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Women's rights, gender and ICTs



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Lori Nordstrom

Publication production

Mallory Knodel

Proofreading

Valerie Dee
Lori Nordstrom

Graphic design

Monocromo
info@monocromo.com.uy
Phone: +598 2400 1685

Cover illustration

Matías Bervejillo

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KENYA

Women and cyber crime in Kenya



Kenya ICT Action Network (KICTANet)

Alice Munyua

www.kictanet.or.ke

Introduction

The internet continues to provide secure tools and spaces where women can enjoy their freedom of expression, information and privacy of communication, but the same benefits of anonymity and privacy also extend to those who employ it for committing violence against women.

Emerging online crimes threaten to take away the safe and secure spaces, denying women's ability to use the internet for their empowerment and development due to safety concerns. It is estimated that 95% of aggressive behaviour, harassment, abusive language and denigrating images in online spaces are aimed at women and come from male partners or former partners.¹ Many information and communications technology (ICT) tools such as spyware, wireless technology and webcams are used to perpetrate violence against women.

According to a 2012 study conducted by the Kenya ICT Action Network (KICTANet), cyber crime against women is becoming a widespread and destructive problem involving stalking, sexual harassment, digital manipulation of photographic images, fraudulent postings and advertisements, persistent abusive mobile messages, sex trafficking, humiliating comments that reinforce gender-constructed stereotypes, professional sabotage, identity theft, and intimate photos and videos used for blackmailing women in violent relationships, among others.²

While both men and women are affected by cyber stalking, victims aged between 18 and 32 were predominantly female. The report notes that women are affected differently, and cyber crime against women is a uniquely gendered phenomenon. Most of the criminals invoke humiliating, gendered stereotypes making it clear that women are targeted due to their gender. It has a profound impact on the women targeted, interfering with their full participation in online activities and impacting negatively on their personal and professional lives, sometimes raising

vulnerability to possible offline harassment. This can result in women getting discouraged from engaging in internet-related activities including learning, social connections and economic activities.

Policy and legislation

Cyber security/crime legal and regulatory frameworks lack consideration of the social and gender impact of cyber crime. Despite several legal and regulatory provisions, including the new constitution in Kenya, none begin to specifically address online harassment against women. The new constitution of Kenya, promulgated in August 2010, contains the "Bill of Rights", which provides for various rights and fundamental freedoms to be enjoyed by all persons, including women. They include the right to life; the right to equality and equal protection and benefit of the law; the right to respect and protection of human dignity; the right to freedom and security of the person, including the right not to be subjected to any form of violence, torture or treatment in a cruel, inhuman or degrading manner; the right to privacy, including the right not to have information relating to family or private affairs unnecessarily required or revealed, or the privacy of communication infringed; the right of access to information required for the exercise or protection of any right or fundamental freedom; protection of the right to property; the right to access justice; and the right to a fair hearing. Other relevant pieces of national legislation include:

- The Sexual Offences Act, No. 3 of 2006, Penal Code, Cap. 63 (Rev. 2009)
- The Children Act, No. 8 of 2001
- The Kenya Information and Communication Act, Cap. 411A (Rev. 2012), which provides the framework for the regulation of the ICT sector. Apart from section 84D on pornography, the act does not explicitly deal with conduct which would amount to online violence against women. However, the cyber crimes provided for in the statute deal with activities whose commission could result in or facilitate the commission of online offences against women.
- The National Cohesion and Integration Act, No. 12 of 2008, which seeks to encourage national

1 www.kictanet.or.ke/?page_id=57

2 Ibid.

cohesion and integration by outlawing discrimination on ethnic grounds, while also providing for the powers and functions of the National Cohesion and Integration Commission.

- The Evidence Act, Cap. 80, which provides the procedural legislation that governs the production and admissibility of evidence in Kenya. In cases involving cyber crime, and more so violence against women, achieving this burden of proof may sometimes be difficult given the nature of evidence that is required to mount a successful prosecution. 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.
- The Criminal Procedure Code, Cap. 75 (Rev. 2009), which provides the general framework for the enforcement of criminal law in Kenya and provides the procedural guidelines for the conduct of investigations, arrest, prosecution, trial and sentencing of accused persons.
- The National Gender and Equality Commission Act, No. 15 of 2011, which established the National Gender and Equality Commission, whose aim is the promotion of gender equality and freedom from discrimination.
- The Kenya National Commission on Human Rights Act, No. 14 of 2011, which established the Kenya National Commission on Human Rights, whose mandate is the promotion of human rights.
- The Mutual Legal Assistance Act, No. 36 of 2011, which provides a framework for legal assistance to be given or received by the Kenyan government in investigations, prosecutions and judicial proceedings.
- The Prevention of Organised Crimes Act, No. 6 of 2010, which seeks to prevent and punish organised crime while also providing for the recovery of proceeds of organised criminal group activities.
- The National Police Service Act, No. 11A of 2011, which provides for the functions and powers of the National Police Service.
- The Crime and Anti-Money Laundering Act, No. 9 of 2009, which seeks to combat money laundering and provides for, among others, the identification, tracing, freezing, seizure and confiscation of the proceeds of crime. As cyber crimes spread, activities such as prostitution are being run by highly organised criminal groups who launder money from such activities into legitimate businesses.

- The International Crimes Act, No. 16 of 2008, which domesticates the Rome Statute and provides for the cooperation of Kenya with the International Criminal Court.
- The Data Protection Bill, 2012, which 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.

In addition to national legislation, Kenya has ratified several international and regional treaties and conventions that have a bearing on human rights, including sexual and online offences. These include:

- The Universal Declaration of Human Rights (UDHR), 1948
- The International Covenant on Civil and Political Rights (ICCPR), 1966 (entry into force 1976)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 (entry into force 1976)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- The Declaration on the Elimination of Violence against Women (DEVAW), 1993
- The African Charter on Human and Peoples' Rights (Banjul Charter), 1981
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003
- The Vienna Declaration and Programme of Action (VDPA), 1993
- The Beijing Platform for Action (BPfA), 1995
- The Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, 1994
- The Convention on the Rights of the Child (CRC), 1989
- The African Charter on the Rights and Welfare of the Child, 1990.

Case study

Caroline Mutoko³ is a radio presenter. She hosts the “Big Breakfast Show” on Kiss FM in Nairobi, Kenya. The show is one of the most popular morning shows, commanding a huge following and fan base. Mutoko is regarded as “the queen of radio” and she has a

³ www.facebook.com/carolinemutoko?ref=ts

huge online following. Known as an apt advocate for civil rights, she is considered fearless, and while this has attracted numerous fans it has also attracted several lawsuits by politicians, as well as online abuse. She is known to involve her fans in developing topics for her daily show and solicits ideas using several social networks, including Facebook. It is against this backdrop that in December 2012, some fans wrote on her Facebook wall requesting her to host the Safaricom⁴ CEO, Bob Collymore, so that he could address a few pressing consumer issues, including quality of service and high charges. Mutoko did not oblige her fans on this request, and this resulted in online abuse that lasted several weeks.

Safaricom is the leading mobile service provider in Kenya, with a 69.9%⁵ market share and with nearly as many subscribers as Kenya has adults.⁶ According to the Communications Commission of Kenya's (CCK) quality of service report,⁷ Safaricom only complies with six out of the eight parameters set by the CCK key performance indicators for cellular mobile service providers. Mutoko's refusal to engage listeners in a discussion with the Safaricom CEO was therefore seen as "arrogance" and "ignoring average citizens". She was accused of defending Safaricom, which is one of the largest advertising clients on the radio station. Thousands of hate messages were posted on her Facebook page and several new Facebook pages were set up targeting her. One titled "RIP Caroline Mutoko" went viral. Below is an excerpt from the Facebook page:

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.

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

As this case study demonstrates, online harassment most often invokes women's sexuality and gender in ways that interfere with their dignity, wellbeing,

livelihood and identity. In some cases it may take a more indirect form of professional sabotage by discrediting women's competence in their careers. 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 crimes against women go largely unreported due to feelings of embarrassment, shame, and the belief that nothing will be done by the police or other authorities. This suggests existing statistical evidence on cyber crime against women is likely to be underestimated and the scope is still quite difficult to ascertain. A 2005 study by Azy Barak, "Sexual Harassment on the Internet",⁸ suggested that approximately 40% of women internet users had experienced online harassment. Another study by Francesca Philips and Gabrielle Morrissey, "Cyberstalking and Cyberpredators: A Threat to Safe Sexuality on the Internet",⁹ 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. It also raises vulnerability to offline harassment, in some cases branding victims as incompetent and inferior sexual objects. 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, according to Philips and Morrissey, "it also harms society by entrenching male hierarchy online."¹⁰ While Mutoko did not abandon the use of online spaces, several women would find it difficult to continue maintaining social networks, blogs or websites after such experiences.

A 2010 KICTANet study found that some internet service providers (ISPs) were "advising Internet users to stay away from social networks as a possible social strategy against cyber crime." 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, with women missing opportunities to advance their professional reputations through networking effectively online, participating and contributing to policy-related discussions, and blogging, among

4 Safaricom Ltd is the most dominant mobile network operator in Kenya by market share. www.safaricom.co.ke

5 www.cck.go.ke/links/consultations/current_consultations/Regulated_Services.pdf

6 www.economist.com/news/finance-and-economics/21574520-safaricom-widens-its-banking-services-payments-savings-and-loans-it

7 www.cck.go.ke/consumers/other_info/downloads/QoS_Report_2011-12.pdf

8 construct.haifa.ac.il/~azy/SexualHarassmentBarak.pdf

9 con.sagepub.com/content/10/1/66.full.pdf+html

10 *Ibid.*

others. Some may even lose income upon closing their blogs and websites.

Unless women are willing to forgo the internet's economic, social, and political opportunities, they cannot walk away from the online environment without paying a high price. This is particularly true for younger individuals whose lives are inextricably tied to the net, such as Mutoko, who uses her Facebook page to engage with her fans and the public. According to Jack Balkin's "captive audience theory", "employees should not be forced to leave their jobs to escape otherwise unavoidable harassment and coercion." 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 the networked environment by shutting down blogs and 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",¹¹ 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. In Kenya it is a long and tedious process in the absence of an intermediary liability policy and regulation. Further, even if the ISP complied and took down offending material, the material would probably have spread to other sites hosted by other service providers. In his "Free Speech and Hostile Environments",¹² Balkin notes that even if women could fight back, they may be 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. This was seen in Mutoko's case, where more Facebook pages were created, including a "RIP Caroline Mutoko" page, after she responded and asked her followers to address Saraficom directly instead of using her wall.

Conclusions

No matter how serious the impact of cyber crime on women, most of society, including the private and public sectors, is not taking it seriously. For example, user agreements with major 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 harm is reminiscent of the many years 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.

Further, cyber security/crime legal and regulatory frameworks lack consideration of the social and gender impact of online crime. Despite several legal and regulatory provisions, none begin to specifically address online harassment against women.

It is therefore not surprising that online violence against women is not yet taken seriously. With access to the internet increasing at an exponential rate in Kenya (annual growth is estimated at 11.9%),¹³ it is important to address cyber crime against women at this time before the practice becomes entrenched.

A key component of addressing cyber crime is education and empowerment. Women users should be provided with clear information about their rights, and directions on how to protect themselves against crimes and how to report incidents in case they occur.

Industry, technical community, civil society and law enforcement organisations should also be provided with education to address the issue and should collaborate to raise awareness, provide solutions and conduct investigations. In addition, the development of legal and regulatory provisions that recognise the special needs of women can play a critical role in defining cyber crime against women and in shaping online behaviour, by changing the way online violence against women is perceived by law enforcement, perpetrators and the broader public. Revision of existing cyber security frameworks to include gender-based online violence is essential, and so is equipping law enforcement agencies and officers with skills and resources to address and investigate the complex nature of gender-based cyber crime.

Recognising that online harassment against women is gender discrimination and is also a civil rights violation is important in placing the issue on the public and policy agenda, to create awareness about the gendered harms it leads to, and to change online misogynistic culture. This may change online behaviour and deter perpetrators in order to create a safer internet for all.

11 scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1058&context=njtip

12 www.yale.edu/lawweb/jbalkin/articles/frsphoen.htm

13 www.cck.go.ke/news/2012/Internet_access.html

Action steps

- Lobby to have online violence against women recognised as a civil rights violation, thereby placing it on the policy agenda.
- Lobby for the revision of various pieces of legislation including the Sexual Offences Act and the Kenya Information and Communication Act, in order to take into account cyber crimes that result in the violation of the rights of women on-line.
- Contribute to intermediary liability discussions to establish responsibilities and legal mechanisms that would require ISPs and other service providers to report criminal activity perpetrated through their services and respond to takedown requests, among other provisions.
- Lobby the government to establish gender focal points in all ministries and gender desks in police stations to make services accessible to gender violence survivors, so that they can seek redress easily.
- Ensure that the cyber security framework takes into account gender-specific provisions.
- Build the capacity of women's organisations to address the issue of online violence against women, as well as collaborating with other stakeholders including the government, private sector, technical community and media.
- Build the capacity of media partners to report on online violence against women so they can contribute to creating awareness of the issue by placing it on the public agenda. ■