate Alice. In 2010, Bekele had threatened Alice with a legal action<sup>34</sup> as the convenor of the Kenya ICT Action Network (KICTANet), claiming that Ms. Munyua needed to moderate and control the discussions on the KICTANet<sup>35</sup> mailing list, and for the members to stop discussing the DCA application, which had received a lot of negative comments from the African Internet community, not just on KICTANet. She termed the postings on KICTANet as malicious and defamatory.

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<sup>30</sup> <http://www.icann.org/en/about/welcome>

<sup>31</sup> [http://en.wikipedia.org/wiki/.africa#cite\\_note-1](http://en.wikipedia.org/wiki/.africa#cite_note-1)

<sup>32</sup> [http://www.cio.co.ke/content/search/\(offset\)/70?SearchText=ICANN](http://www.cio.co.ke/content/search/(offset)/70?SearchText=ICANN)

<sup>33</sup> <http://www.youtube.com/watch?v=ukgUrAPcemg>

<sup>34</sup> <http://www.scribd.com/doc/40764489/Document-6A-BCEC>

<sup>35</sup> [www.kictanet.or.ke](http://www.kictanet.or.ke)



In the matter of gtlds, Bekele's contention was that Alice's support of the Uniform bid was against ICANN rules, since she sits in the GAC and should therefore not take sides.<sup>36</sup>

Sophia went on the offensive and decided to take her dissatisfaction to online platforms through twitter and blogs. One tweet which was also carried on a blog bore the title "*the Many faces of Alice Munyua and her apparent exit from KENIC.*"<sup>37</sup> Another one read "*Alice Munyua: Read ICANN's Guidebook First before Misrepresenting and Distorting Facts to the African Publics.*"<sup>38</sup> Sophia accused Alice of "massive cover up and fraud" and urged Alice to "resign from any official government positions and all committee posts" that she occupied at the time. Further, on July 18, 2012, Sophia wrote to ICANN<sup>39</sup> and posted the letter on her website, complaining about Alice "being deeply conflicted over dotAfrica (.AFRICA) gTLD" and that "her presence on the ICANN GAC forum to act deliberately as to pose an unwarranted risk to DCA's application".<sup>40</sup> Needless to say, the accusations were never substantiated.

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**Why case was selected:** Alice Munyua holds positions of responsibility in the Internet governance circles and commands respect. Her support to the AUC/UNIFORM, application supported by the government of Kenya, may have brought uneasiness and a feeling of competition to the other applicant. However, this is a case of one professional woman taking on another through un- orthodox means, circulating false offensive and defamatory information on list serves, posting information on twitter and on blogs, with the intention of character assassination. This strategy can be interpreted as wanting to intimidate and cause stress and mental anguish to the abused. Further, Alice was not the only person representing an African government that has endorsed the AUC application. The initiative being an AUC project enjoys support from all the 54 African governments. However, Bekele chose to hit on only Alice.

**Type of violation:** Online harassment.

**Technology Platform:** Twitter, blogs, email lists and website.

**Violator/abuser:** One professional woman against another professional woman.

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<sup>36</sup> <http://domainnewsafrica.com/the-many-faces-of-alice-munyua-and-her-apparent-exit-from-kenic/>

<sup>37</sup> <http://domainnewsafrica.com/the-many-faces-of-alice-munyua-and-her-apparent-exit-from-kenic/>

<sup>38</sup> <http://archive.constantcontact.com/fs053/1102516344150/archive/1110673257683.html>

<sup>39</sup> <http://www.dotconnectafrica.org/wp-content/uploads/2012/09/Letter-to-ICANN-CEO-on-Alice-Munyua-conflict-of-interest-18-July-2012.pdf>

<sup>40</sup> Ibid.

## 2.5 Observation

As our case studies show, online harassment of women is becoming a destructive and widespread problem and while most online crimes against women are committed by men, women are also offenders. Cybercrime against women involves circulation of intimate photographs, digital manipulation of photographs of women in sexually compromising positions, humiliating comments that reinforce gender-constructed stereotypes, harassment through cell phones and social networking sites, and cyberstalking, hate crimes and harassment through cell phones.

Online violence against women invokes women's sexuality and gender in ways that interfere with their dignity, well-being, their livelihood and identity. In some cases it may take a more indirect form of professional sabotage by discrediting women's competence in their careers as is the case with Miss Karun of Camp Mulla who young but has been a lead singer in a group that is on top of the charts in Kenya, and Alice Munyua, the chair of the Kenya Internet Governance Steering Committee. Some of the ensuing injuries are unique to women because men do not typically experience demeaning comments and sexual threats suggesting their inferiority due to their gender.

Cyber crime against women goes largely unreported due to feelings of embarrassment, shame, and conviction that no action will be taken by the police or relevant authorities. For example, in the four case studies highlighted, none of the women reported the abuses to law enforcement or took legal action on the cases highlighted. They choose not to confront and ignored their abusers. Alice Munyua felt that the work she was involved in was important and the need to focus, but also that the judicial processes take too long to conclude. Caroline Mutoko did however in mid 2013 file a complaint against an anonymous blogger known as as kahawa tungu<sup>41</sup> for linking her with the death of Kenya's Senator Mutula Kilonzo. Mutoko felt that the information provided in the blog was a case of character assassination to an affront on her career which had taken over fifteen years to build. It is not clear whether the law enforcement took.

This trend suggests the existing statistical evidence on cybercrime against women is likely to be underestimated and the scope is still quite difficult to estimate. Azy Barak study (2005) "*Sexual Harassment on the Internet*"<sup>42</sup> suggested that approximately 40

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<sup>41</sup> [www.ghafila.co.ke/news/events/item/9045-caroline-mutoko-to-sue-kahawa-tungu](http://www.ghafila.co.ke/news/events/item/9045-caroline-mutoko-to-sue-kahawa-tungu)

<sup>42</sup> <http://construct.haifa.ac.il/~azy/SexualHarassmentBarak.pdf>. (Page 77-92)

percent of women Internet users had experienced online harassment. Another study by Francesca Philips and Gabrielle Morrissey “*Cyber stalking and Cyber predators: A Threat to Safe Sexuality on the Internet*,”<sup>43</sup> estimated that one-third of women Internet users have been harassed online.

Online violence against women has a profound effect on the women targeted. It interferes with their personal and professional lives-causing considerable emotional distress in a number of cases . It also raises vulnerability to offline harassment in some instances branding victims as incompetent and inferior sexual objects as demonstrated by the fun made on Miss Karun about her poor English, and her ‘drinking’ as a result of becoming an adult. This can result in women getting discouraged from engaging in online activities including learning and social connections.

While online violence impacts the most on the targeted individuals, “*it also harms society by entrenching male hierarchy online*” (Phillips and Morrissey, 2004).<sup>44</sup> While the women in our case studies did not abandon use of online spaces, several women would find it difficult to continue maintaining social networks, blogs or websites after such experiences, as demonstrated by comments made against Caroline Mutoko of Kiss FM for example “*She is no longer average or idle...she is an angry, hormonal wreck and has lost all emotional there*”

The 2010 KICTANet’s study found that some ISP’s were “*advising Internet users to stay away from social networks as a possible social strategy against cyber crime*”. This practice remains the same and ISPs need to be discouraged from this approach as women who maintain an active online presence including on social networks should not be required to forgo it to escape harassment and violence. And disengaging from online communities does come at a cost to women, with women missing opportunities to advance their professional reputations through networking effectively online, participating and contributing to policy related discussions, blogging among others. Some may even lose income upon closing their blogs and websites. But unless women are willing to forgo the Internet’s economic, social, and political opportunities, they cannot walk away from online environment without paying a high price. This is particularly true for younger individuals whose lives are inextricably tied to the net, and for those who depend on it for their work, for example Ms. Mutoko, who uses her face book page to engage with her fans and the public. According to Jack Balkin’s

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<sup>43</sup> Convergence: The International Journal of Research into New Media Technologies March 2004 10: 66-79. (2004) <http://con.sagepub.com/content/10/1/66.full.pdf+html>

<sup>44</sup> *Cyber stalking and Cyber predators: A Threat to Safe Sexuality on the Internet*. Convergence: The International Journal of Research into New Media Technologies March 2004 10: 66-79. (2004) <http://con.sagepub.com/content/10/1/66.full.pdf+html>

“captive audience theory”<sup>45</sup> “employees should not be forced to leave their jobs to escape otherwise unavoidable harassment and coercion” and while women working online are not physically confronted by cyber criminals they have no means to avoid online attacks and harassment against them unless they walk away from networked environment by shutting down blogs, websites, changing passwords, etc.

Another approach is that rather than playing victim, women should counter online harassment with retaliation. However, a study by Patricia Sanchez Abril (*(My)Space of One's Own: On Privacy and Online Social Networks*)<sup>46</sup> explains that most often social-networking sites refuse to take down material that is purportedly defamatory or embarrassing. Therefore, requesting intermediaries to take down harassing defamatory postings does not always work and in Kenya it takes a long a tedious process in the absence of an intermediary liability policy and regulation. Further, even if the ISP complied and took down offending material, they would probably have spread to other sites hosted by other service providers.

In addition, Balkin (1999) in his *Free Speech and Hostile Environments*,<sup>47</sup> notes that even if women could fight back, they are unlikely to do so. Some individuals may feel too intimidated to engage in retaliation as it is not always effective in deterring online harassment and might instead be counterproductive as seen in Caroline Mutoko's case, where more Facebook pages including the ‘RIP Caroline Mutoko’ were created after she responded and asked her followers to address Safaricom directly instead of using her facebook wall. There were more insults just as a result of her response. And due to lack of a strong supportive online community to support their retaliation efforts, some women may conclude that retaliation comes at too high a price and would therefore be reluctant to respond.

The case studies of Caroline Mutoko and Miss Karun of Camp Mulla showing that traffic to face book pages and blogs increased when women are attacked is supported by Scoble (2007)<sup>48</sup> who points out “there's just a culture of acceptance of making sexually crude degrading jokes online...“it is a culture that allows and even encourages sexual attacks on women.”

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<sup>45</sup> Bruce, Barry. 2007. *The Erosion of Free Expression in the American Workplace*. Page 163

[https://books.google.co.ke/books?id=8gbho11EBGUC&pg=PA163&lpg=PA163&dq=Jack+Balkin%E2%80%99s+%E2%80%9C%E2%80%99captive+audience+theory&source=bl&ots=r1ukh0ot5h&sig=dxnRx9JEaFQbEzp2lftGJKDV\\_so&hl=en&sa=X&redir\\_esc=y#v=onepage&q=Jack%20Balkin%E2%80%99s%20%E2%80%9C%E2%80%99captive%20audience%20theory&f=false](https://books.google.co.ke/books?id=8gbho11EBGUC&pg=PA163&lpg=PA163&dq=Jack+Balkin%E2%80%99s+%E2%80%9C%E2%80%99captive+audience+theory&source=bl&ots=r1ukh0ot5h&sig=dxnRx9JEaFQbEzp2lftGJKDV_so&hl=en&sa=X&redir_esc=y#v=onepage&q=Jack%20Balkin%E2%80%99s%20%E2%80%9C%E2%80%99captive%20audience%20theory&f=false)

<sup>46</sup>Patricia Sanchez AbrilA. 2007. *(My)Space of One's Own: On Privacy and Online Social Networks* 6 Nw. J. Tech. & Intell. Prop. (73, 82) <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1058&context=njtip>

<sup>47</sup> <http://www.yale.edu/lawweb/jbalkin/articles/frsphoen.htm>

<sup>48</sup> Robert Scoble to Scobleizer, Taking the Week Off, (Mar. 26, 2007). <http://scobleizer.com/taking-the-week-off/>

In the case studies cited, several remedies could be available if the cases were pursued under the criminal justice system or the courts. Under criminal law, the offenders if reported, could be charged with various offences. These include hate speech, under section 13 of the National Cohesion and Integration Act; libel under section 194 of the Penal Code; Conspiracy to injure the reputation of another under section 395 of the Penal Code; Improper use of system under section 29 of the Kenya Information and Communication Act; and infringement of copyright under section 38 of the Copyright Act. In addition, there are also causes of action under civil law. These include an action under tort, for defamation to allow recovery of damages for among others emotional distress, pain and suffering. In addition, one could sue for breach of the constitutional right to privacy, under Article 31 of the Constitution.

No matter how serious the impact of cyber crime has on women, most of society, including the private and public sectors is not taking it seriously. For example, user agreements with major Internet Service Providers (ISPs) fail to address this issue as part of their terms and conditions. In addition, most online media platforms in their coverage seem to trivialise it sometimes branding the incidences as harmless targeted at overly sensitive individuals. This trivialisation of harms is reminiscent of the many years that domestic violence was downplayed, in Kenya. It took the Kenyan women's movement over a decade to get the sexual harassment bill enacted and even then, the ensuing debate of the bill in Parliament trivialised the issue despite the pervasiveness of the practice. It is therefore not surprising that online violence against women is not yet taken seriously. With access to Internet increasing at an exponential rate, it is important to address cyber crime against women at this time before the practice becomes entrenched.



. The new law (Constitution of Kenya, 2010) repealed Kenya's post-independence Constitution and commenced the transformation into the new republic complete with progressive provisions to promote human rights, democracy and the rule of law.

## 3.0 Legal Framework

This section focuses on legislation relevant to sexual offences in Kenya, their relation to cybercrime and technology based Violence against women (VAW), as well as the prevention mechanisms entrenched in them such as the crimes and penalties created, institutions established, rights conferred on citizens and responsibilities attaching to the relevant duty bearers.

### 3.1 Constitution of Kenya, 2010

The promulgation of the Constitution of Kenya in August 2010 marked the biggest shift and most significant development in Kenya's legal history since independence. The new law repealed Kenya's post-independence Constitution and commenced the transformation into the new republic complete with progressive provisions to promote human rights, democracy and the rule of law.

The "Bill of rights",<sup>49</sup> provides the fundamental freedoms to be enjoyed by all persons, including women. They include the rights to: life; equality and equal protection and benefit of the law; human dignity; freedom and security of the

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<sup>49</sup> Chapter 4 of the Constitution of Kenya, 2010

person;<sup>50</sup> not to be held in slavery or servitude or to perform forced labour; privacy;<sup>51</sup> access to information;<sup>52</sup> property; access justice; and to a fair hearing.

The Constitution also establishes Institutions and constitutional commissions<sup>53</sup> that have a key role to play in safeguarding rights and fundamental freedoms including the prevention of violence against women. These include Institutions such as the National Intelligence Service; the National Police Service; National Security Council; the Attorney-General's Office;<sup>54</sup> and the Office of the Director of Public Prosecution;<sup>55</sup> Kenya National Human Rights and Equality Commission;<sup>56</sup> National Police Service Commission; and the Judicial Service Commission.

Since the adoption of the Constitution, there has been marked responsiveness by state agencies in the application and enforcement of the law, including respect and protection of fundamental human rights and freedoms.

### **3.2 Sexual Offences Act, No. 3 of 2006**

This law revised and consolidated Kenya's law regarding sexual and gender based violence while expanding the scope of previous related offences. The Act however largely focuses on real world sexual offences and provides extensively for offences such as: rape,<sup>57</sup> attempted rape,<sup>58</sup> sexual assault,<sup>59</sup> compelled or induced acts,<sup>60</sup> defilement,<sup>61</sup> attempted defilement,<sup>62</sup> gang rape,<sup>63</sup> indecent acts with children or adults,<sup>64</sup> child trafficking,<sup>65</sup> trafficking for sexual exploitation, among others. Unfortunately, and despite being the main law on sexual offences, it doesn't cover online sexual offences.

### **3.3 Penal Code, Cap 63 (Rev. 2009)**

This Act provides the general framework for criminal law. It creates various offences relevant to cases of violence against women mostly with regard to real world offences. Section 181 addresses pornography by prohibiting the trafficking of obscene

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<sup>50</sup> Includes the right not to be subjected to any form of violence, torture or treatment in a cruel, inhuman or degrading manner

<sup>51</sup> including the right not to have information relating to their family or private affairs unnecessarily required or revealed, or the privacy of their communication infringed

<sup>52</sup> Especially for the exercise or protection of any right or fundamental freedom

<sup>53</sup> Article 248

<sup>54</sup> Article 156

<sup>55</sup> Article 157

<sup>56</sup> Article 59

<sup>57</sup> Section 3, the penalty is imprisonment for a term of not less than ten years but which may be enhanced to imprisonment for life.

<sup>58</sup> Per Section 4, the penalty is a minimum of five years capable of enhancement to life imprisonment.

<sup>59</sup> Per Section 5, the penalty is a minimum of ten years capable of enhancement to life imprisonment.

<sup>60</sup> Per Section 6, the penalty is an imprisonment term of no less than five years.

<sup>61</sup> Per Section 8, the penalty is imprisonment for life; where the child is aged between twelve and fifteen years, the penalty is imprisonment for a term of a minimum of twenty years; and where the child is aged between sixteen and eighteen years, the penalty is imprisonment for a term of a minimum of fifteen years.

<sup>62</sup> Section 9

<sup>63</sup> Per Section 10, the penalty is imprisonment for a term of a minimum of fifteen years capable of enhancement to life imprisonment.

<sup>64</sup> Section 11

<sup>65</sup> Section 13



publications whether they are pictures, films; or the exhibition of any indecent show or performance tending to corrupt morals including the participation of any person therein. Defamation is also addressed by the penal code as well as the offence of libel. Its provisions can be instrumental in instances where the publication is done online such as has been highlighted in the case studies.

#### **3.4 Children Act, No. 8 of 2001**

This Act provides for offences against children and more so, the girl-child such as child abuse, child prostitution, child sex tourism and child pornography.

#### **3.5 Kenya Information and Communication Act, Cap 411A (Rev. 2012)**

This Act provides the framework for the regulation of the Information Communication and Technology sector. The offences apart from section 84D on pornography, do not explicitly deal with conduct which would amount to online violence against women. However, the cybercrimes provided in the statute deal with activities whose commission could result in, or facilitate the commission of offences against women.

Some of the provisions include, section 29 which makes it an offence to send a message that is grossly offensive or of an indecent, obscene or menacing character; or to send a message that one knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person. In section 30, the Act makes it an offence for a person engaged in the running of a licensed telecommunication system, intentionally modify or interfere with the contents of a message. Intercepting and disclosing the contents of a message.

Section 83G recognises electronic records, which allows for the provision of information in electronic form and section 83H allows the retention of records in electronic form. Section 83I allows the presentation of an electronic record as proof of an original document where the same was required to be kept in its original form. The Act also deals with hacking by prohibiting the unauthorized access to computer data and prohibits interception and modification of any function or data within a computer system. Section 83Z prohibits the disclosure by any person of any password, access code or other means of gaining access to any programme or data held in any computer system for any wrongful gain, unlawful purpose or with knowledge that the disclosure is likely to cause prejudice to any person. Section 84D prohibits pornography in audio or visual form.

These provisions are particularly useful when investigating cybercrimes for example cyber harassment, cyber stalking et cetera, highlighted in the case studies that are perpetrated through the transmission of information either by email, SMS or other

electronic format, or the illegal access of private information contained in a computer systems. Section 29 has been used severally in courts for prosecution of hate text messages.

### **3.6 National Cohesion and Integration Act, No. 12 of 2008**

This Act seeks to encourage national cohesion and integration by outlawing discrimination on ethnic grounds while also providing for the powers and functions of the National Cohesion and Integration Commission. Section 13 of the act prohibits the use of hate speech and creates offences therein.<sup>66</sup> Further, section 62 makes it an offence to utter words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race. ICTs such as SMS, email and websites such as blogs can be used to propagate hate speech, ethnic discrimination and verbal abuse. The provisions of this Act can be used to protect the women highlighted in the case studies to punish the offenders.

### **3.7 Evidence Act, Cap 80**

This Act provides the procedural legislation that governs the production and admissibility of evidence in Kenya. It also provides the rules by which officers of the court namely prosecutors, judges, and defence counsels are required to observe with respect to the taking of confessions,<sup>67</sup> handling of witnesses<sup>68</sup> including expert witnesses,<sup>69</sup> presentation of evidence whether oral or documentary, and so on.

In any criminal investigation, the rules of evidence must be observed. In Kenya, the standard of proof in criminal cases is that beyond reasonable doubt and this burden must be discharged by the prosecution.<sup>70</sup> In cases involving cybercrime, and more so violence against women, achieving this burden may sometimes be difficult given the nature of evidence that is required to mount a successful prosecution. Hence, where for example, victims of rape take showers, or stalkers hide behind proxies it may be difficult to obtain sufficient evidence to discharge the burden of proof.

A notable amendment to the Act was the introduction of Part VII of the Act allowing the admissibility of electronic records, which were previously, not admissible. As

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<sup>66</sup> Defined as the use of threatening, abusive or insulting words or behaviour or display of written material; the publishing or distribution of written material; the presentation or directing the performance of a play; the distribution, showing or playing of recordings of visual images; or the provision, production or direction of a programme which is, or involves the use of threatening, abusive or insulting words or behaviour intended to, or likely to stir up ethnic hatred.

<sup>67</sup>Part III

<sup>68</sup>Part IV; Chapter V

<sup>69</sup>Section 48

<sup>70</sup>Section 111

such, their admissibility removes barriers to the prosecution of cybercrimes. Section 106I further provides for the presumption as to electronic messages such that messages forwarded by the originator to an addressee via an electronic mail server are deemed to correspond to the message as fed into the originators computer for transmission. This provision is critical in the investigation of electronic communication.

### **3.8 Criminal Procedure Code, Cap 75 (Rev. 2009)**

This Act provides the general framework for the enforcement of criminal law in Kenya. It provides the procedural guidelines for the conduct of investigations, arrest, prosecution, trial and sentencing of accused persons.

### **3.9 National Gender and Equality Commission Act, No.15 of 2011**

This Act establishes the National Gender and Equality Commission. The functions<sup>71</sup> include among others: the promotion of gender equality and freedom from discrimination; monitoring, facilitating and advising on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions; and investigation of matters regarding any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned.

In executing its mandate, the commission is empowered under Section 26 to issue summons; take statements; adjudicate matters; obtain any relevant information necessary for the discharge of its functions; conduct interviews; and enter into any land, establishment or premises by order of the court. However, it is worth mentioning that the commission's power to investigate does not extend to among others matters before any court or tribunal or those relating to criminal offences.

NGEC therefore is an important port of call for the redress of any matter relating to gender discrimination or the violation of any rights that accrue to women.

### **3.10 Kenya National Commission on Human Rights Act, No. 14 of 2011**

This Act establishes the Kenya National Commission on Human Rights. The functions of the commission include inter alia: the promotion of human rights and development of a culture of human rights in the republic; the promotion of the protection and observance of human rights in public and private institutions; the monitoring,

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<sup>71</sup> Section 8

investigation and reporting on the observance of human rights in all spheres of life in the republic; the receipt and investigation of complaints relating to human rights abuse<sup>72</sup> and to take steps to secure appropriate redress; and, on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs.

Like NGEK above, KNCHR is important institution in the protection and promotion of human rights.

### **3.11 Mutual Legal Assistance Act, No. 36 of 2011**

The Act provides the framework for mutual legal assistance to be given or received by Kenya in investigations, prosecutions and judicial proceedings. The Act also designates the Office of the Attorney-General as the Central Authority to perform the functions specified in the Act, including the requesting of legal assistance by Kenya, which may be initiated by any law enforcement agency or judicial authority in Kenya.

Legal assistance offered may include the service of documents;<sup>73</sup> the provision or production of records;<sup>74</sup> the examination of witnesses;<sup>75</sup> the facilitation of the attendance of a witness before a court exercising jurisdiction in a requesting state;<sup>76</sup> the temporary transfer of a person in custody in Kenya to appear as a witness before a court exercising jurisdiction in a requesting state;<sup>77</sup> the search and seizure of property in Kenya;<sup>78</sup> the lending of exhibits;<sup>79</sup> the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime;<sup>80</sup> the interception of telecommunication;<sup>81</sup> the provision of stored communications;<sup>82</sup> the preservation of communication data;<sup>83</sup> and for the deployment of covert electronic surveillance.<sup>84</sup> The Act also states in Section 51 that a request for legal assistance shall not be construed as authorising the extradition, arrest, or detention with a view to extradition of any person.

Given the trans-boundary nature of cybercrime, this Act facilitates the provision of crucial information between law enforcement bodies in other countries and their Kenyan counterparts.

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<sup>72</sup> Except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission

<sup>73</sup>Section 12

<sup>74</sup>Section 13

<sup>75</sup>Section 14

<sup>76</sup>Section 15

<sup>77</sup>Section 16; Per Section 17, the exception is where the person requested is a child

<sup>78</sup>Section 18

<sup>79</sup>Section 19

<sup>80</sup>Section 23

<sup>81</sup>Section 27

<sup>82</sup>Section 28

<sup>83</sup>Section 31

<sup>84</sup>Section 32

### **3.12 Prevention of Organised Crimes Act, No. 6 of 2010**

This Act seeks to prevent and punish organised crime while also providing for the recovery of proceeds of organised criminal group activities. Today, activities such as prostitution including child prostitution, pornography whether online or otherwise, are conducted at the behest of criminal gangs or groups. The act would be relevant if the case studies revealed the involvement of criminal gangs.

### **3.13 National Police Service Act, No 11A of 2011**

This Act gives effect to the provisions of Articles 238, 239, 243, 247, 244 of the Constitution and provides for the functions and powers of the National Police Service. It also repeals the Police Act (Cap 84) and the Administration Police Act (Cap 85).

It also establishes the Directorate of Criminal Investigations Department, and specifies its functions to include among others the: collection and provision of criminal intelligence; investigation on serious crimes including human trafficking, economic crimes, piracy, organized crime, and cybercrime among others.

### **3.14 Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009**

This Act seeks to combat money-laundering and provides for among others, the identification, tracing, freezing, seizure and confiscation of the proceeds of crime. As cybercrimes spread, activities such as prostitution are being run by highly organised criminal groups who launder money from such activities in legitimate business.

Section 3 defines the ingredients of the offence of money laundering, while section 4 makes it an offence to acquire, use or possess any property which amounts to proceeds of crime. This law can be invoked if it was found that there were incidence of laundering.

### **3.15 Data Protection Bill, 2012**

This bill seeks to regulate among others, the collection, processing, storing, use and disclosure of information relating to individuals that is processed through automated or manual means. Clause 3 of the bill outlines some of the key principles for data protection, which include the right to secrecy of personal data; the right to obtain information on the person processing data concerning him/her, the place of origin of the data, the use of the data collected, any other person whom the data is

transmitted and the right to rectification of incorrect data, and the right to erasure of illegally processed data.

The bill places a duty on data controllers to ensure that information collected is for lawful purposes connected with the functions of the entity and is necessary for the purpose it is collected.<sup>85</sup> In addition, entities collecting personal information will be required to ensure that the individual concerned is aware of the fact and the purpose of the collection; the intended recipients of the information; the name and address of the entity collecting the information; the law authorising the collection, if any and whether it is voluntary or otherwise; the consequences of non-provision of required information and the rights of access to, and correction of, personal information.<sup>86</sup>

The bill in clause 7 also criminalises the unlawful collection of information. Further, clause 8 thereof places responsibility on entities holding personal information to ensure that the information is protected against loss; unlawful access, use, modification or disclosure or other misuse. Entities are obligated to use the information only for the purpose it was intended<sup>87</sup> and not to arbitrarily disclose it unless in instances where such disclosure is permitted or authorised by law.

This bill if adopted by Parliament, can prove useful in safeguarding the privacy of women online and enhancing the security of their information online.

### **3.16 International Convention and Treaties**

Kenya has ratified several International and Regional Treaties and Conventions that have a bearing on Human Rights, including sexual and online offences. However, before 2010, many were yet to be fully operationalized, as some required the enactment of supporting legislation. However, by operation of Article 2 of the Constitution Kenya was converted into a monist state. The effect of this was that from 2010, the general rules of international law and all treaties and conventions ratified by Kenya would automatically become part of the law of Kenya. The relevant treaties and conventions already ratified that can be relied on and have significant effect on the protection of the rights of women online are highlighted below.

#### **3.16.1 Universal Declaration of Human Rights (UDHR)**

This declaration was adopted by the United Nations General Assembly in December 1948 and acceded to by Kenya in July 1990.<sup>88</sup> It also forms part of the International Bill of Human Rights. The UDHR while not legally binding is a foundation for several national and international law and as such is considered to form part of customary

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<sup>85</sup>Clause 5

<sup>86</sup>Clause 6

<sup>87</sup>Clause 13

<sup>88</sup><http://www.kenyalaw.org/treaties/treaties/164/Universal-Declaration-of-Human-Rights>

international law. The Bill of Rights in the Kenyan Constitution largely borrows from this Declaration.

Article 2 entitles everyone to all the rights and freedoms set out in the Declaration, without distinction of any kind. The notable rights and freedoms espoused include: right to life, right to liberty and security of the person;<sup>89</sup> freedom from slavery;<sup>90</sup> freedom from torture, inhuman or degrading treatment or punishment;<sup>91</sup> right to equality before the law and equal protection of the law;<sup>92</sup> right to fair and public hearing;<sup>93</sup> right to privacy;<sup>94</sup> and so on.

### **3.16.2 International Covenant on Civil and Political Rights (ICCPR)**

This treaty was adopted by the United Nations on 16 December 1966 and was later ratified by Kenya on 1 May 1972.<sup>95</sup> It commits state parties to the treaty to respect the civil and political rights of individuals.

Article 2 of the treaty commits state parties to respect rights recognized in the treaty. These include among others: the right to life;<sup>96</sup> the freedom from torture or to cruel, inhuman or degrading treatment or punishment;<sup>97</sup> freedom from slavery;<sup>98</sup> right to liberty and security of the person;<sup>99</sup> right to equality before the law<sup>100</sup> and equal protection of the law without any discrimination;<sup>101</sup> freedom from arbitrary or unlawful interference of privacy, family, home or correspondence, and to unlawful attacks on a person's honour and reputation.<sup>102</sup>

### **3.16.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)**

This treaty of the United Nations came into force in 3 January 1976 and was signed and ratified by Kenya on 1 May 1972.<sup>103</sup> It commits state parties to grant economic, social and cultural rights to individuals.

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<sup>89</sup> Article 3

<sup>90</sup> Article 4

<sup>91</sup> Article 5

<sup>92</sup> Article 7

<sup>93</sup> Article 10

<sup>94</sup> Article 12

<sup>95</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>96</sup> Article 6

<sup>97</sup> Article 7

<sup>98</sup> Article 8

<sup>99</sup> Article 9

<sup>100</sup> Article 14

<sup>101</sup> Article 26

<sup>102</sup> Article 17

<sup>103</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

State parties under Article 3 commit to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant. These include *inter alia* the right to: work;<sup>104</sup> right to the enjoyment of just and favourable conditions of work;<sup>105</sup> to the enjoyment of the highest attainable standard of physical and mental health;<sup>106</sup> and so on. Also parties are required<sup>107</sup> to protect children and young persons from economic and social exploitation by among others, punishment of harmful employment and the employment of persons below the permitted age.

### 3.16.4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

This convention<sup>108</sup> was adopted by the United Nations General Assembly on 18 December 1979 and was acceded to by Kenya in 9 March 1984.<sup>109</sup>

Article 1 of the convention defines the term 'discrimination against women'<sup>110</sup> while Article 2 requires state parties to condemn discrimination against women in all its forms. Also, that they agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to undertake measures to among others: embody principles of equality; protect the rights of women; prohibit discrimination against women; and abolish laws, customs and practices which constitute discrimination against women. In addition, state parties are required to take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.<sup>111</sup>

### 3.16.5 The Declaration on the Elimination of Violence Against Women (DEVAW)

This declaration was adopted by the United Nations General Assembly in its resolution 48/104 of 20th December 1993.<sup>112</sup> The General Assembly recognised the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings while noting that the rights were already enshrined in existing international instruments e.g. UDHR, ICCPR, ICESCR and CEDAW.

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<sup>104</sup> Article 6

<sup>105</sup> Article 7

<sup>106</sup> Article 12

<sup>107</sup> Article 10

<sup>108</sup> [http://en.wikisource.org/wiki/Convention\\_on\\_the\\_Elimination\\_of\\_All\\_Forms\\_of\\_Discrimination\\_Against\\_Women](http://en.wikisource.org/wiki/Convention_on_the_Elimination_of_All_Forms_of_Discrimination_Against_Women)

<sup>109</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>110</sup> Means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

<sup>111</sup> Article 6

<sup>112</sup> See: <http://www.un.org/documents/ga/res/48/a48r104.htm>



It defines "violence against women"<sup>113</sup> and provides that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This includes the rights to: life; equality; liberty and security of person; equal protection under the law; be free from all forms of discrimination; the highest standard attainable of physical and mental health; just and favourable conditions of work; and not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. In Article 4, states are required to among others, condemn violence against women and to pursue all appropriate means to eliminate violence against women.

### **3.16.6 African Charter on Human and Peoples' Rights (Banjul Charter)**

This Charter of the Organisation of African Unity (Now African Union) came into force in October 1986 and was ratified by Kenya on 23 January 1992.<sup>114</sup> It seeks to promote and protect human rights and freedoms in the African continent. A protocol to the Charter adopted in 1998 establishes the African Court on Human and Peoples' Rights.

Member states commit to recognise and guarantee without discrimination, the rights, duties and freedoms enshrined in the charter and undertake to adopt legislative and other measures to give effect to them.<sup>115</sup>

These rights, duties and freedoms include among others: the right to life;<sup>116</sup> the duty of the state to prohibit all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;<sup>117</sup> right to fair trial;<sup>118</sup> right to work;<sup>119</sup> protection of the family and vulnerable groups;<sup>120</sup> right to equality and equal rights;<sup>121</sup> right to economic, cultural and social development;<sup>122</sup> and the duty of the state to promote human rights<sup>123</sup> and guarantee the independence of courts.<sup>124</sup>

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<sup>113</sup> Means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

<sup>114</sup> <http://www.kenyalaw.org/treaties/treaties/11/African-Banjul-Charter-on-Human-and-Peoples-Rights>

<sup>115</sup> Article 1

<sup>116</sup> Article 4

<sup>117</sup> Article 5

<sup>118</sup> Article 7

<sup>119</sup> Article 15

<sup>120</sup> Article 18

<sup>121</sup> Article 19

<sup>122</sup> Article 22

<sup>123</sup> Article 25

<sup>124</sup> Article 26

### **3.16.7 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.**

This Protocol was adopted in July 2003, entered into force in November 2005 and was signed by Kenya in December 2003. It expounds on the rights enshrined in the African Charter on Human and Peoples' Rights, with respect to the rights of women in Africa.

Under Article 2, state parties are required to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. Further, the protocol lists additional rights of women that need protection. These include: the right to dignity and the recognition and protection of human and legal rights of women;<sup>125</sup> the right to life, integrity and security of the person, including the prohibition of all forms of exploitation, cruel, inhuman or degrading punishment and treatment;<sup>126</sup> the right to equal protection and benefit of the law;<sup>127</sup> the right of women to participate in the political and decision-making process;<sup>128</sup> and the right to education and training.<sup>129</sup>

The protocol also calls on state parties to among others: prohibit and condemn all forms of harmful practices which negatively affect the human rights of women; eliminate stereotypes that perpetuate discrimination, protect women from all forms of abuse including sexual harassment; guarantee women the freedom to choose their occupation, and protect them from exploitation; ensure effective access by women to judicial and legal services; sensitise everyone on the rights of women; equip law enforcement organs to enforce women rights and to facilitate representation of women in judiciary and law enforcement organs.

### **3.16.8 Vienna Declaration and Programme of Action (VDPA)**

This human rights declaration was adopted at the World Conference on Human Rights in June 1993 in Vienna, Austria and endorsed by the United Nations General Assembly Resolution 48/121.<sup>130</sup>

The Declaration in its preamble highlights the fact that the promotion and protection of human rights is a matter of priority for the international community, while underscoring that all human rights are universal, indivisible, inter-dependent and interrelated. More importantly, paragraph 18 states that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.

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<sup>125</sup> Article 3

<sup>126</sup> Article 4

<sup>127</sup> Article 8

<sup>128</sup> Article 9

<sup>129</sup> Article 12

<sup>130</sup> [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/a.conf.157.23.en)

It goes on to state that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. Lastly, it urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

### **3.16.9 Beijing Platform for Action of 1995 (BPfA)**

This was the outcome document of the Fourth World Conference on Women held in Beijing, China in September 1995.<sup>131</sup> It called on member states to among others: protect and promote the human rights of women and girls as an integral part of human rights; eradicate the persistent and increasing burden of poverty on women; remove the obstacles to women's full participation in public life and decision-making at all levels including the family; and eliminate all forms of violence against women.

It also called on governments<sup>132</sup> to inter alia: condemn violence against women; refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, punish acts of violence against women; enact and reinforce sanctions in domestic legislation to punish and redress the wrongs done to women and girls subjected to violence; periodically review legislation to ensure its effectiveness in eliminating violence against women; take measures to ensure access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators; and to ratify and implement international human rights norms and instruments as they relate to violence against women.

### **3.16.10 Victoria Falls Declaration Of Principles For The Promotion Of The Human Rights Of Women, 1994**

This Declaration was adopted at the Africa Regional Colloquium on the Domestic Application of International Legal Instruments that Promote Gender Equality in August 1994 in Victoria Falls, Zimbabwe.<sup>133</sup>

The declaration called on judicial officers in Commonwealth jurisdictions to be guided by the Convention on the Elimination of All Forms of Discrimination Against Women when interpreting and applying the provisions of the national constitutions and laws, including the common law and customary law, when making decisions. Further, that

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<sup>131</sup> See: <http://www.un.org/womenwatch/daw/beijing/platform/>

<sup>132</sup> Para 124

<sup>133</sup> <http://www.kenyalaw.org/treaties/treaties/30/Victoria-Falls-Declaration-of-Principles-for-the-Promotion>

all Commonwealth governments ensure that domestic laws are enacted or adjusted to conform to the international and regional human rights standards.

In addition, it called for: the translation of international human rights instruments into local languages; government sponsored human rights awareness campaigns; and, the development of public interest litigation and other means of access to justice to litigants, especially women, who wish to complain of violations of their rights before courts for redress.

### 3.16.11 Convention on the Rights of the Child (CRC)

This convention of the United Nations came into force on September 1990 and was ratified by Kenya in 30 July 1990.<sup>134</sup> It sets out the civil, political, economic, social, health and cultural rights of children and requires state parties to take appropriate measures to ensure their implementation.

The convention defines a child as a human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Further, it requires state parties to respect and ensure without discrimination the rights of each child within their jurisdiction. Also, that in all actions<sup>135</sup> concerning children, the best interests of the child shall be the primary consideration.<sup>136</sup>

Key among the rights provided under the convention include among others: the right to life;<sup>137</sup> right to privacy;<sup>138</sup> right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse;<sup>139</sup> right to protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;<sup>140</sup> protection from all forms of sexual exploitation and sexual abuse;<sup>141</sup> and protection from all other forms of exploitation prejudicial to any aspects of the child's welfare.<sup>142</sup>

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<sup>134</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

<sup>135</sup> whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies

<sup>136</sup> Article 3

<sup>137</sup> Article 6

<sup>138</sup> Article 16

<sup>139</sup> Article 19

<sup>140</sup> Article 32

<sup>141</sup> Article 34; Include inducement or coercion to engage in unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.

<sup>142</sup> Article 36

### 3.16.12 African Charter on the Rights and Welfare of the Child

This Charter of the African Union was adopted in 1990 and ratified by Kenya in July 2000.<sup>143</sup> The Charter establishes an 11 member Committee on the Rights and Welfare of the Child whose primary function is to promote and protect the rights and welfare of the child.

Article 1 of the Charter requires member states to recognise the rights, freedoms and duties enshrined in the Charter and to take necessary steps to adopt such legislative or other measures necessary to give effect to the provisions of the Charter. Further, Article 3 entitles children to the enjoyment of the rights and freedoms recognised and guaranteed in the charter without discrimination.

Some of the relevant rights and freedoms recognised and guaranteed in the Charter include: the right to privacy,<sup>144</sup> right to leisure, recreation and cultural activities;<sup>145</sup> protection from child labour;<sup>146</sup> protection against child abuse and torture;<sup>147</sup> protection against harmful social and cultural practices;<sup>148</sup> protection from sexual exploitation;<sup>149</sup> and the protection of children from sale, trafficking and abduction.<sup>150</sup>

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<sup>143</sup> <http://www.kenyalaw.org/treaties/treaties/14/African-Charter-on-the-Rights-and-Welfare-of-the-Child>

<sup>144</sup> Article 10

<sup>145</sup> Article 12

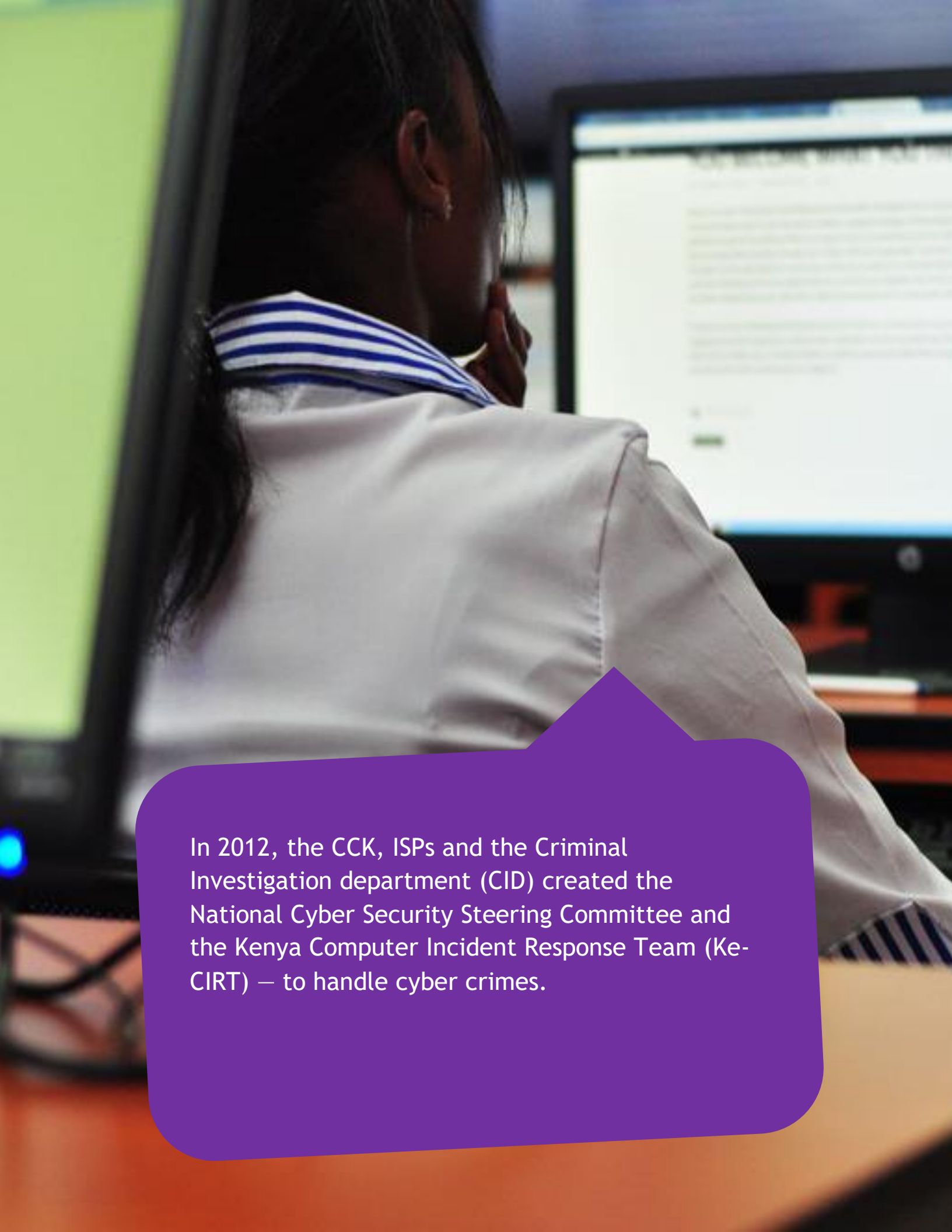
<sup>146</sup> Article 15

<sup>147</sup> Article 16

<sup>148</sup> Article 21

<sup>149</sup> Article 27

<sup>150</sup> Article 29



In 2012, the CCK, ISPs and the Criminal Investigation department (CID) created the National Cyber Security Steering Committee and the Kenya Computer Incident Response Team (Ke-CIRT) – to handle cyber crimes.

## 4.0 Users Policies

The 1990's witnessed the introduction of the Internet and Internet Service Providers (ISPs) in Kenya. Initially offering dial up and content services, most were confined to Nairobi but as the number of Internet users increased so did ISPs and their spread to other parts of the country.

Kenyan ISPs were members of the ISP Task Force in the East African Internet Association (EAIA) but in 1999 they broke away and created the Telecommunications Service Providers Association of Kenya (TESPOK).<sup>151</sup> TESPOK members then set up the Kenyan Internet Exchange Point (KIXP) in 2000, in an effort to improve local Internet connectivity.

A study *Kenya cyber security report 2012 getting back to security basics edition one*<sup>152</sup> noted that ISPs in Kenya have “poor reputation scores” and are not able to address the level of cyber crime witnessed over the past couple of years. The study notes that “*poorly trained staff, misconfigured systems, lack of company security strategies, unpatched and vulnerable systems*” contribute to the high level of cyber crime activities that have been witnessed over the past several years.

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<sup>151</sup> <http://www.tespok.co.ke/>

<sup>152</sup> <http://www.serianu.com/downloads/KenyaCyberSecurityReport2012.pdf>

KICTANet's study <sup>153</sup> conducted in 2010 noted that ISPs *“offered tools that filter or block communications from specific individuals once victims of online crime, including harassment or cyber stalking provided evidence”*. ISPs encouraged users to collect evidence and document online harassment and present it as a form of complaint. Although ISPs began to receive more complaints about harassing and threatening behaviour on-line, they had not paid attention to these types of complaints. TESPOK had then argued that attempts to impose cyber stalking reporting or response requirements would be difficult and costly for providers to collect and submit such data.

ISPs therefore focus on employing antivirus applications, software and hardware, firewalls, anti-spam applications, data recovery and staff training in an effort to control cyber crime. However, these efforts have failed to focus on gender related cyber crime, including stalking, pornography and penetration testing.

The lack of policy and regulatory framework makes it difficult for ISPs to invest resources and skills to addressing cyber crime until in recent times, when the Communications Commission of Kenya initiated a collaborative cyber crime initiative.

In 2012, the CCK, ISPs and the Criminal Investigation department (CID) created the National Cyber Security Steering Committee and the Kenya Computer Incident Response Team (Ke-CIRT) – to handle cyber crimes. According to the CCK, this centralised desk is meant to be the *“first point of contact and could help reduce the lengthy process of getting a court order to pull down, for instance, derogatory photos of individuals posted online”*. In the same year the CCK also announced its intention to install an Internet traffic monitoring equipment the *“Network Early Warning System (NEWS)”* to monitor traffic on Kenyan networks and respond to possible cyber threats. *“This system is meant to be installed on each ISP network with the sensors relaying information to a central node for collection and analysis of cyber threats”*.

This proposal met with stiff opposition from ISPs, consumer networks and human rights advocates who noted that it was in breach of the Constitution. Article 31 of Constitution grants citizens the right to privacy, including *“the privacy of their communication.”* In addition, there is no policy or regulatory framework for data protection to mitigate against abuse of personal data.

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<sup>153</sup> [http://www.kictanet.or.ke/documents/Activities/Women-and-CyberCrime-in-KE/Women\\_and\\_Cybercrime\\_in\\_Kenya\\_Literature\\_Review\\_report\\_working\\_ver4.pdf](http://www.kictanet.or.ke/documents/Activities/Women-and-CyberCrime-in-KE/Women_and_Cybercrime_in_Kenya_Literature_Review_report_working_ver4.pdf)



Another effort is TESPOK's Industry Computer Security Incident Response Team (iCSIRT)<sup>154</sup> meant "to ensure network integrity and information security is maintained at the KIXP". The iCSIRT focuses on disseminating information and coordinating responses among ISPs on security vulnerabilities and threats. Among the services provided include: summary of IPs with spam, open resolvers, proxies, scanners, malware URLs and botnets. The iCSIRT service handles other general security incidents including identity theft, phishing, and IP hijack. Online violence against women is treated as a general service.<sup>155</sup>

ISPs have the ability to monitor their own network activity for billing and technical purposes and can identify particular IP host addresses at any given time. They know what traffic transverses their network and have the technical capacity to observe malicious traffic that would enable them to block and more importantly identify and notify users. They have however not applied these facilities to protect users against individual harassment in particularly violence against women.

This study examined three user agreements of Access Kenya, Wananchi (Zuku) and Safaricom Limited. These three ISPs command a large market share and seem to provide some level of "attentive protection" by providing information about their user policies, terms and conditions, as well as complaint procedures. However, only Safaricom has a comprehensive explanation of what constitutes harassment and follow up procedures.

Safaricom<sup>156</sup> has several terms and conditions of use for the various services they offer including Mpesa. Safaricom's terms and conditions have the most comprehensive references to online crime against the individual.

*"The user name you choose must not be obscene, threatening, menacing, racist, offensive, derogatory, defamatory or in violation of any intellectual property or proprietary rights of any third party; and if we consider in our sole and absolute discretion that the user name selected by you is inappropriate, we reserve the right to reject and prevent your use of such user name at any time with or without notice to you"* It goes further to state that "Abusive, indecent, defamatory, obscene, pornographic, offensive or menacing (or that has the effect (as may be contemplated by a reasonable person) of causing the recipient to feel so harassed, abused or offended; or Designed to cause annoyance,

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<sup>154</sup> <http://www.tespok.co.ke/index.php/i-csrt.html>

<sup>155</sup> <http://www.tespok.co.ke/index.php/programs/i-csrt.html>

<sup>156</sup> <http://www.safaricom.co.ke/about-us/about-safaricom/terms-conditions>

*inconvenience or needless anxiety to any person; or In breach of confidence, intellectual property rights, privacy or any right of a third party”*

Access Kenya<sup>157</sup> has a “*Contact and Escalation Path*” which outlines the procedures to follow to escalate a complaint. A user has to report the nature of the incident, which would then be responded to at various levels depending on the speed of response. Access Kenya does not provide users with information on what constitutes harassment, and what would be their follow-up procedures for harassment.

Zuku’s “user agreement”<sup>158</sup> only provides terms and conditions for usage and payment but is silent on what constitutes harassment and online crime.

ISPs need to provide comprehensive mechanisms for reporting and addressing instances of online abuse. By cooperating with law enforcement agencies they can facilitate the sharing of useful information to support the prosecution of cybercriminals.

All ISPs ought to update their user policies to specifically address focus on gender related online crimes.

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<sup>157</sup> <http://www.accesskenya.com/index.php/customer-area.html>

<sup>158</sup> <http://beta.zuku.rhcloud.com/zuku/useragreement.htm>



In 2012, the CCK, ISPs and the Criminal Investigation department (CID) created the National Cyber Security Steering Committee and the Kenya Computer Incident Response Team (Ke-CIRT) – to handle cyber crimes.

## 5.0 Organizations/Institutions dealing in technology based VAW

The study sought to establish if Kenyan organizations engaged in violence against women activities are addressing online based VAW and if so in what ways.

In addition, the study sought to find out if any of these organizations have made take down requests to ISPs and the outcomes.

The organizations selected for this study are the Coalition on Violence against Women (COVAW), the Centre for Rights Education and Awareness (CREAW), the Kenya Police Gender desk, the Federation of Women Lawyers (FIDA-K) and the African Women Development and Communication's Network (FEMNET) which is a Pan African organisation based in Kenya. The study found that apart from the Kenya Police, the rest if the organizations have not handled any online VAW.

### **5.1 The Coalition on Violence against Women (COVAW)**

The formation of the Coalition on Violence against Women (COVAW)<sup>159</sup> was informed by the need for concerted efforts to address women rights. It is the number one civil society organisation that deals with matters relating to violence against women. It works in partnership with community based organizations towards the eradication of violence against women. “Using a rights -based approach, COVAWs efforts have continued to be instrumental in placing violence against women as a crime and a human rights violation”. Further, it continues to spearhead the campaign against violence against women and women’s right to self defence and state protection.

### **5.2 The Centre for Rights Education and Awareness (CREAW)**

The Centre for Rights Education and Awareness (CREAW)<sup>160</sup> was started by a number of women lawyers with the purpose of confronting the low awareness of “women’s real needs and rights in society”. One of its areas of focus is that of providing legal representation, advice and referrals to survivors of sexual and gender based violence mainly to underprivileged women. The aim is to contribute to the reduction of gender based violence instances.

CREAW runs a project that aims to achieve raised levels of awareness among organized community groups, increase access to justice and other gender based violence support services by survivors, and ultimately increase reporting of gender based violence cases. Additionally, the project aims to achieve increased respect for women and girls as equal human beings as men and boys. CREAW has not focused on online VAW.

### **5.3 Kenya Police**

The Kenya Police<sup>161</sup> is charged with the task of maintaining law and order, preserving peace, protecting life and property, preventing and detecting crime, apprehending offenders and enforcing all laws and regulations. The Kenya Police has the duty to prevent gender based violence by apprehending perpetrators and sending a clear message to the population that such actions will not be tolerated. Types of gender violence reported at the Police Gender Desk include physical violence, sexual, psychological and harmful traditions. They have also received text based abuses which were treated as criminal offences and perpetrators prosecuted.

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<sup>159</sup> <http://www.covaw.or.ke/>

<sup>160</sup> <http://www.creawkenya.org/>

<sup>161</sup> <http://www.kenyapolice.go.ke/>

#### **5.4 African Women Development and Communication's Network (FEMNET)**

The African Women Development and Communication's Network (FEMNET) is a membership-based pan-African Network that aims to amplify women's voices and influence decisions that have impact on women's lives. While they have a programme on ending violence against women, their focus has not extended to online based violence.

#### **5.5 Africa Unite Kenya Chapter**

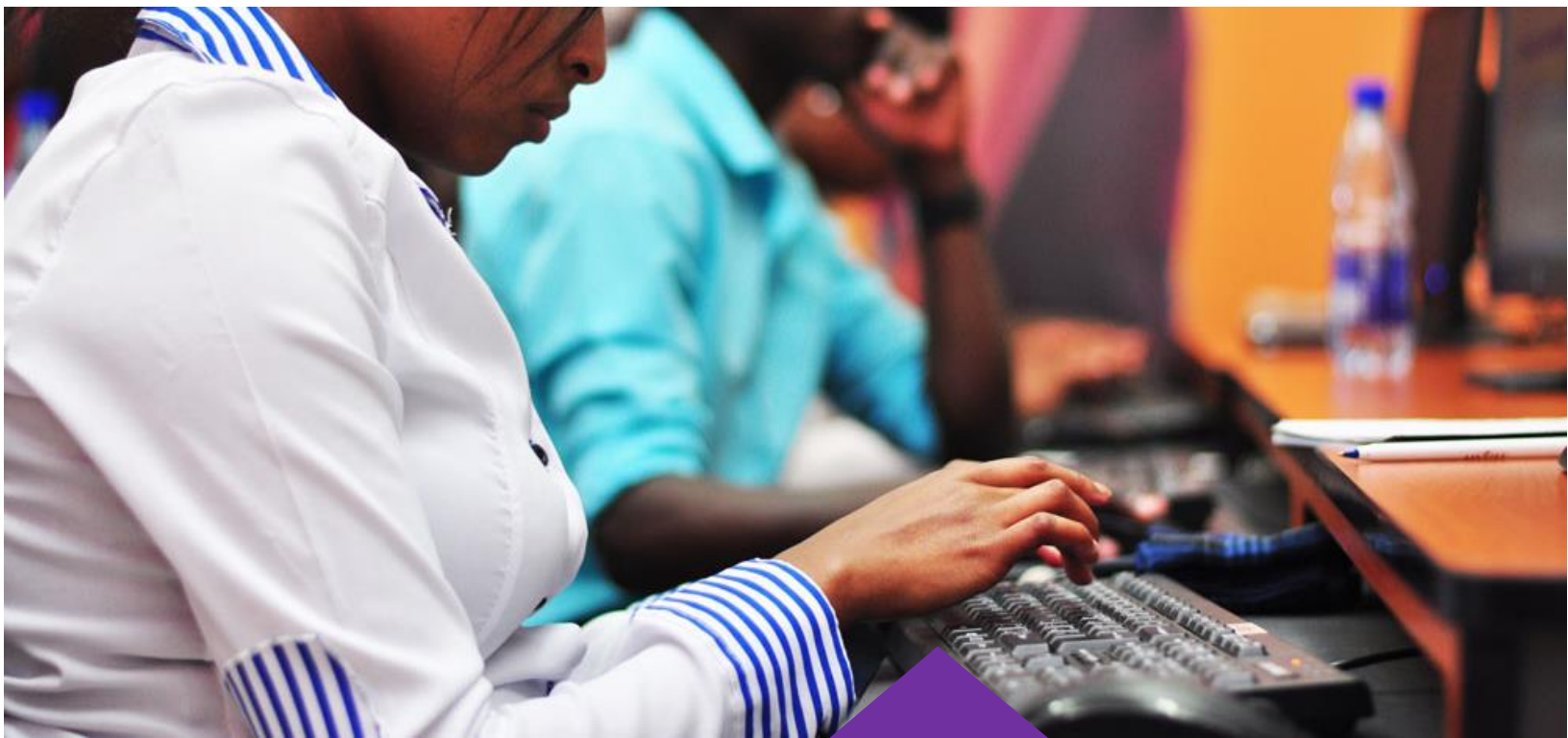
The Africa Unite Kenya Chapter<sup>162</sup> focuses on prevention of violence against women and girls, promotion of justice and ending impunity, and provision of services to survivors of violence. Overall, the goal of Africa UNiTE is to “mobilize and support governments in fulfilling their commitments to end violence against women and girls”. However, they have not focussed on online violence against women.

#### **5.6 Federation of Women Lawyers, (FIDA)**

FIDA Kenya is a women lawyers' organisation whose establishment was informed by the need to promote women's rights. It is committed to bridging the “gap between the government and the citizenry, and in particular, the disadvantaged women”. FIDA has been actively involved in the development and drafting of various laws and policies such as the Children's Act 2001, the Sexual Offences Act 2006, the Gender and Development Policy just to mention a few. FIDA runs two programmes transformative justice (TJ) and Access to Justice programmes. The Transformative justice programme works toward sustainable transformative justice for women in Kenya, to consolidate the gains made in the past and use them for transformation in the justice system, while the access to justice programme provides and engages with women and the justice system to ensure justice for women.

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<sup>162</sup> <http://africauniteke.wordpress.com/about/>



As a general rule, internet users are advised to take precautions whenever they interact online. However, upon the occurrence of an incident, users are advised to gather and collect as much evidence as they can and also to report the incident to the police

## 6.0 Approaches to Online VAW in Other Regions

### 6.1 European Union

The European Commission has established the European Cybercrime Centre (EC3) based at the Europol (the European Union's law enforcement agency) at The Hague, Netherlands.<sup>163</sup> The centre is the EU's focal point in fighting cybercrime and supports EU member states and Institutions, and cooperates with international partners such as non-EU states and institutions. Its mandate is to tackle cybercrime that: is committed by organised groups to generate large criminal profits such as online fraud; causes serious harm to the victim such as online child sexual exploitation; and affects critical infrastructure and information systems in the European Union.

The centre provides a series of services such as a 24/7 Helpdesk and Coordination Centre, data processing capabilities, internal network security monitoring, forensic support, information extraction, data fusion from the Member States, and outreach services.

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<sup>163</sup> <https://www.europol.europa.eu/ec3>



The EU member states have also adopted the Convention on Cybercrime<sup>164</sup> which has been acceded to or ratified by 39 countries and signed by 10. Non-EU countries such as USA, Australia, Japan and the like have also ratified the Convention.<sup>165</sup> The Convention seeks to harmonise cybercrime legislation among party states and requires them to establish certain substantive cybercrime legislation and procedural law to investigate them. Moreover, the Commission issued the EC Cybercrime Communication that addresses issues of cybercrime and makes several proposals for reform. Further, EU member states have adopted a cybercrime strategy<sup>166</sup> to guide the fight against cybercrime.

## 6.2 United Kingdom

In the UK, the Serious Organised Crimes Agency (SOCA) deals with serious organised crimes in the UK such as cybercrime in partnership with other agencies and countries.<sup>167</sup> With regard to the law, the country has passed several legislation on cybercrimes. Firstly, the Communication Act 2003 deals with offences such as the sending of obscene or offensive content, harassment, and interception and disclosure of communication.<sup>168</sup> The Malicious Communication Act (1998) further deals with the sending of indecent or offensive communication that bear threats, are false or could cause distress.

The Protection of Freedoms Act 2012 and the Protection from Harassment Act 1997 deal with the offences such as: cyber-stalking, online harassment, and related offences e.g. putting people in fear of violence, stalking involving fear of violence or serious alarm or distress. They also allow for individuals to seek restraining orders as a means of preventing further harassment by limiting physical, or other contact.<sup>169</sup> Lastly, the Sexual Offences Act 2003 deals with sexual offences such as rape, sexual assault, non-consensual sexual activity, offences against children and so on.<sup>170</sup>

As a general rule, internet users are advised to take precautions whenever they interact online. However, upon the occurrence of an incident, users are advised to gather and collect as much evidence as they can and also to report the incident to the police.<sup>171</sup> Victims of online crimes can also seek help from support organizations such as National Stalking Helpline, Bullying UK or True Vision which have dedicated help lines to assist victims of online violence. Once an incident has been reported, the

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<sup>164</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>

<sup>165</sup> <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=8&DF=&CL=ENG>

<sup>166</sup> [http://ec.europa.eu/information\\_society/newsroom/cf//document.cfm?doc\\_id=1667](http://ec.europa.eu/information_society/newsroom/cf//document.cfm?doc_id=1667)

<sup>167</sup> <http://www.soca.gov.uk/>

<sup>168</sup> [http://www.cps.gov.uk/legal/a\\_to\\_c/communications\\_offences/](http://www.cps.gov.uk/legal/a_to_c/communications_offences/)

<sup>169</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/stalking\\_and\\_harassment/#a02b](http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/#a02b)

<sup>170</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/sexual\\_offences\\_act/#INTRODUCTION](http://www.cps.gov.uk/legal/s_to_u/sexual_offences_act/#INTRODUCTION)

<sup>171</sup> <http://content.met.police.uk/Article/Stalking/140001070222/140001070222>

police are required to conduct investigations, then take appropriate action against the suspect which may involve a charge, caution or the discharge of a suspect where there is insufficient evidence.

If after investigation the offender is charged, the Crown Prosecution Service (CPS) will decide whether to prosecute and take a case to court. If the case goes to court, the victim may be required to go to court and give evidence. The UK has Witness Care Units whose job is to keep the victim informed about how the case is progressing right up to the point of sentencing. There is also a Victim Liaison Service, from which victims can get information about the prisoner for example their release date, sentence and so on.

### 6.3 United States

In 1994, the US Congress in recognition of the severity of crimes associated with domestic violence, assault and stalking, passed the Violence against Women Act which seeks to enhance the investigation and prosecution of violent crimes against women.<sup>172</sup> This also led to the establishment of the Office on Violence against Women (OVW) whose mission is to provide federal leadership in developing the nation's capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.

With regard to Cyber-stalking, the US Federal Anti-Cyber stalking law<sup>173</sup> is worth noting. In addition, several states e.g. Alabama, Arizona etc. have passed legislation to address the issue including prohibitions on harassment. Further, several states have passed legislation to deal with sexual offences such as rape, sexual assault, sexual abuse and so on.

Like in the UK, users are advised to take precautionary measures when online. And in case of an incident, to among others, stop correspondence, block the offenders and file complaints with the internet service providers or the web service managing the particular site. In case of escalation, users are advised to report such incidences to the appropriate law enforcement investigative authorities at the local, state, federal, or international levels, depending on the scope of the crime.

The Department of Justice<sup>174</sup> and key institutions such as the Federal Bureau of Investigation (FBI),<sup>175</sup> the United States Secret Service, the United States Immigration and Customs Enforcement (ICE), US-CERT, the United States Postal Inspection Service, and the Bureau of Alcohol, Tobacco and Firearms (ATF), Department of Homeland

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<sup>172</sup> <http://www.ovw.usdoj.gov/overview.htm>

<sup>173</sup> 47 USC sec. 223

<sup>174</sup> <http://www.justice.gov/criminal/cybercrime/reporting.html>

<sup>175</sup> <http://www.fbi.gov/about-us/investigate/cyber>

Security<sup>176</sup> and the Internet Crime Complaint Center (IC3) are critical in the fight against cybercrime.

After receiving complaints, they will be forwarded to the appropriate agency for investigation and further prosecution under the applicable law. Users are also advised to collect useful evidence that may help the investigation. Where they are required to testify in court, they are notified and are also kept up to date with the progress in resolving their complaints or cases.

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<sup>176</sup> <http://www.dhs.gov/defending-against-cybercriminals>

## 7.0 Recommendations

### 7.1 Legislative

The Sexual Offences Act and the Kenya Information and Communication Act, need to be revised in order to take into account cybercrimes that result in the violation of the rights of women online. Hence they need to make provision for offences such as cyber harassment; cyber stalking; violation of privacy; online prostitution; human trafficking and so on. In addition, there is need to provide stiffer penalties for existing sexual offences in order to discourage commission of such offences in the future.

In addition, legal mechanisms should be put in place to require ISPs and companies providing hosting or social media services to among others: provide mechanisms for reporting criminal activity perpetrated through their services by their users; take down content that is deemed criminal or offensive, report criminal activity conducted through their services once they are aware, to reveal the identities of such perpetrators; and, hold them liable where they fail to cooperate with law

enforcement agencies.

## 7.2 Policy makers

The government has shown a commitment to addressing gender violence as provided by various policies, strategies and legal documents. Further, it has established gender focal points in all ministries and gender desks in police stations to make services accessible to gender violence survivors to seek redress easily.<sup>177</sup>

However, a major challenge experienced with regard to cases of violence against women is in the enforcement of the law. Some police officers and police stations are ill-prepared, poorly equipped or insensitive to cases of violence against women. The complex nature of cybercrime also means that very few officers most of whom are within specialised agencies are capable of understanding, investigating and prosecuting cybercrime.

Further, the burden of proof in criminal cases is proof beyond reasonable doubt. In this regard, finding, collecting and handling evidence including challenges with regard to the chain of custody may be problematic, for both sexual or cybercrimes, which offences by their very nature are complex. Another challenge for the police is the premature prosecution of cases, before investigations are complete, hence accused persons may be acquitted as a result.

Additionally, the police gender desks are under resourced. Therefore the government and development partners should consider setting aside resources (both financial and human) to train more police officers on how to handle tech-based violence against women to allow for the apprehending and prosecution of culprits. This will contribute to sensitizing the police officers on how to deal with online violence against women and to enhance capacity of police to understand, investigate and handle cybercrimes and cases of violence against women. In addition, the relevant agencies, should create online platforms where users can easily make and follow-up on complaints and get information on how to secure their online interactions and how to deal when affected.

There is also need to consider online violence against women in planning and to take specific measures to reduce online violence for example enforcement and revision of existing sexual offences legislation to include online violence against women and other cybercrimes that may lead to such violence. Further, it is important for the state to establish systems and programmes that protect women from violence,

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<sup>177</sup> Institute of Economic Affairs (IEA). 2009. *The Status of Gender Desks at Police Stations in Kenya: a Case Study of Nairobi Province*.

including the education and involvement of men and the provision of information on online safety for users. Moreover, it will be useful to disaggregate tech-based VAW cases reported to the police in order to formulate appropriate ways of stemming them and ensuring there is a rapid response mechanism for the survivors.

Additionally, there needs to be a cyber security framework to guide the industry and a data protection policy. Among pertinent issues that imply the need of such a policy include liability of firms in case of loss of user data such as usernames, passwords and credit card numbers they had collected.

It is recommended that there be established a centre for combating cyber crime against women.

### **7.3 Women groups engaged in VAW (individuals and community leaders)**

Women groups, including civil society should pick online violence against women as an advocacy issue and lead initiatives to highlight key issues with regard to cases of violence against women. So far organizations that work in the area of violence against women still operate in the traditional ways of reporting and monitoring VAW cases. Majority are yet to embrace technological component of VAW. Therefore, women organizations/women's movement will need to take on board tech based VAW as a programmatic area since VAW has taken on a new dimension where some women are being abused by large numbers online.

In addition, they need to strengthen their existing networks and collaboration as civil society with government institutions. Moreover, they can be instrumental in the provision of legal aid to women who cannot afford legal services, and make suggestions to policy formulation and legislative changes that address tech based VAW at community, National, and Regional.

### **7.4 Tech companies**

Technology companies including ISPs and operators of social media platforms should provide quick and effective mechanisms for recourse such as for reporting instances of abuse and getting additional assistance. Further, they can cooperate and partner with law enforcement agencies to facilitate the sharing of useful information to aid the prosecution of offenders, who are users of their services. At the same time, they should take responsibility and put in place measures to minimise the use of their services for criminal activities. Where they take action, such action should be not only be reported, but also publicised to act as a deterrent for would be violators and to create public awareness.

In addition, they can through their corporate social responsibility programmes support victims of violence and initiatives aimed at addressing cases of online violence against women. Also, Tech companies should update user protection policies with specific focus on gender related online crime.

### **7.5 Women users**

Women users need to be encouraged to exercise due care online and avoid unnecessary publication of private content especially where prior informed consent is not obtained. There is also need for awareness on the risks involved especially with regard to their security online and the available redress mechanisms in case of breach. Unfortunately, many women who are abused do not for various reasons, report the cases and as a result end up suffering silently. Others are also not aware of the procedures required to seek legal redress. Victims therefore, should be supported in coming forward and reporting technology based offences.

### **7.6 General users**

Such users need to be educated on their rights online, including the rights of women, and on the available mechanisms to report cases of online violence against women. They should also be encouraged to observe netiquette rules<sup>178</sup> by among others: remember the human; adhere to the same standards of behaviour online they would in real life; respect other people's privacy; to be forgiving of other people's mistakes; not to abuse their power; and to keep under control flame wars. If netiquette rules were observed, some of the cases highlighted wouldn't have occurred.

In addition, they should take responsibility by not creating, sharing or approving communication that spreads hate. Therefore, they should avoid "liking" such pages on Facebook as the one of "*RIP Caroline Mutoko*" because if one person 'likes' such a page, it shows all their 'friends' and these friends may end up checking out the page and 'liking' creating a spiral effect and getting more people to participate in circulation of vitriol against women or even seeing nude pictures that sometimes are just manipulated through Photoshop. In other words, ordinary people should be discouraged from posting on their blogs or on twitter offensive content in the name of 'sharing,' and instead delete VAW messages instead of circulating them on email. A multi-pronged approach, which would involve, raising awareness and capacity building is what is required.

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<sup>178</sup> <http://www.albion.com/netiquette/corerules.html>

## **7.7 Media**

All concerned should endeavour to work with media to highlight and publicize what tech-based violence against women is all about and ways in which it can be stemmed.



## Annex 1

### Cases reported through the takebackthetech.net map (<https://ke.takebackthetech.net/mapit/>) by the end of the Take Back the Tech 2012 campaign period

The takebackthetech<sup>179</sup> campaign is a platform that urges all users of information and communication technologies (ICTs) especially women and girls to take control of technology and strategically use any ICT platform at hand (mobile phones, instant messengers, blogs, websites, digital cameras, email, podcasts and more) for activism against gender based violence. Further it is to use the new tools to ascertain and find solutions to the type of violence women face online.

This call to document is a call to witness and for women to tell own stories of facing the dark side of technology, as well as build evidence to work for the elimination of online violence against women.

In 2012, Kenya participated in techbackthetech campaign and mapped the following cases on <https://ke.takebackthetech.net/mapit/>:

#### I. Hate Text Messages

Two young women were arraigned in court and charged with sending abusive text messages to each other<sup>180</sup>. Joseline Mwangi and Harriet Kemunto appeared before Nairobi Chief Magistrate Gilbert Mutembei and were released on a cash bail of Kes. 10, 000 (approximately US \$120).

Sending an abusive message by means of a licensed telecommunication system is an offence according Section 29(a) of the Kenya Communication Act of 1998. If convicted, the offender is liable to a prison sentence of up to three months or a fine of up to Sh50, 000, or both.

- **Date and time:** March 22<sup>nd</sup>, 2011 and reported on April 1, 2011
- **Why case was selected:**

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<sup>179</sup> <https://ke.takebackthetech.net/mapit/page/index/2>

<sup>180</sup> Citizen television news <http://www.youtube.com/watch?v=9q7VmsYNsqE>

This is a case of two women getting into a quarrel around an issue that is not directly related to them and which involves men who are close to them. The matter should have been resolved by the men directly involved in the issue.

Apparently the two women are known to each other. The issue of focus centres on a debt incurred by Joseline's father. Harriet sends the abusive texts telling Joseline to tell her father to stop borrowing money from Harriet's dad to pay up what he owes. A series of abusive and harassing text messages are exchanged between the two women which eventually lands them in court. Yet the two men involved have no issues with the debt. In fact, they may have a silent agreement on how they reached at one borrowing from the other, and the terms of repayment.

- **Category and usefulness:** Online harassment
- **Source of information:** Citizen television news  
<http://www.youtube.com/watch?v=9q7VmsYNsqE>

## II. Text message lands Nanyuki man in court<sup>181</sup>

A man who sent an text message to his estranged girlfriend threatening her not ask for money has was charged before a Nanyuki court for 'improper use of a licensed telecommunication system.'

The man, Richard Parsinei Liosoi, reportedly sent his ex-girlfriend, Merrily Daniel Ole Kanjori, who now lives with another man but is taking care of the child they had together a text that read:

*"te wife will gte ur head in de black paper bag wl make sure umekufa I cannot give u bassary ur prostitute even ur bro. unashindana na ndovu kuhara court nitaenda na pesa zitafanya kazi nitoke u wil just all losers idiot. Kwani umesahau babangu ni mganga hatari"*

This roughly translates to "stop asking for money you prostitute, or you will find your head in a black paper bag. Why are you competing with an elephant that has a running stomach? I will go to court and win. And just in case you have forgotten, my father is a famous witch doctor."

Hearing the case Senior Resident Magistrate Caroline Obara saw no humour in the man's text and set a bail of of ksh 50,000 which the accused pleaded against and was

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reduced to Ksh 30,000. The next hearing was set for 18<sup>th</sup> June 2012, but we could not trace the ruling.

Due to the steadfast enforcement of the legislation such as the Kenya Information and Communication Act and the National Cohesion and Integration Act, both of which have strong provisions on hate speech, more people have been taken to courts for sending threatening text messages to each other. Some are pushing for the same to be applied to those insulting and bullying others online.

- **Date and time:** April 3, 2012
- **Why case was selected**

This is a common case of sour grapes. The man is resentful of his former girlfriend and the fact that she has moved on and living with another man. He does not want to be asked for money presumably to support his child. It appears he is still bitter and threatening to use all means available including witchcraft to create fear in the woman. He also has no qualms about corrupting the judicial process just to make sure the woman suffers. It demonstrates the contempt for the very means of redress (judicial process) that women may resort to in times of harassment.

- **Category and usefulness:** Intimate partner violence
- **Source of information:** Daily Post <http://www.kenyan-post.com/2012/05/details-sms-that-may-land-nanyuki-man.html>

### III. Facebook hate campaign:

- **Description**

Nelly Kimani (not her real name) participated in one of a popular reality shows in East Africa and emerged among the top four contestants. In the said show, audiences vote for their favourite contestants to keep them in the show. Additionally, the participants are expected to openly vote out of the show one fellow contestant each week. Nelly attracted the wrath of the viewing audiences when she voted against a 'favourite' contestant of the audiences. Her vote was seen to have carried the day since she and the contestant in question were both from the same country.

As a result, her haters created a dedicated Facebook page to specifically bash her. This is besides receiving so many messages in her Facebook inbox as well as text messages with the same hate content. The result of this is that she did not want to

read anything on email and was also afraid to venture into the outside world. She then decided to suspended her Facebook account.

- **Date and time:** 2010
- **Why case was selected**

This is a case where an innocent young woman exercised her right of choice in the voting process but because the audience did not side with her, they resorted to unorthodox means of harassing her. A Facebook fanpage drew followers from the Eastern Africa region and the insults were because she voted against a male contestant. In the interview with us, she doubted that if the situation had been the other way round where the male contestant had the opportunity to vote her out, that it would have attracted the public wrath.

- **Category and usefulness:** Online harassment and cyber-stalking
- **Source of information:** KICTANet study on Women and cybercrime: the dark side of ICTs

[http://www.kictanet.or.ke/documents/Activities/Women-and-CyberCrime-in-KE/Women\\_and\\_Cybercrime\\_in\\_Kenya\\_Literature\\_Review\\_report\\_working\\_ver4.pdf](http://www.kictanet.or.ke/documents/Activities/Women-and-CyberCrime-in-KE/Women_and_Cybercrime_in_Kenya_Literature_Review_report_working_ver4.pdf)

#### IV. **Embu Man fined for sending insulting sms**

A 30-year-old man was fined Sh3,000 (approximately 40 US\$) or 50 days in jail in default after he sent an obscene text message to a woman. Robert Mkareh pleaded guilty to sending Fridah Gakii a vulgar text message on March 20 in Embu town, in which he claimed her husband had admired his wife.

In the text message he told the complainant that he had learnt that her husband was admiring his wife for being fat. He told Gakii that if she was not satisfying her husband to tell him to go and look for satisfaction from dogs. He told the complainant to tell her husband that if he is envious at the way he looks after his wife, he should go to him (Mkareh) and he will sodomise him so that he can also be fat.

The convict pleaded to the court to be pardoned saying that he will never repeat the offence. Prosecutor Patrick Migwi described Mkareh as a first offender noting that he didn't have records of past involvement in crime.

However resident magistrate Robert Mobisa Oanda termed the offence as serious and requiring a deterrent sentence. In the charge he was accused of misusing his mobile

phone by sending the offensive message to the complainant against the law. Mkareh paid the fine and was released.

- **Date and time:** November 2011
- **Why case was selected**

This is a typical case of real harassment of a man to an innocent woman. Robert sends a vulgar message to Frida on account that Frida's husband has admired Robert's wife. Involving Frida is uncalled for since she is not the one admiring. Instead of Robert dealing with Frida's husband, he picks on Frida. This is because culturally women are deemed weak, and would therefore not pick or want to be involved in this kind of fight, and again she is an easy target than her husband.

- **Category and usefulness:** Online harassment
- **Source of information:**

The Star Newspaper <http://allafrica.com/stories/201111161150.html>

## V. Text message lands man in court

A man was arraigned in a Nakuru court for sending threatening messages to a married woman who he is thought to be in love with.

Zakayo Njoroge Ng'ang'a is alleged to have intentionally used his phone to send threatening text messages to Rehab Mweru Kanyingi contrary to section 29 (a) of the Kenya Communications Act of 2004.

In a text sent on 28<sup>th</sup> June 2012, the suspect said (in Kiswahili), "*Usidhani eti sina mia ya kununua petroli na hakuna atakae epuke! Kama ni bwana unaye, ploti utajenga, mtoto utanunua then u lucky.*" (Don't think I don't have Sh100 to buy petrol and when I do so, no one will escape. If you have a husband, a house and child, then you are lucky.)

Another text message sent on 12<sup>th</sup> June stated, "tell your brother to give you security today, even against your legal husband," with the last message being "that is a shadow to me, am coming today."

Appearing before Chief Magistrate Samuel Mungai, Zakayo denied the charges and was released on a Ksh100,000 bond and a surety of similar amount and a cash bail of Ksh 50,000.

- **Date and time:** June 2012
- **Why case was selected:**

This is a case of a man wanting a woman who is already committed elsewhere. The man employs fear tactics by sending threatening messages to the woman including that of burning her house, husband and child. He finds it difficult to simply accept that he cannot have her.

- **Category and usefulness:** Online harassment and cyber stalking
- **Source of information:** <http://nakuru.hivisasa.com/crime/text-message-lands-man-court>