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LEGAL CHALLENGES FACING LAW ENFORCEMENT AGENCIES IN PREVENTING AND COMBATING PORNOGRAPHY IN TANZANIA

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Abstract

This Article examine the legal challenges faced by the law enforcement agencies (Tanzania Police Force, TCRA, NPS, and the Court of Law) in Tanzania in their efforts to prevent and combat pornography. Despite the existence of statutory instruments such as Cybercrime Act No. 14 of 2015, The Electronic and Postal Communications Act (EPOCA) of 2010 and the Penal Code Cap 16 Revised Edition 2023, enforcement remain problematic due to the rapid evolution of digital technologies and the transnational nature of online content. The widespread use of smartphones, social media, and encrypted platform has enabled the proliferation of pornographic material, often beyond the reach of domestic legal jurisdiction. This article examines the legal barriers that curb the law enforcement agencies on combating and preventing pornography in Tanzania includes; ambiguous of the definitions of pornography and limited provisions for strong penalties. It also examines the legal framework governing pornographic contents in Tanzania, also on institutional limitations of law enforcement such as inadequate technical capacity, insufficient cybercrime training. These factors collectively hinder effective implementation of anti-pornography laws. This article conclude by finding a way by making recommendations to strengthen the prevention of pornography in Tanzania, by suggesting the law reforms, strengthen the technologies, and public awareness to strengthen Tanzania response to digital obscenity. Therefore, by addressing above recommendation Tanzania will strengthen in preventing and combating pornography which is mostly problem currently.

Keywords: pornography, obscene material, law enforcement agencies

INTRODUCTION

Tanzania like many African countries is young and at early stages in all aspects, these include socially, political, economic and technological. With this comes the need to progress in a high rate, in among strategies adopted in Tanzania includes the development of Information and Communications Technology (ICT) to speed up the flow of information, access and transaction in an effort to elevate the technology which in return develop other sectors.ⁱ

In Tanzania, the legal battle against pornography presents a multifaceted challenge for law enforcement agencies. Despite the existence of laws such as the Cybercrimes Actⁱⁱ and the Penal Code,ⁱⁱⁱ which criminalize the distribution, publication, and possession of obscene material, enforcement remains difficult in

the digital age. The proliferation of smartphones, social medias platforms, and encrypted messaging apps has made it easier for individuals to access and share pornographic content, often anonymously and across borders. This technological shift has outpaced the capacity of law enforcement to monitor, investigate and prosecute offenders effectively.

Compounding these difficulties are gaps and ambiguities within the legal framework itself. For instance, while Tanzania law prohibits pornography, it does not always clearly define what constitutes obscene material, leaving room for subjective interpretation. Furthermore, enforcement agencies (Tanzania Police force, Tanzania Communication Regulatory Authority, National Prosecution services, and Court of Law) often lack the technical expertise and resources needed to conduct cyber investigations,



especially when content is hosted within foreign servers. The tension between protecting public morality and upholding digital rights also creates legal and ethical dilemmas, making the fight against pornography.

BACKGROUND

The advent of communications technology, particularly the introduction of computers and the internet in Tanzania, has brought about new challenges, including crimes that are perpetrated through these devices and internet access, impacting the global landscape. This technological evolution has transitioned from computers to mobile devices, notably mobile phones, which have further accelerated advancements in communications technology.^{iv} However, this progress has also rendered individuals, information, and devices increasingly vulnerable to attacks, commonly referred to as cybercrimes due to their execution via the internet.

The rapid developments in Information and Communication Technology (ICT) have significantly influenced the legal field. Despite these advancements, Tanzanian laws have struggled to keep up with the fast paced technological changes, as referenced by some author in his dissertation, defines ICT as a “unified and integrated communication system that encompasses telephone lines, wireless signals, computers and their software, middleware, storage, and audio-visual systems, enabling users to access, store, transmit, and manipulate information.”^v Moreover, individuals now utilize “micro-blogging and picture- and video-sharing via mobile phones as platforms to disseminate and consume news.”^{vi}

Indeed, social networks have evolved over time from the 1800s to the modern digital age,^{vii} where individuals leverage wireless mobile phones and computers to capture and share information primarily messages, photos, and images through various available platforms such as *WhatsApp*, *Facebook*, *Twitter*, and *Instagram*. Furthermore, it asserts that “the rise of new media, including blogs, *Twitter*, *Facebook*, and cell phones, has resulted in a wider reach for diverse media.”^{viii} This underscores the fact that individuals utilize these new media platforms to download and distribute pornographic materials, including images and videos, over the internet through social networks.

While pornography dominates the internet landscape, the existing legal frameworks in Tanzania fall short in effectively prohibiting such content and in preserving moral and social values. Pornography refers to obscene materials disseminated through computers connected to the Internet. However, determining whether specific material qualifies as obscene can pose challenges. The law governing electronic communications, specifically the Electronic and Postal Communication Act (EPOCA), primarily addresses the prohibition of sending obscene articles by post, thus limiting its scope.^{ix} The EPOCA explicitly prohibits any network facilities, services, application services, or content services that intentionally and knowingly create, solicit, or initiate the transmission of any comment, request, suggestion, or other communication deemed obscene, with the intent to annoy, abuse, threaten, or harass another person.^x

Additionally, the Cybercrimes Act^{xi} prohibits the publication and distribution of cyber pornography, although it does not address the production or creators and possession of such material. These laws exhibit significant limitations, as they focus solely on prohibiting the publication and distribution of cyber pornography. While they prevent the transmission of obscene materials aimed at causing annoyance, abuse, threats, or harassment, and regulate computer systems, this represents a gap in legal coverage. Laws are established to uphold social norms, yet pornographic materials can undermine morals and social values.

In the current technological landscape, advancements in communication, particularly the shift to digital technology, have facilitated rapid and instantaneous information sharing. However, this evolution has brought about legal challenges for law enforcement, particularly in Tanzania, where cybercrimes can occur without explicit prohibition in the digital age. The Penal Code and the Law of Children do not specifically address cyber pornography, apart from the existing cyber law.^{xii}

LAW ENFORCEMENT AGENCIES IN TANZANIA

Law enforcement Agencies in Tanzania refer to the various governmental bodies and organizations that are responsible for enforcing laws, maintaining public order, preventing and investigating crimes, and ensuring the safety and security of citizens. And these agencies operate under the authority of the government and are tasked with upholding the rule of law within the country.

A: Tanzania Communication Regulatory Authority (TCRA)

This regulatory body monitors and regulates communications services in Tanzania, including internet services providers. They are involved in efforts to block access to pornographic websites and ensure compliance with the country's authority. TCRA is a partially government entity tasked with controlling the communications and broadcasting sectors in Tanzania.^{xiii} It was established under the Tanzania Communications Regulatory Act,^{xiv} in its everyday activities as the government agencies which are used as first institutions in enforcement mechanisms of the law and procedure governing in addressing and prohibiting of the contents which are not morals acceptable in the community.

B: Tanzania Police Force

Refer to the principal law enforcement agency in Tanzania, tasked with maintaining law and order, preventing crime, and ensuring the safety and security of citizens. The police play a crucial role in enforcing laws related to pornography. They investigate cases, conduct raids, and apprehend individuals involved in the production, distribution or possession of pornographic material. Cybercrime Unit within the police force, the Cybercrime Unit specifically targets offences related to the internet and digital platforms, including online pornography. They work to track down offenders and remove illegal content from the websites.

C: National Prosecution Services (NPS)

The National Prosecution Services (NPS) of Tanzania is an independent and autonomous entity responsible for overseeing and instigating criminal prosecutions in Tanzania. Established by the National Prosecutions Services Act, 2008, its primary goal is to ensure the efficient dispensation of criminal justice. The services is headed by the Director of Public Prosecutions (DPP). According to the National Prosecution Service Act,^{xv} Section 3 defines the meaning of public prosecutor as a person appointed in accordance with the Act to conduct prosecution of a criminal case in a court of law.^{xvi}

D: Court of Law

Is a formal judicial body established to adjudicate disputes, interpret laws, and administer justice. Courts are essential components of the legal system in any jurisdiction which operate under an independent judiciary system. This system includes various levels of courts, each with specific jurisdiction and powers to handle disputes, deliver justice, and oversee the administration of law in civil and criminal matters.

LEGAL FRAMEWORK PROHIBITING AND COMBATING PUBLICATION OF PORNOGRAPHY IN TANZANIA

A: The Constitution of the United Republic of Tanzania of 1977

The Constitution of United Republic of Tanzania 1977 is a mother law of the land it provides all human rights and power of the officials are granted for governance and directions of all national activities.^{xvii} This is the principal law of the country. The constitution of the country is a set of the fundamental principles or established precedents for which the state is governed. Regarding to the publication of pornographic offences in Tanzania, under Article 16 (1) of the Constitution states, “Every person is entitled to respect and protection of his person, the privacy of his own person, his family and matrimonial life, as well as respect and protection of his residence and private communications.” This Article emphasizes the importance of valuing and respecting the right to privacy. The law is neither biased nor subjective; it applies equally to all individuals. The privacy rights enshrined in the Constitution also safeguard other fundamental rights, particularly the right to freedom of communication. Together, these rights are essential to democracy, a critical component of the state's development.

B: Cybercrime Act No 14 of 2015

The objectives of the new cybercrimes law are designed to regulate misconduct that occurs through computer systems or other electronic devices. These objectives are outlined in the law's long title, which states, “An Act to make provisions for criminalizing offenses related to computer systems and Information Communication Technologies; to provide for investigation, collection, and use of electronic evidence and related matters.”^{xviii} From the outset, we can perceive the overarching intent behind the enactment of this legislation.

The legislative body aimed to establish offenses such as pornography and to penalize actions that are facilitated by computer systems, electronic devices, or cyberspace in Tanzania. Given that pornography is contrary to both the law and the moral and cultural values of Tanzanian society, any act or behavior that opposes these social norms is rightly condemned and criminalized.

C: The Electronic and Postal Communications Act (EPOCA) of 2010

In 2010, the parliament of the United Republic of Tanzania introduced the first legal framework addressing electronic communications, which encompassed certain aspects of cyberspace.^{xix} However, the law primarily focuses on postal and communication services and does not specifically prohibit cyber pornography. Instead, it includes provisions that address the prohibition of indecent and obscene content.

The law addresses various offences related to the transmission of indecent materials through postal services.^{xx} The materials mentioned include printouts, photographs, lithographs, paintings, books, cards, and similar items. Additionally, the law prohibits content service licensees from distributing indecent or obscene materials,^{xxi} and imposes penalties on anyone who transmits obscene communications using network facilities.^{xxii} However, despite these provisions, the law does not explicitly cover electronic materials. Furthermore, it fails to define the term “obscene,” which grants discretion to the viewer to determine what constitutes obscene material. In this context, one might inquire whether cyber pornography contains obscene material. To determine this, an obscenity test should be applied.

D: Tanzania Communications Regulation Authority Act

The Act, established in 2003, created the Tanzania Communications Regulatory Authority, tasked with overseeing telecommunications, broadcasting, and postal services in the country. It addresses concerns related to privacy and confidentiality while regulating content to ensure alignment with national interests and cultural values, particularly in protecting minors and safeguarding consumers. While the Act does not explicitly mention privacy, it implies that any conduct that violates acceptable standards, including intrusions into personal matters, is considered unacceptable. The Tanzania Communications Regulatory Authority Act^{xxiii} effectively addresses issues of privacy and confidentiality, prohibiting telecommunications companies from retaining or disseminating materials that could contribute to moral decline or undermine societal values.

E: Penal Code [CAP 16 RE 2023]

The penal statute serves as the cornerstone of criminal law in Tanzania, encompassing a diverse range of offenses along with the corresponding penalties for individuals found guilty of committing offline crimes. While pornography is not explicitly addressed within this legislation, it is indirectly encompassed under other offenses.^{xxiv} However, these provisions do not consider issues related to cyber pornography or obscenity. Notably, the term “obscene” remains undefined within the statute. The law seems to categorize pornography under offenses associated with acts of

gross indecency between individuals, which is recognized as a common law offense. Furthermore, the statute does not provide a clear definition of what constitutes indecency. According to Osborn's Concise Law Dictionary, indecency is defined as an act that offends public decency and morality.^{xxv} Consequently, pornography can undoubtedly be considered inclusive within this context.

CHALLENGES FACING LAW ENFORCEMENT AGENCIES IN PROHIBITING AND COMBATING PORNOGRAPHY OFFENCE IN TANZANIA

A: Jurisdictional Issues in Cross-Border Cases

Cybercrime incidents often involve perpetrators who are located outside of Tanzania or who operate on platforms managed by foreign entities. Consequently, Tanzanian law enforcement faces significant jurisdictional challenges and lacks strong international cooperation mechanisms to effectively address such cases across borders, thereby complicating enforcement efforts.^{xxvi} Notably, the Cybercrime Act contains no explicit provisions dealing with jurisdictional issues in cross-border cases.

B: Absence of national-level cyber surveillance

Tanzania currently lacks comprehensive National level cyber surveillance systems capable of monitoring online interactions in real-time. The systems are either limited or non-existent in Tanzania. Although such systems raise ethical considerations regarding privacy, they are often used in other countries to track pornography related activities as occur. In the absence of such mechanisms, Tanzania law enforcement is limited to respond reactively rather than proactively to pornography incidents.^{xxvii}

C: Privacy and data protection challenges

Accessing data related to pornography cases can be complicated by privacy laws and the lack of clear data protection guidelines. Law enforcement must navigate these complexities to obtain evidence, especially when requesting data from social media platforms, which may resist disclosing information.

D: Low Digital Forensic Tools and Literacy among Law Enforcement Officers

Many Tanzanian law enforcement officers face difficulties in effectively preventing and combating pornographic cybercrime due to limited specialized training in digital technology and cyber security. Furthermore, the lack of adequate forensic tools it may hampers their ability to recover digital evidence and identify offenders for prosecutions.

E: Technical challenge to law enforcement officer (Tanzania Police Force)

Tanzanian law enforcement agencies often encounter significant challenges stemming from limited technical expertise and insufficient resources to effectively investigate cybercrimes, particularly those involving the distribution of pornography. The development and deployment of advanced digital forensics tools is essential for collecting, preserving and analysing remain underdeveloped in Tanzania. This gap substantially hinders law

enforcement's capacity to pursue perpetrators of pornographic cybercrimes with the required technological capability.^{xxviii}

CONCLUSION AND RECOMMENDATIONS

By concluding the law enforcement agencies in Tanzania reveals there are a number of problems, starting from the laws governing and which are enacted for the purpose to curb the problems, loophole of the provision of the law which provides directly powers and authority what exactly the agencies prohibits its either publications, distribution, sharing and possession of such contents. Despite the laws recognized the offence of pornography and provide the punishment to the offenders, but are silence to the creators or producers, and this creates ambiguity to the law enforcement agencies what a specific target as the institutions are going to deals with in order to cure the problem. The absence of the clear provisions and technological support from the government it may hinder to prohibits and cure the problem in all aspects.

RECOMMENDATIONS

Recommendation to the Legislation

That, the legislature should amend the law governing publication of pornography in Tanzania, especially Cybercrime Act^{xxix} to cover those loopholes which can be seen as a source one way offenders can escape from the liability such as providing the meaning of the key terms, "pornography" "obscene" and "lascivious" also is no any provisions of the laws that govern possessor and creators of such contents. Therefore there is need to have a particularly legislation or provision of the law that governing or gave mandate for the law enforcement agencies to conduct and to preserve the electronic evidence.

Recommendation to the Government

The government should develop a mechanism which could facilitate easily accessibility of getting evidence by development of technological tools, there is a high need to invest in technological tools, such as artificial intelligence, to detect and report instances of pornography. These tools can assist law enforcement and social platforms in proactively identifying harmful content, which can facilitates to gather necessary information's concern the publishers, creators and distributors of pornography wherever they are, and to cover the uses of Virtual Private Network (VPN), also to provide for the cross border jurisdictional cases by strengthen international cooperation mutual legal assistance for contents hosted overseas and for perpetrators who operates across jurisdiction.

Recommendation to the stakeholders

Strengthening the technical and investigative capacities of law enforcement agencies is essential for effectively addressing cases involving publication of pornography material. Adequate and continuous training in digital forensics, international cooperation, and modern cyber investigative techniques should be effective. The law enforcement officer should be equipped and empowered to use both digital and hardware forensic tools in cybercrime investigations whenever it is evident that essential evidence can be collected through such means.

To achieve this, all stakeholders within the criminal justice system must be made aware of the importance of forensic tools, and comprehensive training involving cyber related sexual offences should be continuously trained toward law enforcement agencies such as the Tanzania Police Force Cyber Unit, other law enforcement personnel, and the National Prosecutions Service

under the Director of Public Prosecution (DPP). This will make mutual understanding of cyber laws, and improve effective adjudication of offences under these laws and strengthen institutional coordination for the proactive prevention and deterrence of the crime.

END NOTE

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