



THE NATIONAL GENDER AND EQUALITY COMMISSION

OFFICE OF THE CHAIRPERSON

NATIONAL PUBLIC ADVISORY

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TO ALL KENYANS, MEDIA PRACTITIONERS, SOCIAL MEDIA USERS, LAW ENFORCEMENT AGENCIES, AND THE GENERAL PUBLIC

NATIONAL ADVISORY ON THE PROTECTION OF THE PRIVACY AND DIGNITY OF SEXUAL AND GENDER BASED VIOLENCE SURVIVORS: PROHIBITION AGAINST THE NON-CONSENSUAL SHARING OF INTIMATE IMAGES AND CHILD SEXUAL ABUSE MATERIAL

1.0 Introduction

The National Gender and Equality Commission (NGEC) is a constitutional Commission established under Article 59(4) & (5) of the Constitution of Kenya, 2010 and the National Gender and Equality Commission Act, 2011 (Cap 7K). The Commission's mandate is to promote gender equality and freedom from discrimination for all persons in Kenya, with particular focus on Special Interest Groups, including women, children, youth, persons with disabilities, older members of society, minorities, and marginalized communities.

Pursuant to Section 8(b) and (f) of the NGEK Act, 2011, the Commission is mandated to monitor, facilitate, advise on, and investigate matters relating to equality and freedom from discrimination in all national and county policies, laws, and institutions.

2.0 Our Concern over Rising Digital Violations

The Commission is profoundly alarmed by the sharp rise in the non-consensual sharing of intimate images (commonly known as “revenge pornography”), the circulation of personal data and images of survivors of Sexual and Gender-Based Violence (SGBV/GBV) — especially children — and the dissemination of child sexual abuse material (CASM) across social media and other digital platforms.

While technology has enhanced crime reporting, evidence collection, and prosecution in SGBV cases, its misuse causes secondary victimization, severe trauma, stigma, and mental harm to survivors, especially vulnerable survivors such as children. Eventually sharing of the images and materials discourage reporting and undermines access to justice.

3.0 Legal Position

The non-consensual sharing of intimate images and the disclosure of identities of Sexual and Gender Based Violence survivors is strictly prohibited and punishable under Kenyan law:

a) Sexual Offences Act, 2006 Section 31(11) prohibits the publication or revelation of the identity of victims of sexual offences (including names, images, videos, or any details that may identify them). The penalties under this law are severe. For child victims, imprisonment for a term of not less than three (3) years or a fine of not less than KSh. 50,000 or both; and for adult victims, imprisonment for a term of not less than three (3) years or a fine of not less than KSh. 200,000 or both

b) Children Act, Cap 141:

Section 27 guarantees every child's right to privacy and protection from all forms of abuse, including digital exploitation. Processing of children's data is strictly governed by the Data Protection Act, 2019.

c) Data Protection Act, 2019 (Cap 411C)

Section 33 protects personal data (names, photographs, videos, health information, and other identifiers). Processing of a child's data requires parental/guardian consent and must prioritize the child's best interests while avoiding harm. A person who contravenes section 27 of the Children Act (Cap 141), violates section 33 of the Data Protection Act (Cap 411C). The Penalty under this law includes fine not exceeding three million shillings or to an imprisonment term not exceeding ten years, or to both.

d) Computer Misuse and Cybercrimes Act, 2018 (Cap 79C)

Section 37 criminalizes the wrongful distribution of obscene or intimate images without consent. The Penalty for wrongful distribution is Fine of up to KSh. 200,000 or imprisonment for up to two (2) years, or both. Section 42 penalizes aiding, abetting, or facilitating such offences. The law also provides for a fine of up to KSh. 7 million or imprisonment for up to four (4) years, or both.

4.0 Judicial Pronouncements

Kenyan courts have consistently and firmly upheld the constitutional rights to privacy and dignity in such matters:

a) In **MWK & Another v Attorney General & 4 Others** [2017] eKLR (Constitutional Petition No. 347 of 2015), the High Court ruled that the taking and sharing of nude images of victims violated the rights to privacy (Article 31) and dignity (Article 28), awarding KSh. 4,000,000 in damages.

b) In **Roshanara Ebrahim v Ashleys Kenya Limited & 3 Others [2016] eKLR** (Petition No. 361 of 2016), the Court held that the non-consensual sharing of private nude photographs constituted a breach of privacy and dignity, awarding KSh. 1,000,000 in damages.

These decisions confirm that such acts are not only criminal offences but also serious violations of the Constitution of Kenya, particularly Articles 28 (dignity), 31 (privacy), and 53 (rights of children to protection from abuse).

5.0 Why You Should Protect Survivors' Privacy Matters

Protecting the identity and data of GBV survivors is critical because it:

- Prevents further trauma, stigma, re-victimization, and mental harm;
- Upholds constitutional rights to dignity and privacy;
- Protects children from all forms of abuse as guaranteed under Article 53;
- Safeguards the integrity of investigations and judicial processes;
- Encourages reporting and ensures access to justice.

6.0 Call to Action

The Commission calls upon every Kenyan, institution, and stakeholder;

- To Immediately cease** sharing, posting, forwarding, or circulating any names, photographs, videos, or identifying details of GBV survivors or intimate images on any platform, unless expressly authorized by law or a court order.
- Media practitioners, journalists, bloggers, influencers, and content creators** must strictly adhere to professional ethical codes. Anonymize all survivor information or obtain explicit court permission before any publication.
- Report all violations** promptly to the National Police Service, the Office of the Director of Public Prosecutions, the Office of the Data Protection Commissioner, the Witness Protection Agency, or the NGEK.
- Law enforcement agencies** must investigate and prosecute such offences swiftly and decisively.

The protection of the privacy and dignity of GBV survivors is both a legal obligation and a profound moral imperative. No Kenyan has the right to expose, sensationalize, or exploit the suffering of survivors for personal gain, malice, or negligence.

Let us all work together to create a safe, just, and humane society where survivors can seek justice without fear of exposure, stigma, or retaliation.

Issued by:

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