

TWICE SHAMED: THE USE OF UGANDA’S ANTI-PORNOGRAPHY ACT TO TURN REVENGE PORNOGRAPHY NON-CONSENSUAL IMAGE DISTRIBUTION VICTIMS INTO VILLAINS

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INTRODUCTION

“Why is it that women in Uganda are being punished for everything, instead of the government punishing the people who are damaging us?”

Judith Heard—one of the victims of Non-Consensual Intimate Image Distribution (NIID) in Uganda.¹

The internet is currently flooded with pictures of naked women, many shared without the woman’s consent, with the intention of inflicting harm on her. Uganda is not exempt from this phenomenon. The distribution of these non-consensual intimate images, commonly known as “revenge porn,”² is on the rise. There are increasing reports of young women, celebrities and non-celebrities alike, who have been targeted, harassed, or blackmailed by past lovers that have shared intimate pictures of them online. The victims have been humiliated into isolation, and, within Uganda’s current legal framework, some have even been detained or arrested. This shaming and criminalizing treatment is enabled by existing attitudes and laws about women’s bodies, sexuality, and agency.

The Anti-Pornography Act (“APA” or “the Act”)³ is one of many tools used to discriminate against women in Uganda. First drafted in 2005, the APA has been used to intimidate and harass women who are perceived as violating cultural

1. Alice McCool, *When Her Naked Selfies Were Posted Online, She Thought Life Couldn’t Get Worse. Then She Was Arrested*, CNN (Nov. 11, 2018), <https://www.cnn.com/2018/11/10/africa/uganda-pornography-revenge-porn-asequals-africa-intl/index.html>.

2. While this is the commonly used term colloquially, it has been critiqued as misleading and as a distortion of the level of violence inherent to non-consensual intimate image distribution. See Sophie Maddocks, “Revenge Porn”: 5 Important Reasons Why We Should Not Call It By That Name, GENDERIT (Jan. 16, 2019), <https://www.genderit.org/articles/5-important-reasons-why-we-should-not-call-it-revenge-porn>.

3. Anti-Pornography Act, (2014) (Uganda).

standards of decency.⁴ Although the bill itself left decency vaguely defined, both public officials and private citizens have used it as a pretext to impose their own standards on women, leading to everything from legal harassment to violent attacks. These abuses were most commonly directed at women based upon their clothing choices (inspiring the bill's popular nickname, the 'Mini-Skirt Bill'). The Act has created an ever-present target on the backs of women, who have been increasingly targeted for other supposed violations, including being the subject of widely-distributed nude images.

The Pornography Control Committee, which was established to enforce the Act, has primarily detained and arrested women whose intimate pictures have been shared without their consent. The victims are punished for engaging in types of sexual expression of which the Committee does not approve, while the perpetrators who distribute the pictures remain free from consequences. This focus on the subjects of the abuse adds another layer to the violations: on top of the distribution of images, which is a total violation of privacy, it lays down a public trail for which the subjects are pre-judged as guilty—a further injustice to the women, who are already victimized.

This Article argues that, in order to protect victims of non-consensual intimate image distribution (NIID), the Ugandan government should interpret and enforce the APA to hold perpetrators accountable. Additionally, the APA and other existing policies should be revised, and the government should support social change that makes it easier for victims to seek justice. Part I begins by defining and introducing NIID. It situates NIID on the continuum of sexual violence that is targeted towards women as a result of gendered power dynamics. Part II discusses the channels used to distribute NIID, highlighting the particular role played by the internet. Part III examines the use of culture, tradition, and religion to justify the regulation of women's sexuality in Uganda, laying the foundation of the history and justifications that led to the enactment of the Anti-Pornography Act. Following the contextualization of the problem by examining its deep entrenchment and origin, Part IV discusses the rise of NIID in Uganda and introduces the concept of re-criminalization of survivors of NIID in Uganda. Part V then analyzes the Anti-Pornography Act, explaining the history of the Act and its implementation. Part VI proposes different legal, political, and social strategies that shift the focus to protecting victims and not perpetrators of NIID.

I. NON-CONSENSUAL INTIMATE IMAGE DISTRIBUTION AS SEXUAL VIOLENCE

This section positions NIID as a form of sexual violence. It begins by defining sexual violence as broader than physical violence, and then it locates NIID within that definition. By drawing on examples from Uganda and other societies where women have been victimized by the dissemination of NIID, this section

4. Ann Amato & Innocent Anguyo, *Vague Description of Porn Fueling Attacks on Women*, NEW VISION (Mar. 11, 2015), https://www.newvision.co.ug/new_vision/news/1338547/vague-description-porn-fueling-attacks-women (quoting Regina Bafaki, Executive Director of Action for Development).

highlights the double standard based on the gender of the victim and shows that NIID is a gendered crime.

A. DEFINING AND UNDERSTANDING THE CONTINUUM OF SEXUAL VIOLENCE

Sexual violence is a pervasive and widespread problem. While people of all genders can be victims, sexual violence disproportionately affects women.⁵ According to the World Health Organization (WHO), one in three women worldwide have experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetimes.⁶ Sexual violence includes any sexual acts, advances, or comments that are unwanted and non-consensual.⁷ The WHO has recognized violence against women, both intimate partner violence and sexual violence, as a violation of women's human rights.⁸

While once defined only as physical violence, such as rape and unwanted touching, the understanding of sexual violence within various societies has evolved to include non-physical actions that are intended to be harmful to the victims and that take away their sexual autonomy, such as digital stalking and other forms of online abuse.⁹ This in-depth analysis of the different forms of sexual violence is due, in part, to the work of feminists who have theorized on the forms of violence and abuse that women are subjected to and on the effects of gender-based violence, which includes the harmful effects of denying women their sexual autonomy.¹⁰

Liz Kelly characterizes sexual violence as so prevalent that almost all women have experienced it and argues that it comes in various forms and that it occurs in the background of power assigned to men.¹¹ The disproportionate effect of violence against women—and, in particular, the understanding of the manifestation of sexual violence—necessitates that we analyze both traditional gender roles and the resulting unequal gendered power dynamics as having been socially and culturally constructed.¹² Gendered power dynamics are woven into the social fabrics of many institutions. For example, mainstream and widely-accepted religious institutions and their leaders argue that men's dominance over women was predetermined by God and is therefore unquestionable.¹³ Thus, gender

5. See WORLD HEALTH ORGANIZATION, VIOLENCE AGAINST WOMEN (Nov. 29, 2017), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

6. *Id.*

7. U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, SEXUAL AND GENDER-BASED VIOLENCE IN THE CONTEXT OF TRANSITIONAL JUSTICE 1 (Oct. 2014), (https://www.ohchr.org/documents/issues/women/wrgs/onepagars/sexual_and_gender-based_violence.pdf).

8. See Violence Against Women, *supra* note 5.

9. Clare McGlynn, Erika Rackley & Ruth Houghton, *Beyond 'Revenge Porn': The Continuum of Image Based Sexual Abuse*, 25 FEMINIST LEGAL STUD. 25, 28 (2017).

10. LIZ KELLY, SURVIVING SEXUAL VIOLENCE 1 (1988). See generally feminist academics such as Sylvia Tamale and Catherine MacKinnon on the subject.

11. KELLY, *supra* note 10.

12. ANASTASIA POWELL & NICOLA HENRY, SEXUAL VIOLENCE IN A DIGITAL AGE 29 (2017).

13. The principle of subordination of women, particularly to their husbands has been preached about with Genesis 2, Genesis 3 and Ephesians 5:22–23, as the foundation for these teachings. See also Zainah

conditioning then starts from an early age in subtle and overt ways, teaching gender roles to girls and boys and influencing how they navigate the world.¹⁴ The subtleties are often evident in heterosexual relationships, where the gendered performance of roles can create a power dynamic inherently biased against women.¹⁵ This unequal dynamic, where the man is expected to be “the head”¹⁶ and the woman his “helper,”¹⁷ can lead to a need for the man to exert dominance and expect submission from his female partner. The societal normalization of this hierarchy makes it hard to resist for many in heterosexual pairings.¹⁸ The part that society plays in constructing and solidifying these roles cannot be underestimated. The Convention on the Elimination of Discrimination Against Women (CEDAW) Committee¹⁹ has stated that violence against women is founded and rooted in gendered ideas, such as men’s entitlement and privilege over women and social norms around masculinity.²⁰ This leads to a society “where sexual violence is minimized, and men’s sexual aggressions and violations are frequently recast as ‘seductions’; much of what women experience as harmful is likewise dismissed as part of the messiness of ‘normal’ sex.”²¹

Sexual violence is both a public and private harm.²² Women experience “private” sexual violence in intimate settings such as their romantic partnerships or within their families. In public spaces, including workplaces, women are also regularly subjected to abuse through catcalling, unwanted groping, and other forms of public sexual abuse. All of these experiences collectively affect women’s daily ability to move through society, particularly because their sexual autonomy is constantly attacked.²³ These threats of sexual violence exist on a continuum, which ranges from trivialized violations to more serious crimes, including rape.²⁴ Framing sexual violence as a private matter that should to be resolved

Anwar & Ziba Mir-Hosseini, *Decoding the “DNA of Patriarchy” in Muslim Family Laws*, OPEN DEMOCRACY (May 21, 2012), <https://www.opendemocracy.net/en/5050/decoding-dna-of-patriarchy-in-muslim-family-laws/>.

14. See *supra* discussion of accompanying notes 13, 15.

15. Deborah L. Tolman, et al., *Sowing the Seeds of Violence in Heterosexual Relationships: Early Adolescents Narrate Compulsory Heterosexuality*, 59 J. SOC. ISSUES 159, 160–61 (2003). See generally Namy Sophie, et al., *Towards a Feminist Understanding of Intersecting Violence Against Women and Children in the Family*, 84 SOC. SCI. MED. 40 (2017).

16. See *Ephesians* 5:23 (King James).

17. *Genesis* 2:18–24 (King James).

18. Melanie Heath, *State of Our Unions: Marriage Promotion and the Contested Power of Heterosexuality*, 23 GENDER & SOC’Y 27, 38–40 (2009).

19. *Committee on the Elimination of Discrimination Against Women*, U.N. HUM. RTS. OFF. HIGH COMM’R, <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

20. *Convention on the Elimination of Discrimination Against Women*, GEN RECOMMENDATION 39, PARA. 19 (2017).

21. POWELL & HENRY, *supra* note 12, at 30.

22. *Id.* at 24.

23. See *id.*

24. *Id.* at 67; see also Michelle Bowdler, *Underinvestigated, Trivialized, Excused: On a US System That Treats Rape as Something Less Than a Crime*, LITERARY HUB (July 28, 2020), <https://lithub.com/underinvestigated-trivialized-excused-on-a-us-system-that-treats-rape-as-something-less-than-a-crime/>.

intimately²⁵ has contributed to the culture of silencing victims²⁶ and has fueled men's impunity. Victims of sexual violence are conditioned to stay silent or deal with their abuse privately, and this, in turn, allows many of these harms to go unchecked and unreported.

Sexual violence as discussed above, is often gendered in nature. Physical violence is the "prototype" of this violence.²⁷ Other acts without physical contact, such as harassment under the guise of romantic pursuit, unsolicited sexual images, and catcalling, are rarely characterized as sexual violence.²⁸ These other forms of violence to which women are routinely subjected are trivialized because of the societal misunderstanding that rape is the only form of sexual violence and that sexual violence is a crime that must leave physical scars.²⁹ It can therefore be nearly impossible for victims whose experiences fall outside the accepted trope to attain justice.

Sexual autonomy is a core element of bodily and mental dignity.³⁰ While sexual rights have not been expressly protected, they exist as penumbrae in the interpretations of various existing legal instruments, which have been construed to include important rights that relate to human sexuality.³¹ These rights include bodily integrity, protection from violence, the right to privacy, equal protection of the law, and non-discrimination.³² Sexual rights are integral to reproductive health, and yet they stretch far beyond health to recognize the desires of all individuals to have pleasurable sexual lives.³³ The ability to decide for oneself on all issues related to one's sexuality should be understood as an intrinsic part of being human, which includes having a pleasurable sexual life or even choosing not to have a sexual life. Sexual violence removes that choice from women, denying them the agency to decide what happens to and about their own bodies. Their human dignity is threatened not only because of the bodily harm inflicted, but also because of the dehumanizing effects of denying victims the ability to exist as fully autonomous human beings. All forms of sexual violence, as discussed above, should therefore be understood as highly detrimental to women's well-being and to society's ability to ensure women's wellbeing.³⁴

25. Rachel Louise Snyder, *The Particular Cruelty of Domestic Violence*, ATLANTIC (May 8, 2019), <https://www.theatlantic.com/family/archive/2019/05/no-visible-bruises-domestic-violence/588631/>.

26. Rohan D. Jeremiah, Camille R. Quinn & Jicinta M. Alexis, *Exposing the Culture of Silence: Inhibiting Factors in the Prevention, Treatment, and Mitigation of Sexual Abuse in the Eastern Caribbean*, 66 CHILD ABUSE & NEGLECT 53, 55–63 (2017).

27. POWELL & HENRY, *supra* note 12, at 66.

28. *Id.* at 66.

29. *See id.* at 24.

30. *Rape & Sexual Violence: Human Rights Law & Standards in the International Criminal Court*, AMNESTY INT'L (Mar. 2011), <https://www.amnesty.org/en/documents/IOR53/001/2011/en/>.

31. *See* WORLD HEALTH ORGANIZATION, DEVELOPING SEXUAL HEALTH PROGRAMMES: A FRAMEWORK FOR ACTION 3 (2010) [hereinafter WHO].

32. Sylvia Tamale, *The Right To Culture and The Culture of Rights: A Critical Perspective on Women's Sexual Rights in Africa*, 16 FEMINIST LEGAL STUD. 148, 150 (2008).

33. WHO, *supra* note 31, at 5.

34. *See generally Violence Against Women*, *supra* note 5.

Despite the fact that international law has recognized the harm caused by violence against women, its continued prevalence is an indication of the failure of societies to honor their commitment to women's human rights. Despite the widespread condemnation by several legal instruments,³⁵ sexual violence persists.³⁶ Even as feminists and activists fight the sexual violence epidemic, structures and institutions prevent victims from attaining true justice. The #MeToo campaign³⁷ is a reminder of how much sexual violence women continue to experience in their daily lives and of how little progress society has made in ensuring that all women are safe and protected.

The persistence of sexual violence as a pervasive societal problem undermines efforts to protect and champion women's rights all around the world. As one human rights court wrote:

The impunity of the crimes committed sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice.³⁸

States must therefore continue to take measures to end the prevalence of sexual violence.

B. NIID AS A FORM OF SEXUAL VIOLENCE

NIID should be understood as a form of sexual violence. This section explains the various forms of NIID as well as explores the systemic nature of NIID.

1. Definitions of NIID

NIID is the public distribution of intimate pictures or videos without the consent of the subject.³⁹ It can include nude pictures, sex tapes, and any other materials of a sexual nature. NIID encompasses both images obtained without consent and images originally obtained with consent in the context of private relationships.⁴⁰ However the image was originally obtained, a victim of NIID did not

35. Including CEDAW, The Maputo Protocol, ICCPR, ICESCR.

36. See generally *I Can't Afford Justice: Violence Against Women in Uganda Continues Unchecked and Punished*, AMNESTY INT'L (Apr. 2010), <https://www.amnesty.org/download/Documents/36000/afr590012010en.pdf>.

37. See generally Anna North, *7 Positive Changes That have Come from the #MeToo Movement*, Vox (Oct. 4, 2019), <https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019>.

38. *Gonzalez et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 400 (Nov. 16, 2009). This comment can be universally applied to crimes of sexual violence against women.

39. Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 356 (2014).

40. *Id.* at 346.

consent to their images being shared publicly. This type of abuse has been documented in several countries around the world, particularly targeted at high profile women, including politician Katie Hill,⁴¹ actress Jennifer Lawrence in the United States,⁴² and musicians Desire Luzinda and Cindy in Uganda. The motives of perpetrators include retaliation by ex-lovers,⁴³ the threat of NIID or actual distribution as blackmail,⁴⁴ or even satisfaction.⁴⁵ While there are many forms of NIID, there are three core types: “sex-ploitation,”⁴⁶ “sextortion,”⁴⁷ and “sexual trophyism.”⁴⁸

The commercialization of non-consensual intimate images, or “sex-politization,”⁴⁹ is one of the most common forms of NIID. The specific goal of this type of abuse is to exploit the victims further by making money off them through selling their images to porn sites or tabloids. Websites and tabloids dedicated to this abuse rely on this exploitation of NIID victims to make money.⁵⁰ With snippets of the content inside and suggestive headlines, tabloids have routinely turned the pain of NIID victims into a way to drum up print magazine sales.⁵¹

“Sextortion”⁵² is the use of intimate images, often obtained without consent, to coerce the subject. The abuser often demands that the victim stay in a relationship or provide payment in order to prevent distribution.⁵³ Perpetrators are often known to the victim⁵⁴ as former lovers or friends.⁵⁵ In other instances, perpetrators may hack into the victim’s devices, such as phones or laptops, to gain access to their victim’s intimate images, without the former’s consent or knowledge.⁵⁶

The third core type of NIID involves the distribution of images from a previously consensual intimate encounter, also known as “sexual trophyism.”⁵⁷ Sexual

41. Quinta Jurecic, *The Humiliation of Katie Hill Offers a Warning*, ATLANTIC (Oct. 31, 2020), <https://www.theatlantic.com/ideas/archive/2019/10/katie-hill-and-many-victims-revenge-porn/601198/>.

42. *Jennifer Lawrence ‘Blindsided’ by Nude Photos Leak*, BBC NEWS (Aug. 9, 2017), <https://www.bbc.com/news/entertainment-arts-40878964>.

43. POWELL & HENRY, *supra* note 12, at 135.

44. *Id.*

45. *Id.*

46. *Id.* at 128.

47. *Id.* at 122.

48. *Id.* at 126.

49. *Id.* at 128.

50. Dan Tynan, *Revenge Porn: The Industry Profiting from Online Abuse*, GUARDIAN (Apr. 26, 2016), <https://www.theguardian.com/technology/2016/apr/26/revenge-porn-nude-photos-online-abuse>. See also Saikat Pyne, *This is How Porn Sites Make Money*, BUS. INSIDER (Aug. 27, 2019), <https://www.businessinsider.in/this-is-how-porn-sites-make-money/articleshow/48385361.cms>.

51. *E.g.*, Red Pepper Uganda (@RedPepperUG), TWITTER (Dec. 4, 2014, 11:02 PM), <https://twitter.com/redpepperug/status/540597140293439488?lang=en>.

52. POWELL & HENRY, *supra* note 12, at 122.

53. *Id.*

54. *Id.*

55. *E.g.*, *Ugandan Singer Desire Luzinda is Latest Victim of ‘Revenge Porn’*, BBC NEWS AFR. (Nov 11, 2014), <https://www.youtube.com/watch?v=PFgq0xPmmiQ>.

56. POWELL & HENRY, *supra* note 12, at 123.

57. *Id.* at 126.

trophyism can be equated to “a passion for power,”⁵⁸ and explained in the same way hunters often mount the heads of their prey as a show of their conquest.⁵⁹ A perpetrator of sexual trophyism shares images of a sexual encounter without the consent of the other party as a way to earn bragging rights in front of their peers⁶⁰ or to prove that the encounter happened.⁶¹ The perpetrators of NIID do not usually expect the subjects of their abuse to become aware of such actions and intend the display to be a show of their own manly conquests.⁶²

2. How We Got Here and Why It Matters

While violence against women manifests in different ways, it all serves the same purpose: re-expressing and codifying gendered power dynamics⁶³ and continuing to condition women as “sexed” objects.⁶⁴ “Putting women in their place” is not new.⁶⁵ Neither is the idea that women’s bodies exist for the pleasure of men.⁶⁶ These two notions intersect and are responsible for why NIID has become so pervasive today. Social media sites and apps that allow for sharing of non-consensual images have continued to grow and have made NIID so pervasive. It is also important to look at the influences that have allowed for these sites and for the general practice of NIID to evolve into widely-known and generally-accepted parts of society.

3. Consequences of the “Culture of Purity” as Emphasized World Over

While the ideas of lessening control over women’s sexual expression has evolved over the years, the underlining gendered expectations remain dominant.⁶⁷ Women’s sexual experiences are portrayed as fundamentally different from those of men, often setting the foundation for skewed justifications for double standards.⁶⁸ The idea that men enjoy and express their sexual desire innately and women do not or should not is a deeply embedded notion in many cultures worldwide.⁶⁹ It is important to solidify this notion in order to control women’s

58. Brian Luke, *Violent Love: Hunting, Heterosexuality, and the Erotics of Men’s Predation*, 24 FEMINIST STUD. 627, 628 (1998).

59. *Id.*

60. See POWELL & HENRY, *supra* note 12, at 126; Jeff Hearn & Matthew Hall, ‘This is My Cheating Ex’: Gender and Sexuality in Revenge Porn, 22 SEXUALITIES 869, 876–78 (2018).

61. Hearn & Hall, *supra* note 60, at 874.

62. POWELL & HENRY, *supra* note 12, at 126.

63. *Id.* at 123.

64. *Id.*

65. Heather McLaughlin, Christopher Uggen & Amy Blackstone, *Sexual Harassment, Workplace Authority, and the Paradox of Power*, 77 AM. SOC. REV. 625, 635 (2012).

66. Dawn M. Szymanski, Lauren B. Moffitt & Erika R. Carr, *Sexual Objectification of Women: Advances to Theory and Research*, 39 THE COUNSELING PSYCH. 6, 12 (2011).

67. Martin S. Weinberg, Rochelle Ganz Swensson & Sue Kiefer Hammersmith, *Sexual Autonomy and the Status of Women: Models of Female Sexuality in U.S. Sex Manuals from 1950 to 1980*, 30 SOC. PROBS. 312, 313 (1983).

68. Tamale, *supra* note 32, at 58.

69. *Id.*

reproductive functions, and this becomes a vital patriarchal tool in guaranteeing “the paternity and legitimacy of the children” and ultimately ensuring that both inheritance and lineage is continued along the male line.⁷⁰

The obsession with women’s chastity allows for the abuse of women who are perceived to have deviated from this norm by taking naked pictures.⁷¹ This permits for easy slut-shaming, and the subsequent reactions in which the state is allowed to use the law to punish victims of NIID.⁷² The labelling of victims of NIID as sluts is seen to justify the abuse they experience: if they did not allow these pictures to be taken, there would be no images to have been shared.⁷³ Societies label these women as deviants, which can make empathizing with them difficult, if not impossible, for men and women alike.

Women’s nudity has been constructed as especially shameful.⁷⁴ Women are expected to cover most of their bodies, particularly parts that have been deemed highly sexual, such as breasts, nipples, and pubic areas.⁷⁵ Public reactions around intimate images are therefore divided and usually turn to shaming of the subjects and not the perpetrators NIID; the question is always whether these women deserve sympathy or punishment.⁷⁶ To suggest the latter is to continue the cycle of violence. Women who have been victimized by NIID should be able to expect that both society and legal culture will work towards shielding them from further victimization.

Perpetrators of NIID continue to play into these sentiments. Understanding that the majority of society will shame women for nudity, NIID is quickly becoming one of the easiest ways to exert “revenge” or maintain control over women.⁷⁷ In Uganda, women have internalized the idea of shame associated with their nakedness. Instinctively they apologize, retreat, and isolate.⁷⁸ If the first reaction to an image shared without the subject’s consent was not to question the morality of the woman in the picture but, rather, that of the person who shared it, some of the humiliation and subsequent devastating effects of NIID would be void. However, the current emphasis on further punishing women emboldens abusers and creates justifications for their abuse.

70. *Id.*

71. Sarai Chisala-Tempelhoff & Monica Twesiime Kirya, *Gender, Law and Revenge Porn in Sub-Saharan Africa: A Review of Malawi and Uganda*, 2 PALGRAVE COMM. 1, 3 (2016).

72. See Andrew Bagala & Job Bwire, *Anti-porn Committee to Probe Martha Kay, Mufti’s Daughter Over Leaked Nudes*, DAILY MONITOR (June 3, 2019), <https://www.sqoop.co.ug/201906/news/anti-porn-committee-probes-martha-kay-muftis-daughter-over-leaked-nudes.html>.

73. *Madonna and Whore: Revenge Porn in Sub-Saharan Africa*, CMI (Feb. 24, 2017), <https://www.cmi.no/news/1785-madonna-and-whore>.

74. Sylvia Tamale, *Nudity, Protest and the Law in Uganda*, 22 FEMINIST AFR. J. 52, 53 (2017).

75. *Id.*

76. Chisala-Tempelhoff & Kirya, *supra* note 71, at 6.

77. Emily Poole, *Fighting Back against Non-Consensual Pornography*, 49 U.S.F.L. REV. 181, 185–96 (2015).

78. Desire Luzinda, Judith Heard, Anita Kyarimpa, Becky Juuko and many other victims of NIID in Uganda have apologized publicly, deactivated their social media, etc. Discussion *infra* section II.

4. Non-Consensual Intimate Image Distribution as Sexual Violence

The distribution of non-consensual images is a type of sexual violence, primarily because of the “practices of men and masculinities.”⁷⁹ Approximately 90% of the images (10,587 posts) on the popular self-defined “revenge porn” website MyEx.com were images of women, and only 1,173 posts were images of men.⁸⁰ Four thousand, nine hundred and three images were posted by people in seemingly heterosexual pairings, with 4,418 of those posts by men and 529 by women, while only 24 posts appeared to be from people in same-sex relationships.⁸¹ Even in same-sex pairings, the text accompanying posts related to controlling the victims and humiliating them. These figures show that women are more frequent victims of NIID and that NIID is both gendered and amplified by the power dynamics that have traditionally been found in heterosexual partnerships. Motivations for engaging in NIID can vary, but the three most common motivations are to control, to manipulate, or to punish the victim.⁸²

The need to maintain control is one of the most common reasons why ex-partners publicly share intimate pictures of their former partners or other women they perceive to have wronged them.⁸³ In situations where the perpetrator feels that they have been wronged, such as through infidelity or by ending the relationship, they may rationalize publicly sharing intimate images as a way of taking back some of the control that they believe they have lost.⁸⁴ For example, Hunter Moore, creator of IsAnyoneUp.com, noted that a heartbreak he suffered at fifteen was one of the contributing factors for creating the website and was a justification for the subsequent abuse it meted out on women.⁸⁵ In his own words, “the only way to get to a point where you have no feelings, you have to have your heart ripped out and shit on.”⁸⁶ His story is just one example of the rationalization of acts of violence against all women as retaliation for personal tragedies men have suffered. The violence is a way of taking back what the abuser thinks they have lost, rendering all women collateral damage in the process. Unfortunately, these sentiments are common, which explains the widespread appeal and justification of NIID.

79. RAEWYN CONNELL in *MEN AND MASCULINITIES, as quoted by MATTHEW HALL & JEFF HEARN, REVENGE PORNOGRAPHY: GENDER, SEXUALITY AND MOTIVATIONS* 73 (2017).

80. HALL & HEARN, *supra* note 79, at 73.

81. *Id.* at 74.

82. Desire Luzinda, a popular musician in Uganda, has maintained that her nude pictures were leaked by her former lover to “teach her a lesson.” See Catherine Byaruhanga, *Ugandan ‘Revenge Porn’ Victim Desire Could Be Arrested*, BBC NEWS (Nov. 11, 2014), <https://www.bbc.com/news/av/world-africa-30011166/ugandan-revenge-porn-victim-desire-could-be-arrested>.

83. HALL & HEARN, *supra* note 79, at 75.

84. See Hearn & Hall, *supra* note 60, at 869.

85. Marlow Stern, *Hunter Moore, Creator of ‘Revenge Porn’ Website Is Anyone Up? Is the Internet’s Public Enemy No. 1*, DAILY BEAST (Mar. 13, 2012), <https://www.thedailybeast.com/hunter-moore-creator-of-revenge-porn-website-is-anyone-up-is-the-internets-public-enemy-no-1>.

86. *Id.*

II. THE DISTRIBUTION OF NON-CONSENSUAL IMAGES

The idea of using sex and sexuality to sell different products is not a new concept. In fact, early filmmakers exploited this concept by displaying sexual themes on screen.⁸⁷ The phrase “sex sells” has been used so often to justify the display of nude and semi-nude women in music videos, films, and commercials.⁸⁸ This normalized and widely-accepted phenomenon is in contradiction with attempts to shame women for the same sexuality that is so easily used by others, when deemed necessary. In Uganda, tabloids like Red Pepper have facilitated the rise of and normalization of NIID, as will be explained and discussed further below.

A. THE INTERNET AS AN AMPLIFIER OF VIOLENCE AGAINST WOMEN

There is little doubt that the internet has greatly influenced and changed the way we communicate, learn, share, and receive information. All over the world, the internet has facilitated feminist interactions and has been used to organize campaigns, such as #FreeStellaNyanzi,⁸⁹ #WomensMarchUg,⁹⁰ and #MeToo. As much as the internet has given society by increasing communication, it has also taken away from individual privacy and dignity by magnifying existing structural challenges and further placing a target on the backs of marginalized people. The internet poses new challenges, which are further compounded by the complexities of regulating the digital space.

Currently, over half of the world’s population has an internet connection.⁹¹ As of January 2020, 4.54 billion people were reported to be active internet users.⁹² The number is increasing quickly. From 2018 to 2019, there was a 9% increase of internet users, bringing the number to 4.39 billion internet users in January 2019, up 366 million from January 2018.⁹³

87. HALL & HEARN, *supra* note 79, at 2.

88. Tanja Hundhammer & Thomas Mussweiler, *How Sex Puts You in Gendered Shoes: Sexuality-Priming Leads to Gender-Based Self-Perception and Behavior*, 103 J. PERSONALITY & SOC. PSYCH. 176, 176 (2012).

89. The arrest of Ugandan feminist academic and popular blogger Stella Nyanzi sparked a series of online campaigns starting in Uganda, which spread across the world in a show of solidarity. #FreeStellaNyanzi became a popular hashtag throughout her incarceration and was often used to call out repressive state tendencies, especially in relation to freedom of expression.

90. In May 2018, Ugandan feminists took to social media to organize and mobilize a demonstration against the rising femicides in the country and the lack of state action to protect women. The march drew attention from other feminists across the continent, and since then, similar marches protesting femicides have been seen all across the region.

91. Joseph Johnson, *Global Digital Population as of January 2021*, STATISTA (Apr. 7, 2021), <https://www.statista.com/statistics/617136/digital-population-worldwide/>.

92. *Id.*

93. Simon Kemp, *Digital 2019: Global Internet Use Accelerates*, WE ARE SOCIAL (Jan. 30, 2019), <https://wearesocial.com/blog/2019/01/digital-2019-global-internet-use-accelerates>.

(Un)remarkably, 73% of women worldwide have experienced some form of online violence.⁹⁴ The main forms of online violence have been categorized as gender harassment,⁹⁵ which are threatening words and actions targeted at one because of their gender;⁹⁶ sexual coercion,⁹⁷ which are sexual acts resulting from unwanted pressure;⁹⁸ unwanted sexual attention, including unsolicited comments of a sexual nature;⁹⁹ and stalking.¹⁰⁰

The internet replicates many ingrained biases, and the offline abuse women experience is amplified online. As one theorist has written, “[t]he Internet provides online selves with the power to exact quick and meaningful revenge on identifiable others, even in cases where the ire is unjustified, misdirected, or unbalanced to the putative offense.”¹⁰¹ The online abuse experienced by women stems from misogyny and sexism, including threats of violence and the sexualization of women and their bodies.¹⁰² Where the internet was once lauded as having the potential to provide a space free from gender biases, the reality is that it has become a “chilling space that permits anonymous cruelty and facilitates harmful acts towards women and girls.”¹⁰³

Starting in the early 2000s, there was an influx of platforms designed for image sharing¹⁰⁴ and social networking.¹⁰⁵ Platforms like MySpace, Facebook, Instagram, and YouTube became popular for their features that allowed people to share, comment on, and “like” pictures with a touch of a button. Additionally, today there are a myriad of dating applications and platforms that encourage easy sharing of intimate images, all of which also facilitate new waves of sexual violence and other forms of abuse against women.¹⁰⁶ The trivializing, ignoring, and condoning of the various behaviors that perpetuate rape culture have been made even easier with the ability to share, retweet, and make abusive memes.¹⁰⁷

94. BROADBAND COMM’N WORKING GRP. ON GENDER, COMBATTING ONLINE VIOLENCE AGAINST WOMEN & GIRLS: A WORLDWIDE WAKE-UP CALL (Sept. 2015), <https://en.unesco.org/sites/default/files/highlightdocumentenglish.pdf>.

95. Azy Barak, *Sexual Harassment on the Internet*, 23 SOC. SCI. COMPUTER REV. 77, 78 (2005).

96. POWELL & HENRY, *supra* note 12, at 156.

97. Barak, *supra* note 95.

98. POWELL & HENRY, *supra* note 12, at 156.

99. *Id.*

100. Barak, *supra* note 95, at 80.

101. Scott R. Stroud, *The Dark Side of the Online Self: A Pragmatist Critique of the Growing Plague of Revenge Porn*, 29 J. MASS MEDIA ETHICS 168, 170 (2014).

102. *Toxic Twitter: Women’s Experiences of Violence and Abuse on Twitter*, AMNESTY INT’L (Mar. 2018), <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>.

103. Valeria Perasso, *100 Women 2015: Social Media ‘Fuels Gender Violence’*, BBC NEWS (Nov. 26, 2015), <https://www.bbc.com/news/world-34911605> (quoting UN Women’s Phumzile Mlambo-Ngcuka).

104. POWELL & HENRY, *supra* note 12, at 33.

105. *Id.*

106. *Id.* at 79.

107. *Id.*

The internet has undoubtedly facilitated pornography.¹⁰⁸ It is now easier to share explicit images and videos.¹⁰⁹ Where people previously had to buy pornographic magazines or rent DVDs, explicit content is now a simple click and scroll away. This includes sharing, downloading, and manipulating images of women, even without their consent.

The distribution of intimate pictures has further been facilitated by the semblance of anonymity many online platforms offer.¹¹⁰ This type of gendered hate speech on the internet serves to humiliate the victim, who is more often than not, a woman. Between 2013–2016, Ugandans on Twitter, known as UOT,¹¹¹ was marred with this abuse. The dynamics of social media and acceptable online behavior has gradually evolved. Insults to women based on the color of their skin, physical appearances, or past relationships were posted daily by UOT.¹¹² This abuse was always intended to silence, humble, or simply shame the woman in question.¹¹³ Those who participated in this violence were cheered on by largely male colleagues, and rarely was this behavior called out for the abuse it was.¹¹⁴ As more feminists began to publicly use social media platforms to teach, educate, and mobilize against violence, much of the abuse that had been accepted against women was no longer acceptable in the mainstream.

Abuse that includes threats of rape and personal humiliation under the guise of a joke is a common experience for many women who use platforms such as Twitter and Facebook.¹¹⁵ This reality is worsened by the inability to know the origin or seriousness of such a threat: “[a]n anonymous sexual threat on a blog could come from anywhere, and it is virtually impossible to determine whether or not the poster is serious.”¹¹⁶ The rise of online spaces that encourage that abuse, often without any consequences, has left women even more vulnerable in this digital age.

B. THE EASE OF QUICK SHARING OF NIID ONLINE

The relative invisibility that allows a perpetrator to commit these violations of privacy without revealing their identity or being seen makes NIID a unique type of violence.¹¹⁷ This semblance of anonymity makes it easy to share images

108. Rachel Budde Patton, *Taking the Sting out of Revenge Porn: Using Criminal Statutes to Safeguard Sexual Autonomy in the Digital Age*, 16 GEO. J. GENDER & L. 407, 407 (2015).

109. Poole, *supra* note 77, at 186.

110. Stroud, *supra* note 101, at 168.

111. UOT, meaning “Ugandans on Twitter,” defines the community of Ugandans who use Twitter.

112. See, e.g., Colin Asiiimwe (@Spartakussug), TWITTER (Oct. 7, 2015), <https://twitter.com/spartakussug/status/651715607671533568?s=21>.

113. See, e.g., Ciru Muriuki, *‘I Was Arrested and Shamed for Leaked Nudes’: Ugandan Model Judith Heard*, BBC NEWS (June 19, 2019), <https://www.bbc.com/news/av/world-africa-47612896/i-was-arrested-and-shamed-for-leaked-nudes-ugandan-model-judith-heard>.

114. See, e.g., Telephone Interview with Edna Ninsiima, Feminist Writer, Uganda (Jan. 3, 2021).

115. *Toxic Twitter: Women’s Experiences of Violence and Abuse on Twitter*, *supra* note 102.

116. Ann Bartow, *Internet Defamation as Profit Centre: The Monetization of Online Harassment*, 32 HARV. J.L. & GENDER 383, 400 (2009) (quoting Dahlia Lithwick).

117. HALL & HEARN, *supra* note 79, at 90.

without any real regard for the victim. In Uganda, platforms like WhatsApp have made it easy for images to circulate and have made it hard to trace their origin.¹¹⁸ Those who participate in sharing these images do so either to deliberately add to the shaming of the victim or because they are unaware that they are participating in the perpetuation of a cycle of violence against women.¹¹⁹

As one commentator wrote, “[t]he internet never forgets. And that permanent digital record, a blessing when it summons a moment we want to recall with the click of a mouse, can be a weapon in more sinister hands when it preserves ones we would like to forget.”¹²⁰ A quick Google image search of any of the NIID victims in Uganda will unearth the images that were shared years ago without their consent. This is true for most, if not all, of the intimate images on the internet. Images and information from years past can easily be unearthed, and they are easily available to anyone with an internet connection.¹²¹ This image that endures through time, and which was created by the internet, is a unique experience¹²² and one that comes with unparalleled challenges. With a click of a button, we are able to capture images, and we are just as easily able to share them.¹²³ That the choice to consent to the sharing of intimate images has been taken away from NIID victims makes NIID even more daunting. The harm created by the internet is further amplified by how difficult it is to have images completely erased after they have been posted.¹²⁴ The existence of a “digital footprint” years after an event has happened¹²⁵ means that, even if platforms and websites dedicated to this abuse were taken down, the images of NIID victims remain forever downloadable and in the hands of many. There is an ever-present danger of re-circulation and, thus, re-traumatization. While Google is working to give victims the option to remove intimate images from their search results, one of the biggest obstacles is that some NIID victims might never come to know that their pictures were shared.¹²⁶

Because the dominant understanding of sexual violence is physical violence, acts of online abuse are rarely considered harmful if they do not have elements of physical harm to them.¹²⁷ The complexities of regulating the internet makes it even more difficult to regulate online sexual crimes.

118. Ben Popken, *How WhatsApp Became Linked to Mob Violence and Fake News—and Why it’s Hard to Stop*, NBC NEWS (Nov. 2, 2018), <https://www.nbcnews.com/tech/tech-news/how-whatsapp-became-linked-mob-violence-fake-news-why-it-n929981>.

119. Arne Dekker et al., (*Don’t*) *Look at Me! How the Assumed Consensual or Non-Consensual Distribution Affects Perception and Evaluation of Sexting Images*, 8 J. CLIN. MED. 706, 706–08 (2019).

120. HALL & HEARN, *supra* note 80, at 46 (quoting Jonathan Penney).

121. POWELL & HENRY, *supra* note 12, at 138.

122. *Id.* at 135.

123. *Id.*

124. Abby Ohlheiser, *Erasing Yourself from the Internet is Nearly Impossible. But Here’s How You Can Try*, WASH. POST (Feb. 10, 2017), <https://www.washingtonpost.com/news/the-intersect/wp/2017/02/10/erasing-yourself-from-the-internet-is-nearly-impossible-but-heres-how-you-can-try>.

125. Stephen D. Weaver & Mark Gahegan, *Constructing, Visualizing and Analyzing a Digital Footprint*, 97 GEOGRAPHICAL REV. 324, 328–29 (2007).

126. POWELL & HENRY, *supra* note 12, at 127.

127. *Id.* at 66.

The internet and social media sites are being used to showcase masculinity that is expressed through the conquest of women and their bodies.¹²⁸ Pornography, which is a highly lucrative business,¹²⁹ often depicts abuse and physical violence, most of it directed towards women.¹³⁰ Categories of pornography that depict violence, such as gang-rape, and other forms of abuse, such as up-skirting, remain popular on mainstream pornography sites.¹³¹ One study of mainstream pornography sites reported an overwhelming 88.2% of scenes depicting physical violence.¹³² Pornography has evolved with the rise of the internet through interactive sites where people are able to share and download sexual images. “Real-core pornography,”¹³³ a term coined to “describe the emerging trend of sharing images of ex-girlfriends in small internet communities,”¹³⁴ can be dated to as far back as the early 2000s. The normalization of sharing intimate images without the consent of the subject on these sites dedicated to NIID is a continuation of the kind of violence already portrayed and widely accepted by mainstream pornography sites.

The rise of targeted NIID sites that followed has made it easier for perpetrators to ruin lives with the click of a button. Many websites that call themselves “revenge porn” sites, like Hunter Moore’s IsAnyoneUp.com¹³⁵ or MyEx.com, are dedicated specifically to NIID, and people are encouraged to post intimate pictures with the intent of inflicting humiliation to former lovers.¹³⁶ These sites are reported to have received up to 350,000 visitors a day.¹³⁷ Those who defend these sites fault women for allowing the images to be taken in the first place.¹³⁸ Hunter Moore, whose site is responsible for inflicting violence on hundreds of American people, has blamed victims for putting themselves in a position to be able to be

128. *Id.* at 118. Reference is made to the ‘Stanford rape case’ where Brock Turner, after raping an unconscious woman was spotted standing over her. A text message later signaled that he had sent a nude picture of his victim to his friends. Other references made include the gang-rape of a sixteen-year-old in Rio de Janeiro that was filmed and shared on social media. *Id.*

129. In America alone, annual revenue estimates are as high as ninety-seven billion dollars. *Porn Could be Worth More to the US Economy Than Netflix, the NBA, or the NFL*, QUARTZ INDEX (June 21, 2018), <https://index.qz.com/1310708/porn-could-be-worth-more-to-the-us-economy-than-netflix-the-nba-or-the-nfl/>.

130. Eran Shor & Kimberly Seida, “*Harder and Harder*”? Is Mainstream Pornography Becoming Increasingly Violent and Do Viewers Prefer Violent Content, 56 J. SEX RES. 16, 17 (2018).

131. *Id.*

132. *Id.*

133. Alexa Tsoulis-Reay, *A Brief History of Revenge Porn*, N.Y. MAG. (July 21, 2013), <http://nymag.com/news/features/sex/revenge-porn-2013-7/>.

134. Poole, *supra* note 77, at 186.

135. *Id.* at 187.

136. MyEx.com was specifically dedicated to encouraging people to post nude pictures, names and addresses of their former lovers, without their consent. The website was shut down in January 2018 after complaints were filed. See *FTC and Nevada Seek to Halt Revenge Porn Site*, Fed. Trade Comm’n (Jan. 9, 2018), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-nevada-seek-halt-revenge-porn-site>.

137. Poole, *supra* note 77, at 187.

138. Alex Morris, *Hunter Moore: The Most Hated Man on the Internet*, Rolling Stone (Nov. 13, 2012), <https://www.rollingstone.com/culture/culture-news/hunter-moore-the-most-hated-man-on-the-internet-184668/>.

exploited.¹³⁹ Sexual violence in the digital age seeks to reinforce women's fear, and further promote "social subordination and exclusion."¹⁴⁰ In the same way that intimidating behavior from men unpredictably escalates to physical violence,¹⁴¹ women using digital spaces are unable to predict when online behaviors might escalate and begin to manifest as other forms of abuse that extend way beyond digital spaces.¹⁴² Non-contact offenses¹⁴³ in digital form, such as NIID, can be just as harmful and have as much lasting impact as physical sexual violence.¹⁴⁴ Because of the sometimes unique way in which it manifests and the forms of abuse and fear, NIID must be considered a serious form of violence that women experience.

III. CULTURE, TRADITION AND RELIGION VS. WOMEN'S SEXUAL AND BODILY AUTONOMY

Religious, cultural, and traditional practices have been criticized for their role in enabling behaviors and attitudes that allow for the limitation of women's sexual autonomy. This section explores the role of culture, traditions, and religions in dictating norms of how women should behave and dress, and the consequences for women who are perceived to have deviated from those norms. It specifically contextualizes what has come to be perceived as Ugandan culture and the influence of Western religious groups and the legacy of colonialism. This lays the foundation for the discussion on the drafting and passing of the Anti-Pornography Act and further victimization of victims of NIID in Uganda.

A. THE INFLUENCE OF RELIGION AND CULTURE IN UGANDA'S LAWS

Uganda has a historical track record of dictating public morality on its citizens.¹⁴⁵ While there is no set definition of what morality is, this has not stopped past and present leaders from passing different forms of legislation, decrees, and policies aimed at enforcing various forms of public morality.¹⁴⁶ Morality legislation can be traced as far back as 1857 to the British colonialists and missionaries who began the movement to criminalize and deem uncivilized many aspects of cultures and traditions in Uganda.¹⁴⁷ This influence was backed by the arrival of Christian missionaries who worked together with colonial authorities.¹⁴⁸ Using

139. *Id.*

140. POWELL & HENRY, *supra* note 12, at 67.

141. *See id.* at 28 (quoting Stanko Elizabeth).

142. POWELL & HENRY, *supra* note 12, at 28.

143. *Id.* at 61.

144. *See id.*

145. *See* DEBORAH KINTU, *THE UGANDAN MORALITY CRUSADE: THE BRUTAL CAMPAIGN AGAINST HOMOSEXUALITY AND PORNOGRAPHY UNDER YOWERI MUSEVENI* 43 (2018).

146. *See id.*

147. *See* Marcia Oliver, *Transnational Sex Politics, Conservative Christianity, and Antigay Activism in Uganda*, 7 *STUD. SOC. JUST.* 83, 92 (2018).

148. Holger Bernt Hansen, *Church and State in Early Colonial Uganda*, 85 *AFR. AFF.* 55, 55-57 (1986).

both law and religion, they campaigned for an adoption of Victorian standards and discouraged Ugandan cultures, some of which celebrated nudity, by labelling them as immoral and deviant.¹⁴⁹

In a similar fashion, the *katikkiro* (Luganda word for Prime Minister) Paulo Neil Kavuma outlawed “Western dancing” in bars in 1950.¹⁵⁰ The populace was growing tired of British rule and demanding independence by this point.¹⁵¹ The missionary-educated elite in Uganda had already immersed themselves in new ideas and practices, including nightclub scenes and new ways of dressing, that were contradictory to the conservative leanings of the state. Those who had assimilated to the nightclub life criticized the government of the day, particularly for working with the colonialists.¹⁵² In the face of growing criticism, the then Prime Minister responded with measures he knew would please the traditional leaders and hurt his critics. He “. . . banned Western dancing for political expediency—to bring an independent minded and restless urban population to heel through rallying the support of traditional chiefs and their rural constituencies, recasting the *katikkiro* as a powerful leader fighting against those forces that were eroding the moral fabric of society.”¹⁵³

Uganda’s infamous leader Iddi Amin took this playbook and expanded it, beginning a new era of policing women, which has continued today. Amin passed several decrees outlawing the mini-skirt and labelling it as a Western import. The first ban on mini-skirts came in 1972 under the Penal Code Act (Amendment Decree of June 6, 1972).¹⁵⁴ Although Amin had resisted earlier attempts by those who ascribed to the ideas of religious and cultural morality to impose a dress code,¹⁵⁵ he eventually caved, giving in to those demands and passing the decree, which was met with enthusiasm.¹⁵⁶ Somewhat eerily, most of this played out similarly when it came to passing the Anti-Pornography Act in 2014.

This type of post-colonial government reaction has been seen in other African states, as many of them struggled to identify what and who they were after independence. From Tanzania to Malawi to Ghana, governments of the day resorted to prohibiting certain forms of dress by describing them as indecent and anti-African.¹⁵⁷

The colonial legacy of interlinking religion and the state started when colonialists used religion to exert control and has extended into present-day Uganda. To date, the same ideals about morality, influenced by religious leaders, are heavily

149. Oliver, *supra* note 147, at 92. British colonialists banned traditional dances which were interpreted as a display of both salaciousness and paganism. *Id.*

150. KINTU, *supra* note 145, at 44.

151. *Id.*

152. *Id.* at 45.

153. *Id.*

154. *Id.* at 47.

155. Joseph Kasule, *Miniskirts Missing in the Act: The Politics of Cultural Transformation in Uganda, 1972 and 2014*, 36 AHFAD J. 15, 19 (2019).

156. *Id.*

157. *See id.* at 21.

relied upon to enact laws and policies. The imperialist Western influence on dictating morality has extended to American Christian Right groups, which have joined hands with various religious groups all over the world to push back on what it has described as a “global liberal agenda.”¹⁵⁸ Christian groups in Africa continue to be emboldened and funded by conservative groups in the West.¹⁵⁹

Uganda, like many states across the world, centers freedom of worship as a core part of fundamental human rights, expressly stating so in the Constitution.¹⁶⁰ This is further embedded in the country’s motto, “For God and my Country,” which “reflects upon Uganda as a nation of people who fear God and love their country.”¹⁶¹ Despite this, Uganda identifies as a secular state.¹⁶² However, religion and the state are intertwined with religious groups maintaining their influence through parochial education and hospitals, among others.

The binary understandings of what constitutes culture are almost always self-serving, as evidenced by the way the Anti-Pornography Act was passed. This is especially true given that culture is influenced by both socio-economic and political realities and can evolve.¹⁶³ Consequently, the self-imposed moral police of the day will continue to seek justifications to control and restrict sexuality and women’s bodies, neglecting the multiplicity of diverse identities in Uganda. In so doing, the law and societal attitudes in addressing NIID all mirror the reluctance to punish perpetrators and, instead, chastise women for their perceived roles in their own violation.

Fifty-eight years after flag independence, Uganda continues to grapple with the legacies of colonialism: laws and systems that were established by the British and the adulteration of culture that followed.

IV. THE RISE OF NON-CONSENSUAL INTIMATE IMAGE DISTRIBUTION AS A FORM OF SEXUAL VIOLENCE AGAINST WOMEN IN UGANDA

To understand NIID in Uganda, this section provides a detailed dive into the sexual violence laws, as defined within Uganda’s legal framework. It discusses the public reactions around NIID and the different distribution channels that allow for this abuse. This is particularly important, as it ties into Uganda’s history as discussed in the Part IV, as well as the role played by the APA in furthering the violence against women by both perpetrators and the State. The majority of victims are twice shamed: first by having their privacy and bodily autonomy violated, and then by being prosecuted under the Anti-Pornography Act.

158. Oliver, *supra* note 147, at 89.

159. See Kapyia Kaoma, *How Anti-gay Christians Evangelize Hate Abroad*, LA TIMES (Mar. 23, 2014, 12:00 AM), <https://www.latimes.com/opinion/op-ed/la-oe-kaoma-uganda-gays-american-ministers-20140323-story.html>.

160. See CONSTITUTION Feb. 15, 2006, art. 29(1)(c) (Uganda).

161. UGANDAN NATIONAL SYMBOLS, UGANDA MISSION HOME, <https://ugandamission.net/aboutug/symbols.html> (last visited Apr. 25, 2021).

162. See CONSTITUTION FEB. 15, 2006, art. 7 (Uganda).

163. See Tamale, *supra* note 32, at 49.

A. UGANDAN LAWS' DEFINITIONS OF SEXUAL VIOLENCE

Sexual violence remains one of the most prevalent crimes in Uganda, with seven out of every ten Ugandan women reporting sexual violence at least once in their lives.¹⁶⁴ According to a 2015 report, of the 4,023 prisoners imprisoned in Uganda, 2,803 were convicted of sex-related crimes.¹⁶⁵ Of the 1,580 rape cases reported by the 2019 Uganda Police Force, 1,531 of the victims were women.¹⁶⁶ The number of official reports of sexual violence are often lower than the number of instances, because many instances go unreported.¹⁶⁷ The high rates of violence are enabled by cultural and societal attitudes that allow for the justification of different forms of discrimination against women, which include violence.

On paper, Uganda seems to be making headway against all sorts of violence against women. Article 33 of the 1995 Constitution of the Republic of Uganda specifically recognizes the rights of women.¹⁶⁸ It states that women shall be “accorded full and equal dignity,”¹⁶⁹ and it abolishes any laws, cultures, customs, and traditions that might be contrary to this right.¹⁷⁰ It also places responsibility on the state to ensure that women are able to realize their full potential.¹⁷¹ The enactment of laws and policies, such as the Penal Code,¹⁷² the Domestic Violence Bill,¹⁷³ the Employment Act,¹⁷⁴ and the National Action Plan on Women,¹⁷⁵ can also be viewed as a commitment by the State to its obligations with international standards.¹⁷⁶ The Domestic Violence Act in particular has defined domestic violence as constituting acts that include sexual abuse,¹⁷⁷ which is defined to encompass, among others, conduct of a sexual nature that abuses and violates the dignity of the person.¹⁷⁸ In addition to enforcing these laws, the Uganda Police

164. See Anthony Wesake, *Special Report: Strides Made by JLOS Institutions in the Fights Against SGBV*, JUST. L. ORD. SECTOR (Jan. 18, 2019), <https://www.jlos.go.ug/index.php/component/k2/item/659-strides-made-by-jlos-institutions-in-the-fight-against-sgbv>.

165. See *id.*

166. Uganda Police Force, Annual Crime Report 2019 xxi (2019), <https://www.upf.go.ug/wp-content/uploads/2020/04/Annual-Crime-Report-2019-Public.pdf?x45801>.

167. Anna Adeke, *Violence Against Women Remains Widespread Human Rights Abuse*, DAILY MONITOR (Jan. 30, 2019), <https://www.monitor.co.ug/OpEd/Commentary/Violence-against-women-widespread-human-rights-abuse/689364-4958902-15k7jy0z/index.html>.

168. CONSTITUTION FEB. 15, 2006, art. 33(1) (Uganda).

169. *Id.*

170. *Id.* art. 33(6).

171. *Id.* arts. 33(2–3) (Uganda).

172. The Penal Code Act (Cap. 120), 1950 (Uganda).

173. The Domestic Violence Act, (Act No.3/2010) (Uganda).

174. The Employment Act, (Act No. 6/2006) (Uganda).

175. The National Action Plan on Women, Ministry of Gender, Labor and Social Development, 1999 (Uganda).

176. All the laws mentioned are Ugandan laws defining different crimes and their consequences.

177. The Domestic Violence Act sec. (1)(2) (2010) (Uganda).

178. *Id.*

Force operates a Child and Family Protection Department whose aim is to combat and prosecute gender-based violent crimes and child abuse.¹⁷⁹

However, the definitions in some legal instruments are an indication of the persistent problem of sexual violence in the country. As per the Penal Code, “acts of sexual violence against women in Uganda are legally viewed as crimes against morality or honor, not as crimes against the physical and mental integrity of women and girls.”¹⁸⁰ By placing sexual violence in the sphere of morality, the state refuses to recognize the impact the abuse has on an individual and further hampers a victim’s ability to seek justice.¹⁸¹

A number of proposed laws before Uganda’s Parliament have attempted to address and expand what forms of sexual violence are legally considered crimes, particularly in intimate settings. These include the Sexual Offences Bill,¹⁸² which provides for enhanced punishment of sexual offenders and protection of victims during trial, and the Marriage Bill,¹⁸³ which has remained in Parliament for over fifty years and seeks to ensure legal protections for women before, during, and at the dissolution of marriage. The reluctance of Parliament to pass these Bills, coupled with the severe backlash they have attracted from different cultural and religious institutions, is indicative of the bigger hurdle facing women’s rights struggles in the country.¹⁸⁴ Recent laws aimed at regulating online spaces do not take into account sexual crimes facilitated by the internet; for example, neither the Data Protection and Privacy Act¹⁸⁵ nor the Computer Misuse Act¹⁸⁶ directly defines or criminalizes actions of NIID.

The responsibility of the State in protecting women against sexual violence therefore includes protecting against violations by both state and non-state actors.¹⁸⁷ All three arms of the government—Executive, Legislature and Judiciary¹⁸⁸—have an affirmative duty to prevent violence against women, to not

179. Child and Family Protection Department, Uganda Police Force, Facebook, https://web.facebook.com/Child-and-Family-Protection-Department-Uganda-Police-Force-2052572681425487/?ref=page_internal&path=%2FChild-and-Family-Protection-Department-Uganda-Police-Force-2052572681425487%2F (last visited Apr. 19, 2021).

180. *I Can’t Afford Justice: Violence Against Women in Uganda Continues Unchecked and Punished*, *supra* note 36.

181. *Id.*

182. *Sexual Offences Bill to be Re-tabled*, *Parliament of the Republic of Uganda* (Feb. 20, 2019), <https://www.parliament.go.ug/news/3159/sexual-offences-bill-be-re-tabled>.

183. *Gov’t Again Seeks More Time on Marriage Bill*, *Parliament of the Republic of Uganda* (July 11, 2019), <https://www.parliament.go.ug/news/3548/gov%E2%80%99t-again-seeks-more-time-marriage-bill>. This bill was formerly known as the Marriage and Divorce Bill and the Domestic Relations Bill.

184. Despite it going through different name changes, the public reactions to the bill remain constant, and against its passing. It seeks to consolidate all marriage laws in Uganda, and would offer more protections at, during and after dissolution of marriages.

185. Data Protection and Privacy Act, 2019 (Act No. 9/2019) (Uganda).

186. Computer Misuse Act, 2011 (Act No. 11/2011) (Uganda).

187. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, GENERAL RECOMMENDATION NO. 19: VIOLENCE AGAINST WOMEN PARA. 21–246 (1992), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf.

188. *Id.* art. 26.

stand by while others perpetuate violence against women,¹⁸⁹ and to implement measures to eliminate any forms of discrimination.¹⁹⁰

Even with these measures, Uganda still does not meet its obligations to protect women from violence.¹⁹¹ The government makes only a minimal effort to hold perpetrators of sexual violence accountable for their actions,¹⁹² and reported allegations of sexual violence are under-investigated¹⁹³ or dismissed and blamed on women's actions.¹⁹⁴ Additionally, cyber-related harassment is often trivialized.¹⁹⁵ Therefore, the existence of sexual violence laws has not resulted in substantial relief for many victims of NIID.

B. AN INTRODUCTION TO NON-CONSENSUAL IMAGE DISTRIBUTION IN UGANDA

In Uganda, NIID has been on a steady rise.¹⁹⁶ While there are no clear statistics detailing how many women have been victimized in Uganda, it has been reported that women are about 1.7 times more likely than men to have their intimate pictures shared without their consent.¹⁹⁷

Before the rise of the internet, the easiest way to get salacious news, including naked pictures, was to buy local tabloids. Tabloids like Red Pepper, modeled on British tabloids like The Sun, used women's intimate images, sometimes without their consent, as a marketing gimmick to increase sales and appeal to their audiences.¹⁹⁸ Intimate images of Cinderella Sanyu were front page news in 2008, after Red Pepper published them.¹⁹⁹ Red Pepper has since gone on to share images of different women, accompanied by objectifying, shaming, and insulting comments.

189. *Id.* art. 2(d).

190. *Id.* art. 2(f).

191. Amnesty Int'l, *supra* note 36, at 10.

192. Twasiima Patricia Bigirwa, *We Should Condemn Violence Against Women With Vigour*, DAILY MONITOR (Mar. 28, 2019), <https://www.monitor.co.ug/uganda/oped/commentary/we-should-condemn-violence-against-women-with-vigour-1747554>.

193. Cecilia Okoth & John Semakula, *Activists Blame Police Over Aya Sexual Assault Case*, NEW VISION (Apr. 24, 2017).

194. Godiva Akullo, *Those Who Rape and Kill Women Will Murder You Too*, DAILY MONITOR (Mar. 7, 2018), <https://www.monitor.co.ug/uganda/oped/commentary/those-who-rape-and-kill-women-will-murder-you-too-1743600>.

195. Lindsey Kukunda, *In Uganda, Harassment Conviction Brings Backlash*, WOMEN'S MEDIA CENTER (Aug. 30, 2018), <https://www.womensmediacenter.com/news-features/in-uganda-harassment-conviction-brings-backlash>.

196. Esther Nakkazi, *Revenge Porn is Rising, and it Should Be Addressed*, DAILY MONITOR (Mar. 13, 2016), <https://www.monitor.co.ug/artsculture/Reviews/Revenge-porn-addressed/691232-2651158-x5o5r3/index.html>.

197. DR. ASIA A. EATON, DR. HOLLY JACOBS & YANET RUVALCABA, 2017 NATIONWIDE ONLINE STUDY OF NONCONSENSUAL PORN VICTIMIZATION AND PERPETRATION: A SUMMARY REPORT 17 (2017), <https://www.cybercivilrights.org/wp-content/uploads/2017/06/CCRI-2017-Research-Report.pdf>.

198. Sylvia Tamale, *'Keep Your Eyes off My Thighs': A Feminist Analysis of Uganda's 'Miniskirt Law'*, 21 FEMINIST AFR. J. 83, 87 (2015).

199. *Cindy To Sue Over Nude Pictures*, NEW VISION (Aug. 15, 2008).

In 2006, the Ministry of Information and Communications Technology (ICT) and National Guidance was established in Uganda.²⁰⁰ As the government continues to place high importance on internet connectivity, the ministry was established to take the lead on all matters related to growing the ICT sector.²⁰¹ A 2018 report by the Uganda Communications Commission puts Uganda at a 35% internet penetration rate.²⁰² As internet connectivity continues to grow, more and more people will continue to find themselves in NIID situations.

More people, mainly young women who have been targeted because of their celebrity status, have been blackmailed by past lovers, and intimate images of them have been shared online.²⁰³ While any sharing of intimate images is undoubtedly calculated to cause harm, in Uganda, the repercussions of sharing such images could include jail time for the subject.²⁰⁴ Judith Heard and Desire Luzinda have both fallen victim to this type of NIID.

In Judith Heard's case, she details how she was asked to pay \$3,000 (U.S.) to prevent her intimate images from being shared online.²⁰⁵ Judith maintains that she did not send the pictures to anyone, and the blackmailers must have obtained them from a past stolen phone or laptop.²⁰⁶ For Judith Heard, NIID happened twice. In 2013, she was asked to pay 11 million shillings, the equivalent of \$3,000 (U.S.), to prevent intimate images of her from being publicly distributed.²⁰⁷ She refused to pay her blackmailers, and her pictures were published online.²⁰⁸ In 2018, the same pictures were recirculated, and a warrant for her arrest was then ordered.²⁰⁹ Other celebrities have shared similar stories, with the recurring themes of blackmail and extortion.

In 2014, musician Desire Luzinda joined the list of Ugandan women who have been victims of NIID. While she was not the first public figure to have her intimate images made public, Desire was one of the first to face double victimization under the Anti-Pornography Act, suffering both a violation of her privacy, as well as a public trail and punishment for an abuse she suffered.²¹⁰ Her former lover,

200. Ministry of Information and Communications Technology and National Guidance, About Us, <https://ict.go.ug/about-us/> (last visited Apr. 18, 2021).

201. *Id.*

202. UGANDA COMMUNICATIONS COMMISSION, Q3 INDUSTRY REPORT 2018 14, <https://www.ucc.co.ug/wp-content/uploads/2017/09/Communication-Sector-Performance-for-the-Quarter-ending-September-2018-final-edition.pdf> (last visited Apr. 24, 2021).

203. *Gender Gap in ICT and Online Gender Based Violence in Uganda*, WOMEN UGANDA NETWORK (Mar. 13, 2017), <http://wougnet.org/website/blog/blogsingle/4>.

204. The Anti-Pornography Act (2014) S. 13(2) (Uganda) (stating that, if convicted, production of pornography is punishable for up to ten years in prison).

205. McCool, *supra* note 1.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *See infra* Section V.

Franklin Emuobor,²¹¹ publicly distributed intimate images that she had shared with him during their relationship in order to punish her.²¹² Images of Desire's naked body were plastered on several social media sites and eventually published in local tabloids without her consent.²¹³ In turn, the serving Minister of Ethics and Integrity, Simon Lokodo, ordered her arrest for violating the Anti-Pornography Act.²¹⁴ While Desire was eventually able to avoid arrest, the demonization of her by the public and the government set a precedent that is still followed today.

After Desire Luzinda's images were publicly shared, there was immediately a divide on whether to fault or defend her. While Ugandan feminists saw this as a violation of her privacy and another attack on women's bodies and sexuality, many Ugandans were engrossed in re-sharing the images, discussing her body, and blaming her for taking the pictures in the first place.²¹⁵ Almost immediately, a new social media challenge to imitate the images, dubbed the #DesireChallenge,²¹⁶ began where social media users recreated the nude images by taking pictures "with an inverted V-sign by one's genital area."²¹⁷ Other musicians, radio hosts, and countless others shared these images without consideration of the continued harm to the victim.²¹⁸

In the years that have followed, popular celebrities and socialites have been forced to deal with having their privacy violated and have been subsequently punished for it. Anita Kyarimpa, commonly known as Fabiola, was only twenty years old when her ex-boyfriend publicly shared her intimate images on social media, after their five-year relationship ended.²¹⁹ At that time, Anita was a rising star who hosted a popular dating show on the biggest national television network, from which she was subsequently fired.²²⁰ She also faced blackmail from journalists for two months in order to prevent them from sharing the pictures publicly.²²¹ For Martha Kay, her extortionist promised to "torture her until she killed

211. Rowland Bon Nkahebwa, *Desire Luzinda's Nigerian Ex-Lover Franklin Resurfaces*, CHIMP REPORTS (Oct. 17, 2018), <https://chimpreports.com/desire-luzindas-nigerian-ex-lover-franklin-resurfaces/>.

212. Byaruhanga, *supra* note 82.

213. *Id.*

214. Ronald Musoke, *What the Desire Luzinda Nude Photos Say About Us*, THE INDEP. (Nov. 16, 2014), <https://www.independent.co.ug/desire-luzinda-nude-photos-say-us/>.

215. *Desire Challenge Goes Viral More Than Ice Bucket Challenge*, BigEye.ug (Nov. 2, 2014), <https://bigeye.ug/desire-challenge-goes-viral-ice-bucket-challenge/>.

216. See Jacquiline Emodek, *Women Activists Condemn Pornographic Leaks*, HUMANIST UGANDA (Feb. 23, 2015), <https://humanistuganda.wordpress.com/2015/02/24/women-activists-condemn-pornographic-leaks/>.

217. *Desire Challenge Goes Viral More Than Ice Bucket Challenge*, *supra* note 212.

218. *Id.*

219. NBS Television, *My Nudes Were a Case of Revenge Porn—Anitah Fabiola*, FACEBOOK (Jan. 18, 2018), <https://www.facebook.com/nbstelevision/videos/my-nudes-were-a-case-of-revenge-porn-anitah-fabiola/1626430727447886/>.

220. Pat Ribert Larubi, *NTV Under Fire After Firing Anita Fabiola*, CHIMP REPORTS (May 26, 2015), <https://chimpreports.com/ntv-under-fire-after-firing-fabiola/>.

221. NBS Television, *supra* note 216.

herself.”²²² Despite the fact that she paid the money that was demanded to prevent the pictures from being shared, she still found herself at the center of a scandal she did not choose.²²³ Sulayina Nangendo, commonly known by her stage name, Princess Becky Jjuuko, also points to her ex-lover as responsible for sharing her nude pictures, after the relationships had dissolved.²²⁴

These are just a few examples of NIID in Uganda. Other victims include singer Cinderella Sanyu, socialite Zari, and many others.²²⁵ But NIID can—and does—happen to anyone. Intimate images are routinely shared and exchanged within relationships. Some of these are re-distributed beyond the subject’s intended receiver and are shared within different online groups such as WhatsApp and Facebook. The “luckier” victims find themselves as gossip within small social groups; the less-than-lucky ones find themselves as front page news.

V. THE ANTI-PORNOGRAPHY ACT: A THORN IN WOMEN’S RIGHTS STRUGGLES IN UGANDA

The Anti-Pornography Act is thus simply a new tool that has been deployed to further entrench and legalize discrimination against women. This has been specifically true for victims of NIID for which the law has not served as a tool for justice or protection, as discussed below. This section contextualizes the origins of the Act, explaining its history and evolution from a bill to a binding law. It then discusses how it has been defined, interpreted, and implemented.

A. THE HISTORY OF THE ANTI-PORNOGRAPHY ACT

Professor Sylvia Tamale has described the Anti-Pornography Act coming into law as the “single stroke of the presidential pen [that] signaled a redeployment of women’s bodies as a battlefield for cultural-moral struggles, and an eruption of new frontiers in sexual political tensions in the country.”²²⁶ The APA, also known as “The Mini-skirt Bill,” defines pornography broadly to include “indecent show and representation of sexual parts for sexual excitement.”²²⁷ Though the law itself does not ban mini-skirts, its vagueness in defining indecency has led to attacks across Uganda where several women who were perceived to be indecently

222. Next Media Uganda, *Exclusive: Martha Kay Reveals How Her Nudes Leaked Uncut Extra*, YOUTUBE (Oct. 1, 2019), <https://www.youtube.com/watch?v=gYsmaNyaWtE>.

223. See George Okello, *I Could Not Leave My Bed for Days! Martha Kay Opens Up on Trauma After Leaked Nudes*, PML DAILY (Oct. 1, 2019), <https://www.pmldaily.com/features/celebrity/2019/10/i-could-not-leave-my-bed-for-days-martha-kay-opens-up-on-trauma-after-leaked-nudes.html>.

224. See Mabonga Christopher, *Shamed Ebonies Who Generously Served Her Bearded Meat Finally Apologies To The Nation*, GALAXY F.M. (Aug. 13, 2019), <http://www.galaxyfm.co.ug/2019/08/13/shamed-ebonies-star-who-generously-served-her-bearded-meat-to-the-public-finally-apologizes-to-the-nation/>.

225. See e.g., *Zari Nude Pictures Leak*, RED PEPPER (Mar. 20, 2014), <https://www.redpepper.co.ug/2014/03/zari-nude-pictures-leak/>.

226. Tamale, *supra* note 197, at 83.

227. Anti-Pornography Act, S1, ¶ 2 (2014) (Uganda).

dressed were assaulted and stripped of their clothes.²²⁸ The great irony, that claims of indecent dress are met with public stripping which further displays the same bodies intended to be covered up, was lost on many.

Government officials justified the APA as a necessary counter to what was described as an “insidious social problem” of pervasive pornography.²²⁹ The existing law under the Penal Code Act²³⁰ was characterized as inadequate in that it failed to criminalize all other forms of pornography, including those that had permeated into mass media.²³¹ The Bill as it was first introduced defined pornography as

cultural practice, radio or television programme, writing, publication, advertisement, broadcast, upload on internet, display, entertainment, music, dance, picture, audio or video recording, show, exhibition or any combination of the preceding that depicts (a) a person engaged in explicit sexual activities or conduct; (b) sexual parts of a person such as breasts, thighs, buttocks or genitalia; (c) erotic behaviour intended to cause sexual excitement; or (d) any indecent act or behaviour tending to corrupt morals.²³²

Parts of the definition were eventually struck out after the contradictions of criminalizing cultural practices that allowed for nudity were raised.²³³ The new definition of pornography was passed as: “any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement.”²³⁴

In deciding what these “public morals”²³⁵ were, the Bill and subsequent Act successfully imposed a new law that focused on criminalizing nudity.²³⁶ Women’s nudity and sexual expression are seen as the antithesis of the objective of ensuring public morality by those who championed the law.²³⁷ There is a paradox in punishing women’s nudity in Uganda, where nakedness is still accepted as

228. Amito & Anguyo, *supra* note 4.

229. Anti-Pornography Bill 12, § 1 (2011) (Uganda).

230. Penal Code Act Uganda, Cap. 120 (2007).

231. *See* Anti-Pornography Bill 12, § 2 (2011) (Uganda).

232. Anti-Pornography Bill 12, § 5 (2011) (Uganda).

233. Tamale, *supra* note 197, at 85.

234. Anti-Pornography Act § 2 (2014) (Uganda).

235. Anti-Pornography Bill 12, § 3 (2011) (Uganda) (describing the need for the Bill as a remedy for the problem of pornography).

236. Anti-Pornography Bill, 12, § 2 (2011) (Uganda) (explaining that the limitations in the existing laws on pornography were that they did not effectively speak to the various forms of pornography, including the increase in nudity).

237. Tamale, *supra* note 197, at 85.

a cultural lifestyle in parts of the society.²³⁸ The link between morality, religion, and the law was further evidenced by the architects of the Anti-Pornography Bill.²³⁹ The ministers responsible for drafting and passing the Bill, were Nsaba Butoro, a self-proclaimed born-again Christian, and Simon Lokodo, a defunct Catholic priest, who had routinely advocated for the infusion of religious faith and public morality.²⁴⁰

In focusing more on issues of restricting nudity and broadly defining pornography, the law failed in its stated objective to protect women.²⁴¹ Because the definition of pornography in the Act is so broad, women's nudity has become punishable under the Act, with little care as to whether it was consensual or not.²⁴² While this definition could be classified as a gender-neutral law, in application, it is far from gender-neutral.²⁴³ The subjective standard set by the APA for determining pornography is particularly dangerous in a society where women's bodies are already highly sexualized.²⁴⁴ "Representation primarily for sexual excitement" implies that intention is central to what the Act defines as pornography.²⁴⁵ This offense is particularly unfair because the broad definition of pornography infers intention of causing sexual excitement, even when this might not be the objective. The perception of what constitutes intent has been left to the decisions of third parties.²⁴⁶

By linking women's nakedness and sexuality as shameful and punishable and by refusing to focus on actions such as NIID, the APA has left women particularly vulnerable to even more injustice. This, however, is not by accident. This intent to dictate morality has led to the targeted application of the law against women, as will be explained further below.

B. THE HISTORY OF THE ANTI-PORNOGRAPHY ACT AND COMMITTEE IN UGANDA

1. The New "Moral" Code; Passage of the Anti-Pornography Act

Popularly dubbed the "Mini-Skirt Bill," the APA began a movement to legally criminalize women's nudity and sexuality, allowing for several justifications of violence against women. Ethics and Integrity Minister Nsaba Buturo first

238. The Karamajong people from the Northern part of Uganda continue to walk around naked or scantily clothed. This is part of their culture and has not been considered to fall under the definition of indecent under APA. See Nii Ashaley & Ase Ashiley, *The Joy of Nudity: Why the Karamajong People of Uganda Love to Walk 'Naked'*, FACE2FACEAFRICA (July 11, 2019), <https://face2faceafrica.com/article/the-joy-of-nudity-why-the-karamajong-people-of-uganda-love-to-walk-naked>.

239. Tamale, *supra* note 197, at 85.

240. *Id.*

241. The Parliamentary Hansard n. 39 (Feb. 16, 2011), <https://hansard.parliament.uk/Lords/2011-02-16/debates/11021657001761/ParliamentaryVotingSystemAndConstituenciesBill>.

242. See Anti-Pornography Act, S.2 (2014) (Uganda) (defining "pornography").

243. Tamale, *supra* note 197, at 87.

244. *Id.* at 86.

245. Nanima Robert Doya, *Ambiguity in the Definition: The Need for Caution in Prosecuting Persons Under the Anti-Pornography Act*, 41 STATUTE L. REV. 320, 336 (2018).

246. *Id.*

introduced the idea of such a law in 2005.²⁴⁷ He stated that mini-skirts should be considered indecent and punishable by Ugandan law, blaming women who wore them for causing accidents.²⁴⁸ Earlier versions of this Bill expressly defined the “exhibition” or “show” of breasts and thighs as pornography.²⁴⁹ The misogynistic notions behind the APA Bill are evidenced by the inconsistencies in application of the law, focus on prosecuting women and the state’s complicity in attacks against women.²⁵⁰

In 2013 and 2014, Uganda passed a number of laws, including the Anti-Pornography Act, the Public Order Management Act, and the Anti-Homosexuality Act,²⁵¹ as part of a legislative agenda that resulted in a rollback of freedoms. All three laws worked together to support the state’s need to restrict and limit freedoms based on ambiguous provisions in the laws.²⁵² The Anti-Pornography Act specifically marked a new era of rollback of women’s rights in Uganda.

In 2011, the Minister of Ethics and Integrity introduced the law as important to protect women and children.²⁵³ However, this objective is questionable given that the focus of the law has made women even more susceptible to arrests and further victimization based on their choice of clothing and private sexual conduct.

Women’s rights groups and feminists loudly resisted the law. They took to the streets to show their discontent, many of them clad in mini-skirts and with placards pointing to the irony of focusing on women’s nudity and not maternal health, corruption, and other ills that greatly affected women’s quality of life in Uganda.²⁵⁴

2. The Gendered Implementation of the Anti-Pornography Act

The APA has created an environment that allows for intimidation and harassment of women. The enforcement of the law is especially biased as it relates to the distribution of non-consensual images that is a growing trend in Uganda.

In 2014, Desire Luzinda became the first public figure to be subjected to the unfairness of this law. In her narration of events, her former lover publicly distributed intimate images she had shared with him during the relationship to punish her.²⁵⁵ Desire’s naked body was plastered on several social media sites, and eventually local tabloids, all without her consent. In turn, the serving Minister of Ethics and Integrity, Hon. Lokodo, ordered for her arrest for violating the

247. Tamale, *supra* note 197, at 83.

248. *Uganda Seeking Mini-Skirt Ban*, BBC NEWS (Sept. 17, 2008), <http://news.bbc.co.uk/2/hi/7621823.stm>.

249. Anti-Pornography Bill, 12, S5a(b), (2011) (Uganda).

250. Tamale, *supra* note 197, at 85.

251. *Discriminatory Legislation and Legitimized Abuses in Uganda*, AMNESTY INT’L (Oct. 2014), <https://www.amnestyusa.org/files/afr59062014en.pdf>.

252. *Id.*

253. The Parliamentary Hansard n 39 (Feb. 16, 2011).

254. Tamale, *supra* note 197, at 87.

255. Byaruhanga, *supra* note 82.

APA.²⁵⁶ While Desire was not arrested, her experience set a dangerous precedent for victims of NIID. Desire eventually issued a public apology, apologizing to her mother, daughter, and fans for the violation of her privacy.²⁵⁷ She described taking intimate pictures as a “moment of madness” while asking the public to forgive her.²⁵⁸ This double victimization has been the similar fate for many women who at no fault of their own, have been arrested, detained, and humiliated into isolation.

Section 3 of the Anti-Pornography Act provides for the establishment of a committee for the purposes of overseeing and implementing the law.²⁵⁹ In 2016, the Pornography Control Committee, (PCC), was created.²⁶⁰ In June 2018, directed by the Minister of Ethics and Integrity, the Committee issued arrest warrants for eight people.²⁶¹ The majority of these were women whose nude pictures had been shared without their consent.²⁶² There has been no visible effort to date to hold the actual perpetrators accountable.

The selective implementation of the law is further evidenced by the existence of tabloids that continue to market the sexualization of women and their bodies without restriction.²⁶³ Women’s nakedness, when it is controlled by and catered to the male gaze, is therefore acceptable. The PCC essentially chastises the victims of NIID for a type of sexual expression that the Committee does not approve of. The Committee has since done little but engage in activities to further humiliate women.

In August 2019, actress Becky Juuko was coerced²⁶⁴ to apologize to the nation for her naked pictures, which she played no part in sharing with the public.²⁶⁵ At a press conference, surrounded by the Chairperson of the PCC and others, she detailed how her pictures were shared by someone who had betrayed her trust and went on to apologize to those who had once looked up to her.²⁶⁶

256. Musoke, *supra* note 211.

257. Samuel Ouga, *Desire Luzinda Apologises Over Leaked Nude Images*, NEW VISION (Nov. 6, 2014), https://www.newvision.co.ug/new_vision/news/1314243/desire-luzinda-apologises-leaked-nude-images.

258. *Id.*

259. Anti-Pornography Act, S3 (2014) (Uganda).

260. *Pornography Control Committee Named*, NEW VISION (Apr. 14 2016), https://www.newvision.co.ug/new_vision/news/1422110/anti-pornographic-committee-named.

261. McCool, *supra* note 1.

262. *Id.*

263. Tamale, *supra* note 197, at 87.

264. I use the word “coerced” deliberately, as I do not believe that she had any real choice in the matter.

265. *Slyner Becky Juuko Apologizes for Her Leaked Pics, Blames Online Lover*, UGANDAONLINE.NET (Aug. 13, 2019, 9:47 PM), https://www.ugandaonline.net/2020138_slyner_becky_juuko_apologizes_for_her_leaked_pics_blames_online_lover.

266. Muks TV, *Becky Juuko Apologises Over Her Leaked Sexual Video and Nude Pics [Muks steven]*, YouTube (Aug. 14, 2019), <https://www.youtube.com/watch?v=ycGeXQjfuOo>.

C. THE EFFECTS OF VICTIMS BEING PROSECUTED UNDER THE ANTI-PORNOGRAPHY ACT

The effects of NIID are potentially just as brutal as any other type of violence and abuse.²⁶⁷ NIID is amplified by the uncertainty caused by the Internet, where victims are unable to determine when these images might be redistributed.²⁶⁸ There are some whose trauma never ends: this is what happened to Judith Heard when her naked pictures resurfaced in 2018 and she found herself at the police station, not as a victim, but as someone accused of a crime.²⁶⁹ Police in Uganda have focused on detaining victims of NIID when they should have been protecting them from further abuse.²⁷⁰ The serving minister of Ethics and Integrity Simon Lokodo has issued several directives asking for the arrest of victims of NIID.²⁷¹ This public shaming of victims has caused them to quit social media and isolate themselves, causing an already difficult situation to become a lot worse.²⁷² For those who rely on social media as part of their employment, closing down their accounts additionally saddles them with unemployment.²⁷³

Digital sexual violence produces “social subordination leading to discrimination and inequality, which in turn prevents the enjoyment of full, civic participation of group members in society and can further lead to, normalize, or reinforce other forms of embodied or symbolic violence.”²⁷⁴ The effects of NIID are long-lasting. Because these images and history are available to employers, victims may be unable to find work at all. Many employers have reported checking candidates’ online history as part of the employment search.²⁷⁵ In Uganda, victims have also been fired from their jobs.²⁷⁶

This has become the daunting reality for victims of NIID in Uganda. Women are being forced to apologize for the actions of their abusers and face further humiliation in front of the media and the entire country. As the PCC focuses on what can only be rightly termed as slut-shaming, the actual criminals face no consequences. These cases have presented women’s bodies as objects that threaten to “pollute social morality, hence necessitating social control.”²⁷⁷

267. HALL & HEARN, *supra* note 79, at 19.

268. *Id.*

269. Muriuki, *supra* note 114.

270. McCool, *supra* note 1.

271. *Id.* Byaruhanga, *supra* note 83.

272. See *supra* discussion accompanying notes 222–25 (describing Martha Kay’s narration of events, Anita Kyarimpa’s narrative, and Cindy Sanyu’s story).

273. See *supra* discussion accompanying notes 222–23 (describing Martha Kay’s narration).

274. POWELL & HENRY, *supra* note 12, at 67.

275. Cara R. Sronce, *The References of the Twenty-First Century: Regulating Employers’ Use of Social Networking Sites as an Applicant Screening Tool*, 35 S. ILL. UNI. L.J. 499, 500 (2011).

276. Pat Ribert Larubi, *NTV Under Fire After Firing Anita Fabiola*, CHIMPREPORTS (May 26, 2015), <https://chimpreports.com/ntv-under-fire-after-firing-fabiola/>.

277. Tamale, *supra* note 200, at 87.

VI. SHIFTING THE FOCUS TO PROTECTING VICTIMS OF NON-CONSENSUAL INTIMATE IMAGE DISTRIBUTION

This section of the paper discusses possible solutions to protect survivors of NIID in Uganda. It discusses both the legal and non-legal strategies, recognizing the limitations within the law and making recommendations to remedy them.

A multi-pronged strategy is required when so much of the problem is based in cultural and religious norms. The solution is to revise policies and support social change that makes it easier for victims to seek justice. The first step in crafting solutions is to recognize the systemic factors that allow for this violence to continue as well as the lasting harms of NIID on victims.²⁷⁸

1. Elements of a Possible Good Law

A good law should be able to address the current gaps in the existing laws and take into account that there are many manifestations of NIID. While the law might be unable to imagine all future online violence against women facilitated by changing technology and the Internet, the law should be able to speak to all the harms discussed and highlighted in this paper. The definition of NIID as the distribution of images without the consent of the subject as a clear violation of their privacy, bodily autonomy, and sexual rights should be emphasized within the law as punishable by the law. Drawing from legislative efforts elsewhere, such as some states in the U.S, the Philippines, and Australia,²⁷⁹ the law should be able to account for the intentional harm and emotional distress caused by the acts of the perpetrators.²⁸⁰ A good law should be able to clearly highlight the elements of the crime of NIID.²⁸¹ The focus should be on the fact that NIID is non-consensual and the consequences of these actions are detrimental on the lives of victims.

2. Strengthening Sexual Harassment Laws

Some jurisdictions have advocated for tort law remedies that would give victims the opportunity to seek redress for the intentional harm caused by the perpetrators.²⁸² Where the victims are able to prove harm caused by the distribution of intimate images, tort law has proven an effective way of acquiring justice. However, the costs associated with civil suits, coupled with the difficulty of proving abuse that happens on the internet, makes it difficult for the victims to access justice in this way.²⁸³ Some have argued that criminal law is therefore likely to be

278. POWELL & HENRY, *supra* note 12, at 141.

279. Mary Anne Franks, *Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators*, SSRN ELEC. J. 2, 3 (2015).

280. Citron & Franks, *supra* note 39, at 357.

281. Franks, *supra* note 279, at 5.

282. Citron & Franks, *supra* note 39, at 357.

283. *Id.* at 358.

more effective, particularly to deter perpetrators.²⁸⁴ This sentiment however does not take into account the limitations of carceral governance and the need to focus instead on working on reforming the systems that allow for abuse to happen.

There is a disproportionate burden in asking women to prevent their own sexual harassment as opposed to punishing those who sexually harass and abuse women. Since NIID is a manifestation of sexual abuse, the existing sexual harassment laws need to take into account the various forms of online harassment. One step is strengthening sexual harassment laws to criminalize actions such as sextortion, sexploitation, digital stalking, and other abuse that happens online.

A. LIMITATIONS TO USING LEGAL REFORM TO CHANGE CULTURAL AND SOCIETAL ATTITUDES

The effects of the Anti-Pornography Act and its implementation go beyond the revictimization of victims of NIID and extends to questions of women's sexual autonomy. Power based violence, and the non-response by the state, continue a wide cycle of violence. Digital violence against women is often trivialized. Even with a known abuser, convictions relating to NIID are extremely rare.²⁸⁵ NIID is pervasive, and many actively participate in it. Perpetrators are aware of how much many people enjoy slut shaming, body shaming, and inflicting abuse and violence on women, and they count on the willing participation of others to spread the abuse.

Given the state's track record of inadequately addressing sexual violence, it is important to address these structural problems deeply ingrained within the social fabric that allow for its persistence. As discussed in the sections above, sexual violence is enabled by cultural and religious norms perpetuated by the patriarchy and otherwise by understandings that normalize these behaviors against women. The law is not enough as a remedy where the problem stems from what people believe to be normal.²⁸⁶

The problems go beyond the law to include other structural limitations such as poorly trained police officers who are tasked with implementing the law. Institutions such as the police force model societal attitudes and belief systems. Where senior police officers believe that women's dress codes have a role to play in not getting sexually assaulted,²⁸⁷ the willingness by the same officers to ensure justice for victims of sexual abuse is questionable. If the victims are unable to trust law enforcement, it becomes even harder for them to be able to get any semblance of justice.

284. *Id.* at 361.

285. HALL & HEARN, *supra* note 79, at 90.

286. Press Release, United Nations General Assembly GA/SHC/3421, Legislation Not Enough to Overcome Cultural Attitudes, Practices Inhibiting Equal Treatment for Women, Third Committee Told (Oct. 23, 1997), <https://www.un.org/press/en/1997/19971023.GASH3421.html>.

287. Emilian Kayima, *Sexual Violence: Should We Target Girls or Boys?*, NEW VISION (Jan. 17, 2020), https://www.newvision.co.ug/new_vision/news/1513589/sexual-violence-target-girls-boys.

B. CRAFTING FEMINIST POLICIES AND IMPLEMENTING STRATEGIES TO PROTECT VICTIMS

Uganda has legal obligations under international and domestic laws that come with obligations to protect women. In so doing, the state has responsibilities to enact legislation, policies and work towards remedying the failings that lead to the double victimization of NIID victims. One of the biggest questions is what approach to use when pursuing legal action: should it be a civil or a criminal matter?²⁸⁸

While a new law specifically addressing NIID would be an added bonus, an important place to start would be by focusing on using the existing legislation.²⁸⁹ The Anti-Pornography Act, as one of the biggest obstacles to victims of NIID in Uganda getting justice, should be amended to rectify the inconsistencies within the law. Where the law is not clear, there is an opportunity for misinterpretation—as has been the case in Uganda. The vague definition of pornography in the Act should specifically be addressed. The amendment of the law should expressly criminalize NIID and focus on the perpetrators of the abuse. The purpose of the law should not be to reinforce negative stereotypes and further criminalize women's bodies.²⁹⁰ Instead, a criminal law should focus instead on acknowledging the harms caused by arresting women because they are the subject of NIID despite the fact that they did not consent to their images being shared publicly.

The Computer Misuse Act is another existing law that could be relied on to protect victims of NIID in Uganda. Enacted to “prevent unlawful access, abuse or misuse of information systems including computers and to make provision for securing the conduct of electronic transactions in a trustworthy electronic environment and to provide for other related matters.”²⁹¹ However, the law does not specifically address or criminalize NIID. An ideal law would be able to regulate the internet while also protecting freedoms of speech, expression, and privacy.²⁹²

1. Going Beyond the Law

It is important that victims are able to get redress beyond the law, especially given existing laws' limitations. In order to center the needs of the victims, strategies need to extend to creative ways of addressing power imbalances, restorative justice, and focusing on aspects of teaching consent and changing mindsets that allow for this abuse to happen. In centering victims, the first question is, where do victims go to seek help? While the efforts towards training police officers are important to equip them with the skills necessary to protect victims of NIID, this needs to extend to other forms of support that NIID victims need.

Restorative justice is another possible avenue for victims of NIID. As it has been described, “by providing for a particularized response to a crime of sexual

288. Budde Patton, *supra* note 108, at 410.

289. *Id.* at 411.

290. Keats Citron & Franks, *supra* note 39, at 362.

291. COMPUTER MISUSE ACT, 10 UPPC CIV (2011) (Uganda).

292. Chisala-Tempelhoff & Twesiime Kirya, *supra* note 71, at 1.

violence, restorative justice insists that survivors and responsible parties be viewed as something other than predetermined caricatures of victim and offender.²⁹³ A concern around restorative justice is that it may remove the possibility of conventional justice.²⁹⁴ Where the perpetrator is more willing to admit guilt²⁹⁵ and save the victim from the process of a long court process, this type of justice might be more effective in granting justice to NIID victims because it would allow them to forego the often brutal court process and give them an opportunity to center their own healing. Feminists have explored the idea of transformative justice, which is centered on working outside state institutions and centering the lives of the marginalized.²⁹⁶ All these approaches are intended to not replicate existing violent structures and thus minimize any further harm to victims.

2. The Media's Role in Changing the Narrative

The media has equally been complicit in fanning the flames. The problem of ending the distribution of NIID goes beyond the law and must include the reassessment of how masculinity has been constructed.²⁹⁷ Ideas about sexual freedoms are capable of transformation as society evolves, and media has the ability to influence and change mindsets.²⁹⁸ Media is a powerful influence in shaping society's understandings of what is acceptable and what is not acceptable. This is especially true as it relates to the normalization of gendered norms and beliefs.²⁹⁹ Uganda's media has participated in the shaming of women, including by trivializing violence against women³⁰⁰ and creating advertisements that normalize acts of harassment.³⁰¹

293. Quince Hopkins & Mary P. Koss, *Incorporating Feminist Theory and Insights Into a Restorative Justice Response to Sex Offenses*, 11 VIOLENCE AGAINST WOMEN 693, 702 (2005).

294. Clare McGlynn, Nicole Westmarland & Nikki Godden, *'I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice*, 39 J. L. & SOC'Y 213, 216 (2005).

295. *Id.* at 232.

296. Mimi E. Kim, *From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration*, 27 J. ETHNIC & CULTURAL DIVERSITY IN SOC. WORK 219, 226 (2018).

297. Budde Patton, *supra* note 108, at 410 (quoting Martha C. Nussbaum).

298. Hakim Khalid Mehraj et al., *Impacts of Media on Society: A Sociological Perspective*, 3 INT'L J. HUM. & SOC. INVENTION 56, 56 (2014).

299. *Id.*

300. In reporting on the case of Brian Isiko, who was accused of continuously harassing and cyber stalking Hon. Sylvia Rwabogo, Uganda's media houses referred to the assault as "love messages" and mocked Hon. Rwabogo.

Betty Ndagire, *Case in Which Student is Accused of Sending Love Messages to MP Deferred*, DAILY MONITOR (Nov. 16, 2018), <https://www.monitor.co.ug/uganda/news/national/case-in-which-student-is-accused-of-sending-love-messages-to-mp-deferred-1790158>.

301. Rosebell Kagumire, *Ads About Bus Stop Harassment and 'Bonus Wives' Normalise Sexism*, GUARDIAN (Apr. 1, 2019), <https://www.theguardian.com/global-development/2019/apr/01/ugandan-ads-bus-stop-harassment-bonus-wives-normalise-sexism>.

C. CONCLUSION

Addressing the rise in NIID in Uganda must take into account the different structural and societal beliefs that allow for that abuse to go largely unpunished. In order to protect victims of NIID in Uganda, the government should amend the Anti-Pornography Act to hold perpetrators accountable, strengthen sexual harassment laws, and support policy and social changes that make it easier for victims to seek justice. Part of that process begins with a recognition of NIID as targeted and violence against women. To do this, legal reform focused on addressing the Anti-Pornography Act should take center stage. It is equally important that new strategies are designed that focus on addressing the root causes of violence in our societies and focus on both rehabilitation for perpetrators and protection of victims.