



# Revenge Porn: An Act of Domestic Violence

Latiefa Manie\*

Senior Lecturer, Department of Private Law  
University of the Western Cape, Cape Town

## Abstract

*The pervasiveness of domestic violence could in part, be attributed to its hidden nature, with acts usually being committed behind closed doors. With the advancement of technology, new forms of abuse have appeared, one being revenge pornography. Revenge porn, as it is commonly known, has devastating consequences on victims, with some having resorted to suicide. South Africa has alarmingly high rates of gendered-based violence, the main victims being women and children. To The Domestic Violence Amendment Act, amongst others, was enacted to address gender-based violence. Since revenge porn has now been criminalised in terms of the Cybercrimes Act, this article focuses on revenge porn as an act of domestic violence. It becomes apparent that apart from problems with terminology, victims of revenge porn also face difficulties, such as victim-blaming by their communities and the police. The focal point of the article is to assess whether the amendments to the Domestic Violence Act can assist in combatting revenge porn as well as recommendation/s to further assist victims. Nevertheless, only time will tell whether the attempts made by the legislature to combat online abuse are effective.*

**Keywords:** Revenge porn; domestic violence; Domestic Violence Act; gendered nature; criminal offence; Cybercrimes Act

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\* LLB, LLM, LLD (UWC).

## 1 INTRODUCTION

Whereas the privacy of the home and the centrality attributed to intimate relations are valued, privacy and intimacy often provide the opportunity for violence and the justification for non-interference. Victims are ambivalent about their fate and reluctant to go through with criminal prosecution. It is understandable for the legislature to enact measures that differ from those generally applicable to criminal arrests and prosecutions. It is clear that the Act serves a very important social and legal purpose.<sup>1</sup>

The pervasive nature of domestic violence stems from the fact that these brutal acts are committed behind closed doors. However, advances in technology have facilitated online abuse, in the form of, *inter alia*, revenge porn. As mentioned in the quote, the Domestic Violence Act<sup>2</sup> provides measures that are distinct from those in criminal law. There can be no doubt that the Domestic Violence Act plays an important role in an effort to combat domestic violence. Nevertheless, the Act was not flawless and required amendment. In acknowledging the rise of gender-based violence, the President signed off on the Domestic Violence Amendment Act.<sup>3</sup> During deliberations on the Bill, the topic of online abuse ensued. The purpose of this article is to analyse revenge porn<sup>4</sup> as an act of domestic violence and provide recommendations in this regard.

## 2 REVENGE PORN AS AN ACT OF DOMESTIC VIOLENCE

It is accepted that revenge porn is regarded as an act of domestic violence, which often occurs in instances where a perpetrator disseminates or threatens to disseminate intimate images or videos of their ex-partner.<sup>5</sup> The terms “revenge porn”, “non-consensual sexting”, “involuntary porn” and “non-consensual pornography” are used interchangeably to refer to the distribution of sexually explicit or intimate images, whether it be photographs or a video, without the consent of the relevant person.<sup>6</sup> Since technology is used to commit this act of domestic violence, it is regarded as a form of online abuse,<sup>7</sup> that exports the private realm into the public sphere through social networks, blogs, websites etcetera.<sup>8</sup>

The use of technology provides additional avenues as well as more extensive ways for domestic

1 *Omar v Government of the Republic of South Africa* 2006 2 SA 289 (CC) 295C-D.

2 116 of 1998.

3 14 of 2021.

4 While the focal point of the article is on revenge porn as an act of domestic violence, it is nevertheless important to highlight that the Cybercrimes Act 19 of 2020 criminalises the unlawful and intentional disclosure of an intimate image s 16(1). The Act further provides a definition of “intimate image” [s 16(2) (b)]. The Cybercrimes Act will be discussed later in the article.

5 Al-Alosi “Cyber-violence: Digital Abuse in the Context of Domestic Violence” 2017 *UNSW Law Journal* 1590; Addadzi-Koom “Revenge Pornography as a Form of Sexual and Gender-based Violence in Ghana: Emerging Judicial Issues” in Jarpa Dawuni (ed) *Gender, Judging and the Courts in Africa* (2021) 126 where the author states that revenge porn is a form of domestic violence as it is often used to silence and coerce a partner through the threat of public distribution of an intimate image.

6 Henry and Powell “Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law” 2016 *Social & Legal Studies* 399; Stephnović “Privacy Online: New Forms of Domestic Violence in the Age of Digital Surveillance” 2016 *Zbornik Instituta za Kriminološka i Sociološka Istrazivanja* 99; Chisala-Tempelhoff and Kirya “Gender, Law and Revenge Porn in Sub-Saharan Africa: A Review of Malawi and Uganda” 2016 *Palgrave Communications* 2; Musoni “The Criminalisation of ‘Revenge Porn’ in South Africa” 2019 *Obiter* 62; Thomason-Darch “The Dark Tetrad of Personality and the Tendency to Engage in Revenge Porn” 2021 *The Plymouth Student Scientist* 652.

7 Bond and Tyrrell “Understanding Revenge Pornography: A National Survey of Police Officers and Staff in England and Wales” 2018 *Journal of Interpersonal Violence* 2.

8 Stephnović 2016 *Zbornik Instituta* 96.

violence to occur especially in relation to coercion and control, stalking and harassment.<sup>9</sup> Furthermore, the threat of dissemination is used by perpetrators to achieve any of a number of ends, for example, prevent a partner from leaving a relationship, report abuse, or to obtain custody<sup>10</sup> of children.<sup>11</sup>

Perpetrators can circumvent geographic and spatial boundaries when committing an act of domestic violence in this manner.<sup>12</sup> A victim's feelings of safety after separation are consequently impacted, so, while the victim physically leaves the abusive relationship, technology prevents them from completely severing ties.<sup>13</sup> Not only this, but the dissemination of the content amounts to a violation of privacy.<sup>14</sup>

### 3 PROBLEMS WITH TERMINOLOGY

The term revenge porn is a misnomer as the commission thereof may not have been motivated by revenge.<sup>15</sup> Perpetrators can commit the act for profit, notoriety, entertainment, or for no particular reason. The images may have been shared between friends for fun or to flirt, or to show the 'type' of person one is interested in, or to brag about a date.<sup>16</sup>

Moreover, the term pornography is at times interpreted to mean that taking a picture of oneself naked, or engaged in sexual acts, or allowing someone else to take these is pornographic.<sup>17</sup> Focus is placed on the content of the image and framed as pornography regardless of the image or the intent of the original creator.<sup>18</sup> The term is furthermore inadequate to cater for those situations where intimate images are distributed for reasons such as coercion, blackmail, sexual gratification or where the harm caused through distribution or threatening to distribute, is used to intimidate; silence; or to extend power and control over victims of domestic violence.<sup>19</sup>

The reference to pornography also has the potential to minimise the harm caused to victims by likening the images and / or videos to commercially produced online pornography,<sup>20</sup> and

9 Al-Alosi 2017 *UNSW LJ* 1578; Marwick; Bickerdike *et al* "Technology and Family Violence in the Context of Post-separated Parenting" 2019 *Australian and New Zealand Journal of Family Therapy* 151; Dragiewicz, Harris *et al* "Digital Media and Domestic Violence in Australia: Essential Contexts" 2021 *Journal of Gender-Based Violence* 378 379.

10 The term custody has been replaced by the term care in the Children's Act 38 of 2005.

11 Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 2; Fascendini and Faliova "Voices From Digital Spaces: Technology Related Violence Against Women" 2011 *Association for Progressive Communications* 36.

12 Al-Alosi 2017 *UNSW LJ* 1578.

13 *Ibid*.

14 Stephnović 2016 *Zbornik Instituta* 96; Rosenberg and Dancig-Rosenberg "Reconceptualizing Revenge Porn" 2021 *Arizona Law Review* 201.

15 Eaton; Noori *et al* "Nonconsensual Porn as a Form of Intimate Partner Violence: Using the Power and Control Wheel to Understand Nonconsensual Porn Perpetration in Intimate Relationships" 2020 *Trauma, Violence & Abuse* 3; Van der Linde "Some Notes on Non-consensual or 'Revenge Porn' under the Film and Publications Amendment Act" 2021 *THRHR* 22; Kirchengast and Crofts "The Legal and Policy Contexts of 'Revenge Porn' Criminalisation: The Need for Multiple Approaches" 2019 *Oxford University Commonwealth Law Journal* 3; Rosenberg and Dancig-Rosenberg 201.

16 Kirchengast and Crofts 2019 *Oxford University Commonwealth LJ* 4.

17 Franks "Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators" 2016 *Cyber Civil Rights Initiative* 2.

18 Henry and Powell 2016 *Social & Legal Studies* 400; Kirchengast and Crofts 2019 *Oxford University Commonwealth LJ* 3 4.

19 Henry and Powell 2016 *Social & Legal Studies* 400.

20 *Ibid* 400 401.

obfuscates focus from the consequences of the non-consensual dissemination of that image.<sup>21</sup>

That the image/s were initially shared with the expectation that they would remain private seems to have become irrelevant.<sup>22</sup> Creating an image within the context of a private, intimate relationship cannot be equated to pornography. Nevertheless, disclosure of the image can be described as pornographic in that a private image has been transformed for public sexual entertainment.<sup>23</sup> It is the distribution of the image, which is assumed to be private, that causes harm to the victim.<sup>24</sup>

Other issues associated with the term “pornography” is that it confers a value judgment upon the victim by associating him or her with unacceptable practices; assumptions about the circumstances surrounding the origin of the image; and a lack of acknowledgement that the image itself may have been taken without the knowledge and/or consent of the victim.<sup>25</sup> While there may be a more appropriate term, “revenge porn” will suffice for this article.

#### 4 GENDERED NATURE OF REVENGE PORN

“Hardly a day passes without any incident of gender-based violence being reported. This scourge has reached alarming proportions”.<sup>26</sup> Gender-based violence refers to abuse or harm directed against a person or group of persons associated with the normative perception of their gender.<sup>27</sup> In *AK v Minister of Police*<sup>28</sup> the Constitutional Court emphasised that the state not only has a duty to protect women against all forms of gender-based violence, but should also ensure that there are reasonable and appropriate measures in place to prevent the violation of women’s fundamental rights. Courts are furthermore duty-bound to send a clear message to perpetrators of gender-based violence that the courts are determined to protect the equality, dignity, and freedom of all women.<sup>29</sup>

While people of all ages and genders can be victims of revenge porn, studies show that women are the primary victims and that men report higher rates of perpetration. Hence, revenge porn has been referred to as a gendered form of abuse.<sup>30</sup> Nevertheless, some studies have shown that males and females are victimised at similar rates<sup>31</sup> and while there is substantial evidence that women and girls experience particularly harmful impacts when their intimate images are distributed without consent, there are quantitative findings that the rates of the victimisation of men or boys are comparable, and that male victimisation requires further analysis.<sup>32</sup> It has also

21 Kirchengast and Crofts 2019 *Oxford University Commonwealth LJ* 3 4.

22 Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 2; Franks 2016 *Cyber Civil Rights Initiative* 10.

23 Franks 2016 *Cyber Civil Rights Initiative* 2.

24 Kirchengast and Crofts 2019 *Oxford University Commonwealth LJ* 4; Rosenberg and Dancig-Rosenberg 2021 *Arizona LR* 200.

25 Marwick; Bickerdike *et al* 2019 *Australian and New Zealand Journal of Family Therapy* 156.

26 *Tshabalala v S; Ntuli v S* 2020 5 SA 1 (CC) 17[61].

27 Addadzi-Koom “Revenge Pornography” (2021) 125.

28 2023 3 SA 321 (CC) 328[3].

29 328[3]; *Tshabalala v S; Ntuli* 18[63] where the court states that “[j]oint efforts by the courts; society and law enforcement agencies are required to curb this pandemic”.

30 Thomason-Darch 652; See also Rosenberg and Dancig-Rosenberg 2021 *Arizona LR* 201; Addadzi-Koom “Revenge Pornography” (2021) 125: While gender-based violence is experienced by both men and women, women are the mainstream victims of gender-based violence especially in instances where the violence is sexual in nature; Bond and Tyrrell 2021 *Journal of Interpersonal Violence* 2168.

31 Dodge “Trading Nudes Like Hockey Cards: Exploring the Diversity of ‘Revenge Porn’ Cases Responded to in Law” 2021 *Social and Legal Studies* 449 451.

32 *Ibid* 451.

been said that revenge porn can be used by women or girls as a shaming or harassment tactic.<sup>33</sup> So while women and girls are predominantly the victims of revenge porn, the rates of male victimisation raise important questions regarding why male victims choose not to report their victimisation, and why those that do report, do not make it to court.<sup>34</sup>

Research demonstrates that victims frequently encounter perceptions that violence facilitated by technology is “less than” and distinct from other forms of abuse.<sup>35</sup> Police resources are instead employed for matters involving physical offences rather than for that which is regarded as “virtual harms”.<sup>36</sup> One study provides examples where the police simply advised victims that they were unable to assist them or suggested to victims that they turn off their devices and de-activate their social media accounts.<sup>37</sup> Moreover, due to a lack of necessary training and understanding,<sup>38</sup> the police further lacks knowledge of not only the applicable laws at play, but even basic knowledge of social media, which exacerbates their inability to effectively address such matters.<sup>39</sup>

The effectiveness of protection orders is further undermined in situations where police only charge defendants for breaching an order when the conduct also constitutes a serious criminal offence, such as assault.<sup>40</sup> Al-Alosi thus argues that in order to improve compliance police, courts and legal practitioners should play an active role in ensuring that defendants understand that the scope of the protection order extends to technology-facilitated abuse.<sup>41</sup>

## 5 IMPACT OF REVENGE PORN

A person who has consented to the production of intimate content within the confines of a relationship has a reasonable expectation of privacy regarding disclosure beyond such relationship.<sup>42</sup>

Revenge porn is regarded as a serious form of domestic violence, not only because of the distribution of the images and/or videos, but victims are also at times threatened with sexual assault; harassment; forced to leave their schools or jobs’ and some have even committed suicide.<sup>43</sup> A victim’s future social or personal encounters are further at risk where the images remain online to be viewed again.<sup>44</sup> Research shows that victims experience a range of negative mental health outcomes due to their victimisation, which includes anxiety, depression and post-traumatic stress disorder as well as lower levels of well-being than their non victimised

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33 *Ibid* 457.

34 *Ibid* 451.

35 Harris and Woodlock “Digital Coercive Control: Insights From Iwo Landmark Domestic Violence Studies” 2019 *The British Journal of Criminology* 533.

36 Henry, Flynn and Powell “Policing Image-based Sexual Abuse: Stakeholder Perspectives Police” 2018 *Practice and Research* 573.

37 Henry, Flynn and Powell 2018 *Practice and Research* 573.

38 Bond and Tyrrell 2021 *Journal of Interpersonal Violence* 2172.

39 Henry 2018 *Practice and Research* 573.

40 Al-Alosi 2017 *UNSW LJ* 1593.

41 *Ibid* 1600.

42 Franks 2016 *Cyber Civil Rights Initiative* 10.

43 Stephnović 2016 *Zbornik Instituta* 100; Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 3; Franks 2016 *Cyber Civil Rights Initiative* 10; Thomason-Darch 2021 *The Plymouth Student Scientist* 652.

44 Kirchengast and Crofts 2019 *Oxford University Commonwealth LJ* 6; Fascendini and Faliova 2011 *Association for Progressive Communications* 38.

counterparts.<sup>45</sup>

There are further risks associated with intimate content being distributed without consent, such as the personal details and private information of the victim being revealed; the content being distributed to known or unknown persons;<sup>46</sup> and storage on revenge porn sites.<sup>47</sup> Should personal details of the victim be revealed, internet searches of the victim's name will produce their image, which then increases the chances that those associated with the victim, such as family members will also be exposed to humiliation.<sup>48</sup>

The non-consensual distribution of intimate content impacts the dignity and safety of the victim because the dissemination of the content removes any form of control from the person in this regard.<sup>49</sup> Victims are also often blamed, and “slut-shamed” in instances where the content was produced with their consent and apportioned blame for having participated in the production of the content.<sup>50</sup> Victim-blaming attitudes do not only fall within the wider community, but within the police force as well.<sup>51</sup> Studies continue to find that police officials minimise domestic and sexual violence and often fail to hold perpetrators accountable.<sup>52</sup> Al-Alosi notes that police officials sometimes place responsibility on the victim by making statements that victims should refrain from using electronic devices.<sup>53</sup> Since a victim would have to report such a matter to a police officer, victim-blaming attitudes on the part of the police may result in biased investigations and poor treatment of victims.<sup>54</sup> Low reporting rates of revenge porn matters has also been linked to the victim-blaming and harm minimisation attitudes, particularly by the police.<sup>55</sup>

One of the major problems experienced with the dissemination of intimate content is that once it is uploaded, it is difficult to remove as the images can be copied and saved by third parties, which then makes it possible for the image to be reposted once it has been removed.<sup>56</sup>

## 6 *KS v AM* 2018 1 SACR 240 (GJ)

### 6.1 Judgment

The issue of revenge porn and domestic violence arose in the above-mentioned case. The case of *KS v AM* involved parties who were in an intimate relationship, which was terminated when the appellant became aware that the respondent was married.<sup>57</sup> The respondent, who refused to accept the termination of the relationship, proceeded to make various threats against the appellant. He threatened that if he could not be with the appellant no one else would; that he would arrange for another man to rape her if she commenced a new relationship; and that

45 Eaton *et al* 2020 *Trauma, Violence & Abuse* 3.

46 See also Cyprien “The Urgency of Regulation in the Case of Online Gender-based Violence in Indonesia” 2021 *Sawwa: Jurnal Studi Gender* 176; Thomason-Darch 2021 *The Plymouth Student Scientist* 652.

47 Bond and Tyrrell 2021 *Journal of Interpersonal Violence* 2167.

48 Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 2; Franks 2016 *Cyber Civil Rights Initiative* 10.

49 Kirchengast and Crofts 2019 *Oxford University Commonwealth LJ* 6.

50 *Ibid* 4; Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 2.

51 Al-Alosi 2017 *UNSW LJ* 1598.

52 Henry, Flynn and Powell 2018 *Practice and Research* 569.

53 Al-Alosi 2017 *UNSW LJ* 1598: with reference to the SmartSafe Project.

54 Bothamley and Tully “Understanding Revenge Pornography: Public Perceptions of Revenge Pornography and Victim Naming” 2018 *Journal of Aggression, Conflict and Peace Research* 3.

55 Henry, Flynn and Powell 2018 *Practice and Research* 574.

56 Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 2.

57 243A-C.

he knew hijackers and gangs that he would use to kill her family. He furthermore created a Facebook account, befriended the appellant's friends and through this account, sent defamatory messages about the appellant. He went further and created a fraudulent Facebook account in the name of the appellant and posted certain explicit video footage and photographs of the appellant.<sup>58</sup>

The appellant consequently sought a protection order to not only prohibit the respondent from committing various forms of domestic violence, but also sought an order requiring the respondent to hand over all digital material and devices used to disseminate the video footage and photographs in terms of section 7(2) of the Domestic Violence Act.<sup>59</sup> While the court *a quo* granted the order in respect of the prohibitions, it declined to grant the order in respect of section 7(2). The court *a quo* was of the view that the conditions in place were sufficient to protect the appellant and it was thus unnecessary to seize the respondent's digital equipment.<sup>60</sup> It was the appeal court's task to assess whether the court *a quo* was incorrect in failing to grant the last-mentioned request.

It was argued on behalf of the appellant that the issue to be determined by the court was whether section 7(2) of the Domestic Violence Act empowers the court to grant an order that any private material concerning a complainant can permanently be removed from a respondent's device. In this regard, it was contended that the section must be interpreted purposively and generously to promote the rights to dignity, privacy, and bodily and psychological integrity of women. For as long as the respondent remained in control of the complainant's private material, she would continue to suffer a violation of her rights.<sup>61</sup> It was submitted on behalf of the respondent that the appellant did not illustrate that his possession of the content posed a threat to her safety, wellbeing, and health and that granting the order would infringe upon his right to privacy.<sup>62</sup>

When interpreting section 7(2) the guiding principle must be based on the norms and values enshrined in the Bill of Rights. The court highlighted that the Domestic Violence Act was enacted to promote and achieve the objectives of sections 9 and 12 of the Constitution.<sup>63</sup> It was acknowledged that granting the order in favour of the appellant would amount to a search and seizure process, which would intrude into the respondent's rights. Although the appellant consented to the production of the relevant content, the material was of a private nature. As far as the court was concerned it could not have been the parties' intention that upon termination of the relationship, the aggrieved party could use them as a weapon against the other.<sup>64</sup>

The appeal court was of the view that the court *a quo*'s refusal to grant the order in terms of section 7(2) was based on an incorrect principle in that no regard was paid to the constitutional imperative of ensuring the protection of the appellant as a member of a vulnerable group.<sup>65</sup> Although the court *a quo* had no precedent to rely on, it nevertheless had a legal duty to grant appropriate relief by striking a balance between the conflicting rights of the parties and the interests of the community.<sup>66</sup> In doing so, a clear message had to be sent to the respondent and other potential domestic abusers that conduct of this nature would not be tolerated.<sup>67</sup> Expecting

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58 243C-H.

59 241H-242C.

60 244C-D.

61 244E-H.

62 244I-J.

63 245D-E.

64 250F-251A.

65 251A-B.

66 251B-D.

67 251E-G.

the appellant to rely on the responsibility and decency of the respondent to not commit the violation again, resulted in the court *a quo* failing to grant relief that would combat the high incidences of domestic violence, which the Act seeks to address.<sup>68</sup> Thus, the proper approach in interpreting the powers under section 7(2) of the Act required the court *a quo* to look beyond the simple wording of the sub-section by taking into account constitutional imperatives. The court *a quo* further failed to consider the socio-historical basis for the enactment of the legislation.<sup>69</sup>

There was no guarantee that the respondent would not use the material to commit a similar act once the protection order expired. His possession of the material constitutes a continuous violation of the appellant's rights to dignity, privacy, and bodily and psychological integrity.<sup>70</sup> Thus, the special order sought by the appellant was the only remedy for the protection of the appellant.<sup>71</sup> The respondent was consequently ordered to hand over and place in the temporary custody of the Sheriff all digital devices under his control so that the necessary forensic audit could be completed.<sup>72</sup>

## 6 2 Criticism

According to Ndou<sup>73</sup> the court was misdirected in so far as its judgment regarding section 7(2) of the Domestic Violence Act. The author bases his argument on the following reasons: first, the court was required to determine whether the order requested was an additional condition deemed reasonably necessary to protect and provide for the safety, health, or well-being of the appellant in terms of section 7(2). Second, the court was required to decide whether the order would infringe on the respondent's constitutional rights and if so, whether the limitation was justifiable.<sup>74</sup>

Regarding the first issue, Ndou argues that the court's decision was not justified as the respondent obtained the content with the consent of the appellant and that the judgments relied on by the court dealt with matters where no consent was obtained.<sup>75</sup> The author further questions the court's reasoning that consent is tacitly and validly withdrawn if a relationship ends. According to Ndou the court did nothing more than point out that a court was required to protect members of a vulnerable group and did not rely on any evidence that the parties had agreed that once the relationship ended the respondent was no longer entitled to the images.<sup>76</sup> The author further submits that remaining in possession of the content that was obtained with consent did not violate the appellant's safety, well-being, and health and that such possession therefore, did not amount to domestic violence.<sup>77</sup> Whether the additional condition was necessary is thus questioned by the author, more so since section 7(2) directs how it should be interpreted.<sup>78</sup>

Furthermore, if one reads section 7(2) and section 9 of the Domestic Violence Act together, additional conditions are imposed to ensure that no further acts of domestic violence are suffered. The author submits that it was not the intention of the legislature that section 7(2) be

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68 252A-B.

69 252E.

70 252F-G.

71 252G-H.

72 253A.

73 Ndou "The Powers of the Court in Terms of Section 7(2) of the Domestic Violence Act 116 of 1998: KS v AM 2018 (1) SACR 240 (GJ)" 2019 *Obiter* 246.

74 *Ibid* 246 247.

75 *Ibid* 247.

76 *Ibid*.

77 *Ibid*.

78 *Ibid* — the section specifically deals with the seizure of dangerous arms or weapons.

relied on in instances where there were no acts of domestic violence being prevented. Since the continued possession of the content could not be regarded as domestic violence, the court *a quo* was correct in refusing to grant the order.<sup>79</sup>

Ndou further argues that it could not be the intention of the legislature that section 7(2) be relied on to order a search and seizure of material that the respondent came to be in possession of with the consent of the complainant.<sup>80</sup> The author further argues that there was no proper analysis by the court on whether the infringement of the respondent's right to privacy was justified and while the Criminal Procedure Act<sup>81</sup> allows for searches and seizures, the Act was not applicable since the respondent had not been charged with an offence.<sup>82</sup> Nevertheless, the author submits that even if the court were correct, the order granted was too broad and vague<sup>83</sup> as it went beyond providing for the removal of explicit material.<sup>84</sup>

Ndou's note highlights important concerns pertaining to the issue of revenge porn. It is submitted that the author places too much emphasis on the fact that the respondent had consent to be in possession of the material. The problem with this argument was noted earlier in this article: too often focus is placed on how the material was obtained as opposed to the fact that the distribution of the material was done without consent. It is the distribution of the content that harms a victim of revenge porn. In this regard, it is submitted that the court was correct. Even though the material was obtained with consent does not detract from the fact that upon termination of the relationship the other party retains a level of privacy.<sup>85</sup> If one accepts Ndou's argument, it would mean that a victim must expressly state that there is no consent to distribute upon termination. That would be an unrealistic expectation. Furthermore, that the appellant sought an order is indicative that there was no consent to distribute. While Ndou has valid arguments that the respondent's rights to privacy will be infringed, there can be no comparison to the appellant's right to privacy being infringed. Also, his rights would not have been infringed if he did not infringe upon the appellant's rights in the first place.

Another important aspect of this judgment is, as mentioned by Ndou, that while what the respondent committed at the time amounted to domestic violence, it was not regarded as a criminal offence. Nevertheless, it is not only the actual dissemination of the content, but also the threat of dissemination that has major consequences for victims.<sup>86</sup> Thus, eradicating even the threat of distribution is imperative. Literature shows that one of the difficulties with revenge porn is that once the material is uploaded it is almost impossible to remove. So, while the appellant was successful in having her images removed, there was still the risk that for as long as the respondent was in possession of the images, he could commit the act again regardless of what was contained in the order. Not only do many perpetrators not consider protection orders seriously,<sup>87</sup> revenge porn sites exist as well as the "dark web". Here material can be uploaded anonymously, which may make tracing the perpetrator harder. However, as mentioned by Ndou,

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79 *Ibid* 248.

80 *Ibid*.

81 51 of 1977.

82 Ndou 2019 *Obiter* 248.

83 *Ibid* 249.

84 *Ibid* 250.

85 Moreover, Musoni 2019 *Obiter* 67 mentions that a victim of revenge porn can also rely on the Copyright Act 98 of 1978: for example, where a person takes an intimate selfie of themselves, such person is regarded as both the author and owner of the photograph. Consequently, the disclosure of the photograph without the permission of the victim would constitute a copyright infringement.

86 See Chisala-Tempelhoff and Kirya 2016 *Palgrave Communications* 2; Fascendini and Faliova 2011 *Association for Progressive Communications* 36.

87 Al-Alosi 2017 *UNSW LJ* 1593.

the court could have been clearer about the extent of the order, in other words, which images required deletion.<sup>88</sup> Regardless, the court's decision should be welcomed. As mentioned by the appeal court, there was a lack of precedent on such matters. Not only a lack of precedent, but also legislation governing revenge porn effectively. Furthermore, the court's statement on its duty to send a clear message has been reiterated by the Constitutional Court where the court stated that it would fail in its duty if it

does not send out a clear and unequivocal pronouncement that the South African judiciary is committed to developing and implementing sound and robust legal principles that advance the fight against gender-based violence in order to safeguard the constitutional values of equality, human dignity and safety and security.<sup>89</sup>

## 7 DOMESTIC VIOLENCE AMENDMENT ACT

### 7.1 Deliberations

*KS v AM* was decided prior to the the President assenting to legislation that was aimed at combatting gender-based violence. Among those was the Domestic Violence Amendment Act. One of the aspects that the Amendment Act sought to address was the issue of revenge porn. The public was invited to participate in the process and several deliberations on various aspects of the Bill took place. Research ICT Africa<sup>90</sup> was among those who made submissions towards the Domestic Violence Amendment Bill. It was acknowledged that lawmakers had to address online domestic violence. Four recommendations were made in this regard: ensuring that the Bill adopts a nuanced and evolving understanding of online domestic violence and domestic violence aided, facilitated or abetted by information communication technology (ICT); reporting responsibilities in relation to directions; the need for data protection requirements in respect of the integrated electronic repository for domestic violence protection orders; and to widen the definition of domestic violence in the Bill.

The Department of Communications and Digital Technology (DCDT),<sup>91</sup> in reviewing the amendment, noted that the Bill hardly addressed new technology issues. For example, there was a need to address incorporating matters of online violence and cyber violence, where women were also abused by means of technology. The Department acknowledged that it needed to assess the way in which it could ensure that electronic communication providers supported the processes of information, dissemination, and provisions of support to survivors of gender-based violence during the court processes. It was also emphasised that sexual offences could be perpetrated online. The DCDT aimed to provide relevant support on strengthening platforms that would enable victims of online sexual offences or sexual abuse to have an opportunity to report it and to feel safe when providing information on what had occurred. The Department mentioned that one of the problems that had led to the establishment of the Bill was that there was no enforcement mechanism when someone posted illegal content, nor was there online regulation that could easily protect children and consumers from harmful and undesirable content. Unlike advanced countries where illegal content was detected promptly when posted, South Africa had no remedy to cater for it. Nevertheless, taking action against someone who posted content and to have such content removed was not an easy feat.

If one has regard to the deliberations, it is evident that there were concerns regarding revenge porn, which was termed as online violence. The next part will focus on specific provisions in

88 Ndou 2019 *Obiter* 250.

89 *Tshabalala v S; Ntuli* 18 [63].

90 <https://pmg.org.za/committee-meeting/31260/> (accessed 12-02-2023).

91 <https://pmg.org.za/committee-meeting/31608/> (accessed 12-03-2023).

the Amendment Act that deal with revenge porn or non-consensual pornography.

## 7 2 Relevant Provisions

The following are regarded as the relevant provisions pertaining to revenge porn:

- “disclose by means of an electronic communications service” which deals with the sending of an electronic communication; the storing of an electronic communication on an electronic communications network, where the electronic communication can be viewed; copied or downloaded or sending or making available a link to an electronic communication that has been stored on an electronic communications network that allows the viewing, copying or downloading of the electronic communication
- “electronic communication” encompasses a wide variety of electronic representations of information without limitation: voice, sound, data, text, video, animation, visual images, moving images and pictures that are real, simulated or manipulated, or a combination or part thereof, that are disclosed by means of an electronic communications service.
- “electronic communications network” means that as defined in section 1 of the Electronic Communications Act 36 of 2005 inclusive of a computer system.
- “electronic communications service” refers to any service involving the conveyance of a communication over an electronic communication network’
- “electronic communications service provider” refers to an entity that is licenced to provide an electronic service.
- “emotional, verbal and / or psychological abuse” is broad enough to encompass revenge pornography as it encompasses threatening or intimidating or humiliating conduct that causes mental or psychological harm to the complainant.
- “harassment” incorporates the disclosing of an electronic communication or to make an electronic communication available to another person concerning the complainant which contains information of an *inter alia*, private nature; violates the sexual integrity or dignity of a complainant; is abusive, degrading, offensive or humiliating.
- “sexual abuse” is also broad enough as it is defined as any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant, irrespective of whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).

Section 5B is an addition to the Domestic Violence Act which covers the duty of an electronic communications service provider to furnish particulars to a court. This section involves the process when an application for a protection order was made where an electronic communication was used to commit an act of domestic violence. In such instances, the court may adjourn the proceedings and issue a direction in the prescribed form, directing an electronic communications service provider, that is believed to be able to furnish such particulars to the court in an affidavit. The particulars referred to is: the electronic communications identity number from where the communication originated; the name, surname, identity number and address of the person to whom the electronic communications identity number has been assigned; any information which indicates that the electronic communication was or was not sent from the relevant person; any information that is available to the service provider that may be of assistance to the court to identify the person who disclosed the electronic communication; any information that is available to the service provider that can assist the court in identifying the service provider

whose service was used to host or was or is used to disclose the electronic communication in question; or an assessment of whether or not the service provider is in a position to remove the communication or link to the communication; or disable access to the communication or link. If the application is granted, the court must simultaneously issue an order that the service provider that hosts the relevant communication, remove and disable it. The provision is quite lengthy and provides information on what the service provider can do as well as who bears the costs.

Section 7 of the Domestic Violence Act was amended to include subsection (gA) which empowers the court to prohibit the disclosing of any electronic communication or making available any communication as may be specified in the protection order.

## **8 REGULATION IN TERMS OF OTHER LEGISLATION**

### **8 1 Cybercrimes Act 19 of 2020**

Section 16 in Part II of the Act covers the disclosure of an intimate image. Section 16(1) provides that any person who unlawfully and intentionally discloses a data message of an intimate image of a person by means of an electronic communication is guilty of an offence. In terms of section 16(2)(b) an intimate image refers to a depiction of a person, whether real or simulated and made by any means in which the person is nude, or the genital organs or anal region of such person is displayed; or if the person is a female, transgender person or intersex person, their breasts are displayed; or the covered genital or anal region of the person is displayed, or if the person is a female, transgender or intersex person, their covered breasts are displayed; and in respect of which the person so displayed retains a reasonable expectation of privacy at the time the data message was made in a manner that violates or offends the sexual integrity or dignity of the person; or amounts to sexual exploitation.

In terms of section 19(7) a person who is found liable for contravening section 16 can be fined or imprisoned for a period not exceeding three years or be fined and imprisoned. Section 20(1) provides that a complainant who lays a charge with the South African Police Service that an offence in terms of section 16 has allegedly been committed against them may apply on an *ex parte* basis for a protection order pending the finalisation of the criminal proceedings to: prohibit any person to disclose or further disclose the data message; or order an electronic communications service provider whose electronic communications service provider is used to host or disclose the data message to remove or disable access to the data message.

Section 22(2) provides that a trial court that convicts a person of a section 16 offence must order that person to refrain from further making available, disclosing or distributing the data message; that person or any other person to destroy the data message in question, any copy of the data message or any output of the data message, and to submit an affidavit to the prosecutor identified in the order that the data message has been destroyed; or an electronic communications service provider to remove or disable access to the data message.

A South African court would have jurisdiction to try the offence of revenge porn that is committed outside the borders of South Africa, provided that the person who committed it is a South African citizen or is ordinarily resident in South Africa or, was arrested in the territory of South Africa or on board a ship or aircraft registered in South Africa.<sup>92</sup> Musoni mentions that this provision is in line with principles of state sovereignty.<sup>93</sup>

Section 33(1) of the Act governs access to, or the seizure of an article on the arrest of a person who, *inter alia*, committed an offence in terms of Part II of Chapter 2 which covers revenge

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92 Section 24(1)(f)(i).

93 Musoni 2019 *Obiter* 74.

porn. In terms of section 33(1) a police official may without a warrant as contemplated in section 40 of the Criminal Procedure Act arrest any person who, *inter alia*,

(b) who is concerned with or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that they have been concerned with an offence –

(i) similar to those contemplated in Part I or Part II of Chapter 2; or

(ii) Substantially similar to an offence recognised in the Republic, which may be committed by means of, or facilitated through the use of an article in a foreign state and for which they are under any law relating to extradition or fugitive offenders, liable to be arrested or detained in custody in the Republic.

Section 33(2) provides that

on the arrest of a person contemplated in subsection (1) or in terms of section 40 of the Criminal Procedure Act, a police official may search for and perform the powers referred to in paragraphs (a) and (b) of the definition of ‘seize’ in respect of a computer data storage medium or any part of a computer system referred to in paragraph (c) or (d) of the definition of “article” which is found in the possession of or in the custody or under the control of the person.

One of the criticisms levelled against the Act is that liability is limited to the original poster. Accordingly, anyone who receives the content and then shares it, cannot be held accountable. The suggestion is thus, that upon conviction of the offender, a court should order that the offender provide the details of all recipients of the sexually explicit content, which order should then be served on the recipients.<sup>94</sup> It is submitted that such an order would not necessarily resolve the issue, because those recipients could further share the content resulting in the content spreading further. Also, if the Cybercrimes Act is limited to only the original perpetrator, then it is unsure why the issue of revenge porn was even addressed. It is thus submitted that the views held by Van der Linde appear to be more appropriate in that the Act refers to “any person” and that someone can also be charged with attempt, conspiracy, aiding and abetting, instructing, instigating and procuring to commit an offence or being an accessory after the fact in terms of the Act.<sup>95</sup>

## 8 2 Film and Publications Amendment Act 11 of 2019

Section 18(F)(1) of the Act prohibits the exposure of a private sexual photograph or film through any medium, including the internet or social media if such exposure is made without the consent of the person affected and is made with the intention to cause harm. Section 18(F)(3) emphasises that the prohibition mentioned applies even if the person who appears in the photograph or film provided consent to the original creation thereof. Section 18(F)(4) elaborates on what “privacy” means in the context of the Act by providing that it would be regarded as private, if when judging the context in which the photograph or film was taken or made, it was not intended by any individual in the photograph or film to be seen by others. Section 18(F)(5) elaborates on when a photograph or film can be regarded as sexual: it reveals all or part of a person’s breasts if female, anus, genitals or pubic area; it shows something that a reasonable person would consider to be sexual because of its nature; or if its content taken as a whole, is such that a reasonable person would consider it to be sexual. In terms of section 18(F)(6) an internet service provider shall be compelled to provide the relevant board with the identity of

94 *Ibid* 71.

95 Van der Linde 2021 *THRHR* 34.

the person who published the photo or film.

According to Van der Linde the reference to “reasonable person” should be understood to mean whether an ordinary member of the public would consider it as sexual, given the nature and content as a whole.<sup>96</sup> The author further highlights that the unlawfulness of the crime lies in the requirement that the photograph or film should be “exposed” through any medium. It is mentioned that the word “exposed” should be understood in its ordinary, dictionary meaning since it is not defined in the Act.<sup>97</sup>

### 8 3 Protection from Harassment Act 17 of 2011

The purpose of the Act is to *inter alia* provide for the issuing of protection orders against harassment. Section 1 of the Act defines various terms such as:

harassment” which means directly or indirectly engaging in conduct that the respondent knows or ought to know (a) caused harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by: (i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be; (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; or (b) amounts to sexual harassment of the complainant or a related person.

“Sexual harassment” is defined as:

any unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome; unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances which a reasonable person having regard to all the circumstances would have anticipated that the complainant or a related person would be offended, humiliated or intimidated; implied or the expressed promise of reward for complying with a sexually oriented request or implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.

The definitions of both harassment and sexual harassment are broad enough to encompass revenge porn. Section 2 of the Act deals with the application process for a protection order. The wording is very similar to the application process for a protection order in terms of the Domestic Violence Act. Section 4 covers the furnishing of particulars to a court by an electronic communications service provider. The section is also similar to what is stipulated regarding service providers in the Domestic Violence Amendment Act and Cybercrimes Act. Musoni notes that the problem with this Act is that focus is placed on the effect of revenge porn on the victim and not the conduct relating to disseminating the content.<sup>98</sup>

## 9 ANALYSIS AND RECOMMENDATIONS

It should be noted that outside of the Acts highlighted, a victim of revenge porn has other avenues for redress, namely the Protection of Personal Information Act;<sup>99</sup> the Copyright Act;<sup>100</sup>

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96 Van der Linde 2021 *THRHR* 24.

97 *Ibid* 25. See the note for a further analysis of the Act.

98 Musoni 2019 *Obiter* 69.

99 4 of 2013.

100 98 of 1978.

*crimen injuria*; and delictual claims.<sup>101</sup>

From the discussion, it is evident that the legislature attempts to address the issue of revenge porn quite extensively. An argument could be raised that the various Acts could result in uncertainty, and it may have been sensible to have one Act govern the issue. However, the Domestic Violence Act (as amended) is limited to the categories of relationships that it governs. The relevant parties must fall within one of the categories recognised as a domestic relationship to find application. Thus, where the act of revenge porn occurred through hacking by an unknown person, the Domestic Violence Act would not be applicable. Also, while the Domestic Violence Act is broad enough to cater for harassment and sexual harassment, the Protection against Harassment Act is not limited to the persons the Act governs.<sup>102</sup>

The process of applying for a protection order is a civil process and not all acts of domestic violence amounts to a criminal offence. One of the major arguments against the ineffectiveness of laws governing revenge porn was that it was not recognised as an offence. Protection orders were initially limited to restraining physical violence<sup>103</sup> but have since been extended to include non-physical abuse such as emotional and economic abuse, and more recently, digital intimidation and harassment.<sup>104</sup> However, defendants regard protection orders as merely a piece of paper.<sup>105</sup> The Cybercrimes Act combats this concern by making revenge porn an offence. Consequently, a victim of revenge porn should thus be informed of not only applying for a protection order in terms of the Domestic Violence Act, but the police official or clerk of the court also has a duty to inform the victim of their right to lay a criminal charge.

A suggestion was made to introduce legislation that would make it an offence for internet service providers and website hosts that fail to report the relevant material to authorities. However, it was emphasised that imposing criminal liability on such service providers needs to be carefully considered such as what penalty if any, should be imposed for breaching such an obligation.<sup>106</sup> In terms of the Domestic Violence Amendment Act, the penalty for an offence committed by the service provider is a fine not exceeding R10 000; or if it is committed by an employee of the service provider then a fine or imprisonment not exceeding six months or to both a fine and imprisonment. The Amendment Act addresses a failure to remove the content by a service provider or an employee of the service provider, which certainly assists in combatting the problem. Also, both section 21(1)(b) of the Cybercrimes Act and the insertion of section 5B by virtue of the Domestic Violence Amendment Act empowers the court to issue a direction to an electronic communication service provider to provide information that could assist in those instances where content was posted anonymously.<sup>107</sup> It nevertheless remains unclear what impact such offences have in respect of those images that are stored on “porn sites” or the “dark web” as well as the reach of the Domestic Violence Act when the images were shared with known and unknown persons, more so since a court’s jurisdiction in terms of the Cybercrimes Act is limited.

Section 7(2) of the Domestic Act was amended by the insertion of subsection (gA) which as mentioned earlier empowers a court to prohibit the disclosing of any electronic communication, or making available any communication as may be specified in the protection order. However,

101 Musoni 2019 *Obiter* 66–70 and Van der Linde 2021 *THRHR* 32–36.

102 See definitions of complainant, respondent and domestic relationship in Domestic Violence Act (as amended).

103 See also Prevention of Family Violence Act 133 of 1993; Kruger “Addressing Domestic Violence: to what Extent Does the Law Provide Effective Measures?” 2004 *Journal for Juridical Science* 160.

104 See DVA and now Amendment Act; Al-Alosi 2017 *UNSW LJ* 1592.

105 Al-Alosi 2017 *UNSW LJ* 1593.

106 *Ibid* 1601.

107 See also Musoni 2019 *Obiter* 72.

Section 7(2) of the Domestic Violence Act was not amended to cater for the concerns raised by Ndou regarding searches and seizures. It is submitted that the Domestic Violence Act should have been amended in line with section 33 of the Cybercrimes Act relating to access to, and the seizure of an article. Section 7(2) of the Domestic Violence Act (as amended) does contain a provision that a court may impose any additional obligation which it deems reasonably necessary to protect the health; safety or well-being of the complainant, something that was acknowledged by the court *quo in KS v AM*. Whether this was broad enough to cater for the applicant's request at the time is uncertain. However, it should now be possible since revenge porn is an offence. To avoid similar concerns as raised by Ndou regarding the limits of section 7(2) regarding searches and seizures, it is submitted that the provision should have been amended to read:

(2) The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or well-being of the complainant, including an order – (a) to seize any weapon as contemplated in section 9; or data or computer device as contemplated in the Cybercrimes Act.

The amendment should not be problematic as section 7(a), as provided in the Amendment Act, states that a court may not refuse to grant a protection order because other legal remedies are available.

In terms of section 22(1)(a), the Cybercrimes Act provides that if a person is convicted in terms of, *inter alia*, section 16, but the evidence proves that the person engaged in or attempted to engage in harassment as contemplated in the Protection from Harassment Act, a trial court may, after holding an enquiry, issue a protection order in terms of the latter Act, whereafter the Harassment Act will apply. Both the Domestic Violence Act (as amended) and the Harassment Act do not include a provision regulating the seizure of intimate content. It is submitted that the Cybercrimes Act be amended to extend to the Domestic Violence Act as well. If a protection order is being sought in terms of the Domestic Violence Act, it would make sense that an order to have the material deleted from a device be possible in terms of the Act as well. Section (gA) could thus, have been amended in line with section 22 of the Cybercrimes Act which finds application only after a person has been convicted of an offence. In other words, a court should expressly be empowered to order that a respondent destroy the content in question and any copy of the content or any output of the data message in terms of the Domestic Violence Act.

A key problem with the dissemination of images is that the internet tends to extend the life of a malicious post, and once published, it can spread virally and it becomes impossible to trace all copies of the image.<sup>108</sup> One of the most pressing issues concerns the persistence of sexually explicit or intimate images in cyberspace post-distribution and the fact that many existing laws have very little impact on whether the content is removed since many sites where the images are hosted are based outside the victim's country.<sup>109</sup> As the internet readily enables re-blogging and reposting, it may be impossible to retract the image once it has been distributed.<sup>110</sup> The sections on service providers in the Domestic Violence Amendment Act are similar to those contained in both the Cybercrimes Act and the Protection Against Harassment Act. One suggestion put forward in the literature is that there should be agreements between website hosts and law enforcement agencies when investigating revenge porn complaints. Nevertheless, it was questioned whether implementing this suggestion was feasible given the global reach of the internet and potential barriers in creating agreements with faceless website hosts.<sup>111</sup>

While the Cybercrimes Act affords jurisdiction to our courts, it remains limited, which Musoni

108 Stephnović 2016 *Zbornik Instituta* 100.

109 Henry and Powell 2016 *Social & Legal Studies* 405.

110 *Ibid.*

111 Al-Alosi 2017 *UNSW LJ* 1601.

mentions is more in line with state sovereignty. However, the author mentions that the previous Bill afforded the courts jurisdiction for acts committed outside the Republic by a foreign national.<sup>112</sup> If a court's jurisdiction were extended this far, it would have addressed the concerns raised. It is submitted that this strengthens the argument that the Domestic Violence Act should have included provisions in line with the Cybercrimes Act regarding a court's powers. This would mean that a complainant would not have to wait until the trial for a criminal offence before an order to this effect is made.

Education campaigns regarding revenge porn were acknowledged in the deliberations on the Domestic Violence Amendment Bill. This is needed more so since there are various Acts that govern the issue. Police officials and clerks of the court should be trained so that they can provide proper direction regarding the legal avenues a victim of revenge porn has. There should furthermore be education campaigns directed at the public that focus on perpetrator accountability and challenge victim blaming attitudes, on how to for example, minimise cyber-violence.<sup>113</sup>

In Australia, an initiative to assist victims of revenge porn was launched through an online portal, which offers victims reporting options as well as support and resources. Not only can victims report revenge porn, but family, friends and bystanders as well. Victims are assisted with reporting revenge porn and seeking its removal as well as being provided with advice and resources on managing the impact of revenge porn.<sup>114</sup> This should be considered, especially since the Amendment Act includes the option for a complainant to apply for a protection order to an electronic address of the court that has jurisdiction.<sup>115</sup> The Department of Justice's website provides a link to information on domestic violence. However, in applying for a protection order against revenge porn online, a complainant should have access to information pertaining specifically to revenge porn including the other Acts that find application on this issue, as well as other resources available to a victim.

## 10 CONCLUSION

Although revenge porn can be committed against any gender, it is still primarily women who are the victims of this act. To continue combatting revenge porn, the article recommends that education campaigns be conducted to inform the public of the various remedies available if they find themselves in the unfavourable position of being a victim of revenge porn. It will also alert potential perpetrators of the consequences of such act. It is furthermore imperative that police officials receive proper training on the various Acts governing revenge porn so that there is effective compliance with their duties. Although the court in *KS v AM* was criticised for being misdirected, the article argues that the decision was welcomed in addressing an issue that at the time, was not effectively catered for in terms of the law. It should be seen as a positive that the courts have and will continue to send a clear message "that such behaviour will not be tolerated". While time will tell how effective the legislation is, the legislature should be commended for attempting to address this issue.

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112 Musoni 2019 *Obiter* 74.

113 Al-Alosi 2017 *UNSW LJ* 1602.

114 Yar and Drew "Image-based Abuse, Non-consensual Pornography, Revenge Porn: A Study of Criminalization and Crime Prevention in Australia and England & Wales" 2019 *International Journal of Cyber Criminology* 585.

115 Section 7 of Amendment Act which amends s 4(1) of the Domestic Violence Act.