



Non-Consensual Image Dissemination in Paraguay

AN EXPLORATORY RESEARCH



TECH & COMMUNITY



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TECNOLOGÍA &
COMUNIDAD

TEDIC is a non-profit organization that defends and promotes human rights on the Internet. It seeks to foster the production of free knowledge and culture on the Internet on law, technology and gender.

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Abstract

The exercise of sexting, which is part of the right to freedom of expression and sexual and reproductive rights, is practiced by many adults and adolescents. However, this exercise has led to the emergence of various forms of violence, such as the dissemination of non-consensual intimate images through mobile devices and the Internet, which generally affects women and LGBTQ+ communities more.

This exploratory research analyzes the legal responses offered by the judicial system to victims of this type of violence. Several aspects are considered for a broad understanding of the problem. On the one hand, we sought to identify the norms in force and the form of access to justice, using semi-structured interviews with experts from the public service, private sector and civil society. Additionally, an analysis of the sentences in this type of litigation was carried out, using consultations of access to public information, on the complaints received in the context of the dissemination of non-consensual intimate images.

This research seeks to collaborate in the production of public policies that comprehensively address this type of violence, as well as to be more efficient and fair in the protection and reparation of victims in the judicial system, as well as in other state institutions.

Keywords: non-consensual image dissemination, gender-based violence, revenge porn, gender on the Internet

1. Introduction

Connected to the internet, we express our ideas, share feelings, plan actions, gain a voice with a previously unimaginable scope. But as this deepens, the boundaries between online and offline dissolve, and old forms of gender-based violence are also manifested in this on-line-offline continuum.

One of the forms that gender-based violence takes in digital media is the non-consensual dissemination of intimate images and videos. According to the available statistics, published in The Guardian in 2014, non-consensual image dissemination is a problem that affects more women than men¹. The impact of this type of violence has become a central concern among women, adolescents and vulnerable groups in general.

In Paraguay, the first cases were made public in the early 2000s². However, it was from 2010 on that the phenomenon began to be named with the term “revenge porn”, as the media began to report on cases of adolescents who committed suicide, after their intimate videos³ were published on social networks and “viralized”. As an example, in 2019 the daughter of a politician took her own life after her ex-partner viralized her intimate videos and was widely covered by the press. The magnitude of this problem in Paraguay is also expressed in published statistics: in that same year, more than 1200 complaints were filed.

There is no doubt that the unauthorized dissemination of intimate images has serious consequences for its victims⁴. There are countless reports of suicide, depression and isolation from social contact, school dropouts, job loss and difficulty finding another, assaults and street harassment. This problem takes the name of “revenge porn” and began to mobilize different people who seek to minimize the phenomenon or contain its effects. In this sense, feminist activists produce content that seeks to break the guilt or victimization of girls and women who are going through this type of experiences. Non-governmental organizations have participated in data protection campaigns on the Internet⁵.

In this study we prefer the term “non-consensual image dissemination” as opposed to “revenge porn”: firstly because pornography has a commercial profile, i.e. pornographic materials are generally produced with the purpose of circulating in the market and obtain an economic profit. In the case of non-consensual image dissemination, the intention of the person who generates this content is not to circulate or obtain a profit, but an exercise of

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- 1 Davis, Caroline. Revenge Porn cases increase considerable, police figures reveal, in The Guardian, July 16, 2014, “Two-thirds of incidents involved women under 30, with suspects mainly former partners. There were eight female complainants to every male.” Available at <http://www.theguardian.com/technology/2015/jul/15/revenge-porn-cases-increase-police-figures-reveal>
 - 2 Pornovenganza en aumento: hubo 1.200 denuncias en el 2019: <https://www.hoy.com.py/nacionales/pornovenganza-en-aumento-hubo-1.200-denuncias-en-el-2019>
 - 3 Fiscal confirma que hija de Samaniego se suicidó, 2017. <https://www.adndigital.com.py/fiscal-confirma-hija-samaniego-se-suicido/>
 - 4 “La violencia facilitada por la tecnología también puede dar lugar a daños físicos (incluidos suicidios), así como perjuicios económicos” Paragraph 27 of the Report of the Special Rapporteur on Violence against Women, 2018. <https://undocs.org/pdf?symbol=es/A/HRC/38/47>
 - 5 Acosto Online - Regional platform on Internet violence and non-consensual image dissemination: <https://acosto.online/py/> and <https://violenciadigital.tedic.org/>

sexuality, which is desired to be kept in the intimate sphere. Hence its main characteristic: lack of consent. We consider that naming the expression of women's sexuality as potential pornographic material responds to a patriarchal gaze that historically repressed the exercise of female sexuality. On the other hand, the intention of those who disseminate this content is not to obtain an economic benefit but to harm the person who appears in the content.

Analyzing the second part of the term, we believe that the word "revenge" is not a term that encompasses all situations of non-consensual image dissemination, because it reduces the commission of this figure to former partners of the victim. Although this occurs quite frequently, intimate partner relationships are not the only sphere in which this violence appears. For example, it can be committed by someone who does not have a sex-affective link with the victim, and even by people who unlawfully obtain the graphic material⁶.

Based on the above, we are concerned that this terminology continues to be used as it perpetuates gender stereotypes, which also diverts the attention of the authorities from the approach that should be given: guaranteeing the exercise of women's autonomy.

For this study, we conducted qualitative research on the dissemination of non-consensual image that will include: a) 5 in-depth interviews with different people involved in the issue: lawyers, public defenders, prosecutors, activists in the field of gender and sexualities, b) the compilation and analysis of jurisprudence, c) the study of 5 judicial cases and d) consultations through the portal of access to public information.

2. Objective

This research aims to obtain evidence to collaborate in the creation of public policies to prevent and reduce the dissemination of non-consensual images.

The methodologies used will also allow us to produce reflections on the relationship between gender and digital media, from the body, intimacy, gender norms and violence.

Therefore, the questions we intend to answer are: do the media and discourses in the public sphere usually give a good description of the problem and its nuances? What legal responses exist and how satisfactory are they? Have there been any legal changes to deal with "revenge porn"? Are they enough?

6 Llevó su celu y el robó sus fotos íntimas. Newspaper Extra. October 2020 <https://www.extra.com.py/actualidad/llevo-al-tecnico-su-celu-y-el-robo-sus-fotos-intimas-n2908363.html>

3. Methodology

This research is exploratory and seeks to obtain a diagnosis of the situations faced by women on the Internet. Specifically, we worked on 5 sentences resulting from legal cases in the Court of Asunción, the capital of Paraguay. We analyze the strategies and legal discourses to see how this type of situation is addressed, the group of victims, as well as the interface of the problem with legal institutions.

We will expose broadly and thoroughly our findings and empirical reflections, from a sociology of Law approach, which involves the investigation of law through the implementation of practices and techniques of the social sciences. We want to offer a diagnosis of how Paraguayan justice system addresses the problem of the dissemination of non-consensual images.

Analyses will be carried out in institutions of the judicial system: the Judicial Branch and institutions such as the Public Defender's Office, the Office of the Attorney General and Ministry of the Interior-National Police. It aims to understand: a) how the problem reaches the judicial system: how is the complaint filed? What alternatives do victims have?; b) What are the responses given by the institutions to the problem? We will present the main results of the jurisprudential investigation in order to shed light on the dynamics of the cases and we will complement these results with information obtained from interviews with officials of the institutions of the judicial system.

The research includes: a) 6 in-depth interviews with different people involved in the matter: lawyers, public defenders, prosecutors, activists in the field of gender and sexuality; b) collection and analysis of jurisprudence, both quantitative and qualitative; and c) inquiries through the portal for access to public information.

The main challenge that we identified for this research is the current pandemic situation, which delayed the permits to access the completed judicial records, since most of the offices of the Judicial Branch take non-opening measures. The face-to-face interviews were conducted through video-calls, which can create some distance to discuss such a complex topic.

In order to approach the field of study, we used the starting point of the definition of Wikipedia in Spanish on "non-consensual image dissemination":

Non-consensual dissemination of private images, also known as "revenge pornography" or "revenge porn", is the publication of content, usually images with explicit or suggestive sexual content, without the consent of the individual depicted and which were taken within a private setting⁷.

In this exploratory stage we searched the official State websites and for academic articles with keywords: "revenge porn", "revenge pornography", "dissemination of intimate images" and "unauthorized image dissemination", all in Spanish.

7 Non-consensual image dissemination: - Wikipedia. Available at https://es.wikipedia.org/wiki/Difusi%C3%B3n_no_consentida_de_im%C3%A1genes_privadas

We used these terms in academic search engines, such as [SSRN](#), [JStor](#), [HeinOnline](#), [ResearchGate](#), [Google Scholar](#), and [Academia.edu](#). When we did not obtain results in these areas about Paraguay, we searched for news in the media.

3.1. Sampling framework

For the interviews, a theoretical sample was carried out that included the following profiles: one person from the Public Ministry, one from the Ministry of Public Defense, one from the Ministry of Women's Affairs, one from the Judicial Branch, one from civil society and one feminist lawyer.

On the other hand, 3 inquiries for access to public information were made using the official portal: one to the Ministry of Women's affairs⁸, another to the Office of the Attorney General⁹, and one to the Judicial Branch¹⁰. Of these queries, 2 were answered partially, indicating the number of complaints received, but without mentioning whether they were processed by the courts. For its part, the Judicial Branch has not responded so far.

It is important to mention that the methodological route of the research was not evident or linear. We did not access the court files for a thorough analysis. As a first stage, we searched for the terms mentioned above in the jurisprudence field of the official web page¹¹ of the Supreme Court of Justice, but the results did not yield any information related to the search. This showed that there are no cases that have reached the Supreme Court of Justice.

As a next step, we held meetings with the Secretariat of Gender of the Judicial Branch, Directorate of Human Rights of the Supreme Court of Justice and the Department of Statistics of the Judicial Branch: no disaggregated information was found either. At that time we had the main criterion that the majority of cases should be within the criminal or civil chambers.

We had to revise the strategy and we defined to look for legal cases through news publications on the Internet, from the following newspapers: *ABC Color*¹², *Ultima Hora*¹³, *Hoy*¹⁴ and *La Nación*¹⁵. The results showed some cases between the years 2000 and 2020, which became public knowledge because the victims belong to the public sphere¹⁶.

8 Access to Public information. Request 33666 <https://informacionpublica.paraguay.gov.py/portal/#!/ciudadano/solicitud/33666>

9 Access to Public information. Request 33663 <https://informacionpublica.paraguay.gov.py/portal/#!/ciudadano/solicitud/33663>

10 File DTAIP N° 160/2020

11 Supreme Court of Justice – Paraguay <https://www.csj.gov.py/jurisprudencia/>

12 ABC Color <https://www.abc.com.py/>

13 Última Hora <https://www.ultimahora.com/>

14 Hoy <https://www.hoy.com.py/>

15 La Nación <https://www.lanacion.com.py/>

16 The *public sphere* refers to the space for citizen participation focused on the deliberation of national issues and with significant media coverage.

These results helped us to reconsider the main criterion: in view of the fact that in many Latin American countries these cases fall within the criminal or civil field, in Paraguay the victims of non-consensual dissemination of images used the writ of *amparo* (constitutional figure). This redefinition of the criteria led us to move on to a second moment of the conversation with the representatives of the Judicial Branch, and to improve the analysis using in-depth interviews.

Based on the findings obtained in the press media, 10 cases occurred during the last 10 years were selected and the Judicial Branch was asked for the information available on them. The responses allowed access to 5 sentences of cases that occurred between the years 2015 and 2020.

3.2. Conceptual framework

In order to achieve an adequate understanding of the research topic, it is necessary to specify the concepts and discuss the different theoretical approaches. Precise definitions will give theoretical strength to this research, as well as allow a better understanding of the scope and challenges that this topic represents.

Consent: it is a legal concept that refers to the externalization of the will between 2 or more people to accept rights and obligations. Consent plays a fundamental role in the framework of the autonomy of will¹⁷.

On the other hand, feminist debates made it clear that the liberal approach to individuals as autonomous, free and rational subjects is problematic in many ways, especially in terms of meaningful consent: this formula does not consider the historical and sociological structures where consent is exercised. In this sense, a very rich question to pose the debate on data protection from a feminist perspective is “who has the capacity to say no?” (Coding Rights, 2019). In this context, Yolínzltli Pérez considers something fundamental: “It is not only about consent or not, but fundamentally about the possibility of doing so” (Pérez, 2016).

Non-consensual image dissemination: it is the publication of content, generally images with explicit or suggestive sexual content, without the consent of the individual depicted and which were taken within a private setting. Images with sexual content are typically distributed in mass media such as the Internet, both by ex-partners and by strangers with unauthorized access to intimate images and recordings of the victim (Danielle Keats Citron, 2014).

Studies on the gender dimension of online violence indicate that 90 % of the victims of the non-consensual distribution of intimate images are women¹⁸.

17 Definition of consent – Wikipedia <https://es.wikipedia.org/wiki/Consentimiento>

18 See the website of the Cyber Civil Rights Initiative at www.cybercivilrights.org.

The acronym NCII stands for “non consensual intimate images” and has been adopted by English-speaking activists and academics. For conceptual and practical reasons, we decided to adopt the expression “non-consensual image dissemination”, which allows us to adopt the acronym NCII and thus to dialogue with the international literature without further mediation.

Revenge pornography or revenge porn¹⁹: it is understood as the disclosure of graphic and audiovisual material of erotic or explicitly sexual tone without the consent of any of the people portrayed, with the intention of humiliating, intimidating and/or extorting the victim. This disclosure can be made by a partner, ex-partner or a third party with improper access to the material (Online Stalking, 2018).

We use this term mainly because the media and activist groups use it to describe this type of digital violence. We will not abandon this term entirely in the research, but we will replace it with the term “non-consensual image dissemination”.

Sexting²⁰: it is a form of expression of the sexual and reproductive rights, which contributes to our self-determination in the field of sexuality, with no other limitations than respect for the freedom of others. This faculty expands by using one’s own body at will, following one or another sexual tendency at any given moment, making and accepting the proposals of one’s choice, as well as rejecting unwanted ones.

The practice of sexting does not raise legal questions because it is a voluntary practice. However, the storage, dissemination, transfer and publication of the person receiving the digital content, generates potential legal disputes and damages to the person who generated said content of a sexual nature.

3.3. Legal framework

For this study, we identified the most relevant regulations and legal analyses in order to address the *dissemination of non-consensual images* from a human rights gaze.

3.3.1. International law

At the international normative level, the interaction between technology and women’s human rights norms is characterized by the recognition of the principle that the rights of individuals must also be protected on the Internet²¹. In this sense, the right of women to live a life free of violence is considered a principle of international human rights law²². These human rights are recognized and ratified by the Paraguayan State.

19 Definition of revenge porn (*Pornovenganza*) <https://acoso.online/es/pornovenganza/>

20 Sexting, autocuidado en Internet. 2018 CyborgFeminista – TEDIC. Available at: <https://cyborgfeminista.tedic.org/sexting-sendnudes/>

21 Resolución 32/13 del Consejo de Derechos Humanos.

22 Comité para la Eliminación de la Discriminación contra la Mujer, recomendación general núm. 35 (núm. 19).

Among the international instruments that seek to eliminate violence against women and discrimination against women are: the Convention of *Belém do Pará*²³ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁴. Both documents highlight violence as a form of historically unequal power relations between women and men, emphasizing that they have the right to live free from violence and discrimination.

In addition, there is considerable jurisprudence²⁵ and regional and international regulations that protect women's rights in all areas, which means that these legal instruments should also serve to protect them on the Internet.

3.3.2. Fundamental rights

▪ *Right to freedom of expression*

A fundamental right guaranteed by Article 19 of the 1948 Universal Declaration of Human Rights is the freedom of expression, which is included in the constitutions of most democratic systems. On the other hand, The International Covenant on Civil and Political Rights (ICCPR, 1976) recognizes freedom of expression in Article 19 and establishes restrictions: for respect of the rights or reputations of others, and/or for the protection of national security or of public health and morals. If restrictions are necessary, they must be established by law.

In the National Constitution it is available in Article 26, which guarantees free expression and freedom of the press, as well as the dissemination of thought and opinion, without any censorship and without any limitations other than those provided for in the Constitution itself (Constituent Assembly, 1992).

Hate speech is explicitly prohibited by Article 20 of the ICCPR, which states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Although it is a very broad concept that has not been unified by doctrine, in general terms it refers to content that promotes violence or hatred against individuals or groups according to certain attributes: for example, racial or ethnic origin, religion, disability, sex, age, gender identity and sexual orientation. The essential element to be considered hate speech is the incitement to violence.

23 Organización de los Estados Americanos, Convención de Belém do Pará. Disponible en: <http://www.oas.org/juridico/spanish/tratados/a-61.html>

24 Organización de Naciones Unidas, Convención sobre la eliminación de toda forma de discriminación contra la mujer, Disponible en: <http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm>

25 One of the cases is: Penal Miguel Castro Castro - IACHR. The judgment of the Court pointed out that there are patterns of conduct that affect only women because they are considered inferior, and that this discrimination is the cause of violent actions against them. The judgment states the following: “The sexual violation of women was a State practice, executed in the context of the massacres, aimed at destroying the dignity of women at the cultural, social, family and individual level”. Source: IACHR. Case of Penal Miguel Castro Castro Prison Vs. Peru. Fondo, Reparaciones y Costas. Sentence of November 25, 2006. Series C No. 160, para. 303.

According to researcher Paula Vargas:

“Hate speech is the figure that most protects the victim of non-consensual image dissemination of an illegitimate speech. The first thing the victim seeks is to stop this from circulating, beyond seeing the perpetrator of the act in prison or the damages.”

However, prohibiting circulation can be taken as censorship, unless it is identified as hate speech. In such a case the circulation of such content once published can be banned:

“If there was a legislation establishing that this type of content is prohibited, the judge facing a case of this type would only have to order the removal of the content. If one publishes it is for others to see it, then, it could be considered as incitement. For example, publishing on a public platform, open to comments, could fall under this assumption” (Santoro, Sonia, 2016).

As it is observed this could be one of the mechanisms that could be used by the victim in the framework of restrictions on their freedom of expression, their opinions, their experiences, since it suppresses the possibility of showing their identity freely.

▪ *Content moderation by intermediaries*

The regulation of content moderation is one of the forms of control over the free flow of information on the Internet and without an application based on due process standards, it could affect the full exercise of the right to freedom of expression. Regulation takes many forms and is imposed by different entities: State (through laws), private sector (through “terms of use” and contractual agreements), technical community (through standards and protocols) or individuals (through installation of filtering software). Some of the measures include automated keyword filtering or other mechanisms to control what content a person can view online. They may be imposed by a government or by an Internet service provider, but without the user’s consent it constitutes censorship.

In the case of non-consensual intimate image dissemination, platforms have sought to help minimize and mitigate these abuses by their users. The permanent digital record that can be distributed worldwide, using the Internet or other networks, makes the content very difficult to delete and this generates further victimization.

However, the content moderation policies of these platforms have a “paternalistic” and moralistic approach, allowing prior censorship, for example of women’s bodies with visible nipples. Automatically deleting content, without due process, becomes a controversial solution, as it does not comply with human rights protection standards.

▪ *Right to privacy*

Article 12 of the Universal Declaration of Human Rights recognizes for all people the right to privacy in their lives, families and homes without interference from government or other entities. The very nature of the Internet makes it difficult to ensure privacy, but it can help individuals avoid government restrictions. The “private space” is a very important area for securing people’s sexual rights. At the same time, when abuses occur in private spaces, demands for intervention by authorities arise, making the defense of the right complex.

In the National Constitution, the right to privacy is recognized and guaranteed in Article 33. In addition, the American Convention on Human Rights (“American Convention”) ratified on August 24, 1989, obliges the Paraguayan government to respect and protect rights such as: the right to freedom of opinion and expression (Art. 13), the right to assembly (Art. 15) and the right to honor and dignity (Art. 11). On the other hand, it is recognized in the International Covenant on Civil and Political Rights (ICCPR), ratified by Paraguay on June 10, 1992, in its articles 19 and 17 on Privacy and Freedom of Expression. These rights are closely linked, as expressed by former UN rapporteur Frank de la Rue: “the right to privacy is often understood as an essential requirement for the realization of the right to freedom of expression”. (A/HRC/23/40)²⁶.

3.3.3. Constitutional Law

▪ *Writ of amparo*

Article 134 of the National Constitution guarantees the amparo action against “acts of private individuals” that violate fundamental rights, if there is no other more suitable legal remedy. If we consider the dissemination of a non-consensual intimate image as a case of gender violence, the amparo action would be the most suitable legal remedy.

▪ *Writ of habeas data*

The writ of *habeas data* is an action established in Article 135 of the National Constitution. This writ allows individuals to access personal information and data appearing in official or private records of a public nature, as well as to know the use made of them and their purpose. In general, this action allows to request the update, rectification or destruction of such data before the courts, in case they are erroneous or affect the rights of individuals.

Since the image of an identified or identifiable person is personal data, then the non-consensual intimate dissemination of an image can also be applied to the storage of sensitive information by third parties.

²⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue <https://undocs.org/A/HRC/23/40>

3.3.4. Criminal Law

The disclosure of intimate images without explicit consent is not criminalized.

▪ *Punishable acts against physical integrity*

Abuse

Physical abuse is punishable under Article 110 of the Penal Code with a fine of up to 180 days. The criminal prosecution of the act will depend on the request of the victim, unless the protection of the victim or third parties requires an ex officio prosecution. If the victim is a child, the penalties are increased.

Injury and serious injuries

Article 111 of the Criminal Code punishes injuries and Article 112, serious injuries - those that endanger the life of the victim or those that considerably reduce the use of their body, their mental or intellectual strength or their ability to work. The penalty for the criminal offense of injury is imprisonment for up to one year, or a fine; for serious injury, the penalty is imprisonment for up to 5 years. Attempt is also punishable.

The prosecution is carried out at the request of the victim, unless the public interest requires an ex officio prosecution.

▪ *Punishable acts against freedom*

Coercion

In its article 120 the Penal Code punishes the person who by force or threat forces another to do, not to do, or tolerate what they do not want (coercion). Sexual coercion is also contemplated in article 128 of the Penal Code. It is a public action except when the act is carried out against a relative; the criminal prosecution will depend on the victim's request.

Threat

It is important to expose the situation of threatening to publish or make the material available to third parties, because this action already implies violence or violates privacy, by limiting the victim's freedom of action and creating a situation of anguish (Paula Vargas, 2015).

Article 122 of the Penal Code punishes this act, which may be punished with imprisonment of up to one year or with a fine. The process is carried out at the request of the victim.

▪ *Punishable acts against the life and privacy of the individual*

Violation to the right to communication and to an image

Article 144, second paragraph, of the Penal Code punishes the violation of the right to communication and image. This article punishes whoever, without consent, produces or transmits images of another person, violating his right to privacy. Furthermore, it punishes with a prison sentence of up to 2 years or a fine. Likewise, in its third paragraph, it establishes the same penalty for whoever makes accessible to a third party, a recording or reproduction that violates privacy, protected in the first paragraph. The process is carried out at the request of the victim, unless the public interest requires an ex officio prosecution.

Therefore, the person who forwards a non-consensual intimate image reveals aspects of the personal privacy of a third party, thus infringing their rights to privacy, honor and self-image.

Violation of communications privacy

Article 146 of the Criminal Code punishes the access to the content of the publication when there is no consent of the owner. The penalty is deprivation of liberty for up to one year or a fine. The criminal prosecution will depend on the request of the victim, unless the public interest requires an ex officio prosecution.

▪ *Punishable offenses against honor*

It is necessary to point out that with respect to crimes against honor, convictions are minimal because they are considered “less offensive potential”. In addition, their main characteristic is that the criminal prosecution is through a criminal complaint.

Slander

Article 150 of the Penal Code punishes this act when it harms the honor and establishes that it will be punished with a fine. If it is made before a crowd or in a repeated and prolonged manner, the penalty increases to deprivation of liberty for one year, or a fine.

Defamation

The Penal Code punishes this fact in its article 151 and refers to the action of affirming or divulging, to a third party or before a third party, a fact referred to another, capable of injuring his honor. It shall be punished with 180 days-fine.

Injury

Article 152 defines injury as the action of attributing to another a fact capable of injuring his honor; or expressing to another a negative value judgment, or to a third party with respect to the former. This will be punished with a penalty of up to 90 days-fine. Likewise, when the injury is made before a third party or repeatedly during a prolonged period of time, the penalty may be increased up to 180 days-fine.

▪ *Punishable acts against sexual autonomy*

Workplace harassment

The Penal Code punishes sexual harassment or sexual coercion in Article 128, as harassment by abuse of authority. This fact is also one of the justified causes for the termination of a contract, according to article 84 of the Labor Code.

On the other hand, Resolution 472/12 of the Ministry of Justice and Labor includes sexual harassment within the definition of workplace violence.

▪ *Punishable acts against patrimony*

Extorsion

Article 185 of the Penal Code penalizes the punishable act of extortion whenever there is material damage. Article 186 is added, when the extortion is aggravated, that is, when it is committed by means of force. The first has a penalty of imprisonment of 5 years or a fine and the second of imprisonment of 1 to 15 years.

Family violence

Family violence is sanctioned in the Penal Code in its article 229, as amended by law 5378/14. This article applies to all family violence involving physical or psychological violence by a family member or within the framework of cohabitation. The custodial sentence is from 1 to 6 years. Article 112 of the Penal Code states that if the act of violence results in serious injury, the penalties foreseen for this conduct shall be applied.

3.3.5. Other regulations

▪ *Child pornography*

When we refer to child pornography, we are specifically talking about pornography involving persons under 18 years of age, being sanctioned in our country whoever produces, commercializes, distributes, disseminates, exhibits or intentionally acquires or stores it, whatever its medium. It is stipulated in Article 140 (“Pornography related to children and adolescents”) of the Penal Code. The institutions of the penal system are responsible for the prosecution of this punishable act. Penalties range from 5 to 10 years of imprisonment (Law 4439 amending and expanding several articles of Law No. 1160/97 “Criminal Code”, 2011).

It should be noted that in order to consider the assumption of dissemination of non-consensual image, it only applies to relationships between adults. That is, in a relationship between minors or between a minor and an adult, by default, there can be no consent for the sexual relationship itself. The publication of this type of material would constitute child pornography.

Therefore, we can argue that girls are also protected by child pornography legislation.

▪ *Divorce*

Law 5422/15 in its Article 4, which amends Law 45/91, establishes the “matrimony divorce”. Among the grounds, there are ill-treatment, serious injury and attempt against life (National Congress, 2015).

This legal figure is used as a legal strategy to achieve compliance to stop the circulation of the dissemination of a non-consensual intimate image.

▪ *Disregard of the court order*

Law Nº 4711/12 (National Congress, 2012) penalizes contempt for cases that fall within the non-compliance with the written order issued by a competent judicial authority. The same shall be punished with a custodial sentence of 6 months to 2 years, or a fine. Penalties are increased in the event that it is committed by a public official. This is a public criminal action, that is that it will be promoted through the criminal prosecutor on duty, *ex officio*.

This figure is used as a legal strategy by the Public Defense and lawyers, to achieve compliance to stop the circulation of the dissemination of a non-consensual intimate image.

▪ *Civil and commercial law*

One of the legal remedies that the Civil and Commercial Code provides on this subject for the repair of eventual damages is article 1835, which establishes that damage will exist, whenever any harm is caused to another in their person, in their rights or faculties, or in the things of their domain or possession. This can be applied to cases in which the victim of image dissemination seeks compensation for material and moral damages.

▪ *Regulations related to digital violence*

Law 5777/16 On integral protection of women against all forms of violence

The consequences and damages caused by the different manifestations of online violence are closely related to gender, given that women and girls suffer a particular stigma in the context of structural inequality, discrimination and patriarchy. Women affected by online violence are often subjected to further victimization due to harmful and negative gender stereotypes, which are prohibited by international human rights law.

Although this law has protective measures, it does not have enforcement and sanction mechanisms in the case at hand. An example of this is the recognition of telematic violence as a form of violence against women²⁷, which includes the dissemination of a non-consensual image: no sanction is established for the commission of this act. However, we consider it important to emphasize that the inclusion of telematic violence is positive, as it provides a conceptual framework from which mechanisms can be generated to comprehensively address protection against all forms of gender violence.

27 Art. 6 section of the Law 5777/16

4. Findings

4.1. Analysis of public information inquiries

From our queries for access to public information through the portal and the office of access to public information of the Judicial Branch, we have received information on how the different instances of criminal prosecution classify the complaints of victims of non-consensual image dissemination.

First, we have found that there are no official statistics that can account for this phenomenon in a disaggregated basis. Given this lack of evidence, it is very difficult to determine the extent to which this type of violence is occurring. In view of the increase in Internet connection and access of the Paraguayan population, it can be presumed that the lack of visualization is due more to a defect in the way in which statistical data are collected than to the non-existence of the problem (Sequera, 2020).

It is also highlighted that at the time of completing this research, terms such as “revenge porn”, “revenge pornography” and “dissemination of non-consensual image”, are not used by judges and prosecutors.

In order to adjust the consultation to the record systems of the Institutions of the penal system, the following terms were searched: “telematic violence” under law 5777/16, and those related to the Penal Code named above. The latter was very broad and the search for “harm to the right of communication and image” was chosen. Even so, it has not been possible to identify whether they correspond to cases related to the dissemination of non-consensual image.

The following table, obtained from our consultation, shows how State institutions classify and observe this phenomenon. All data presented correspond to the years 2017 to 2020:

Institution	Records on dissemination of non-consensual image	Legal figures invoked to deal with dissemination of non-consensual image according to each Institution	Number of cases recorded with the legal figures
Judicial Branch Statistics – judisoft System (software)	There is no specific disaggregated data with this denomination	Telematic violence	6 cases. It is not known which ones correspond to the research topic
Public Prosecutor’s Office	There is no specific disaggregated data with this denomination	Harm to the right of communication and image	326 cases. It is not known which ones correspond to the research topic
Ministry of Women’s Affairs	There is no record of data with this denomination	Domestic Violence and Family Violence (telematic violence)	39 cases. It is not known which ones correspond to the research topic

What can be concluded is that the methodology of data collection is not very clear, therefore the results between institutions are not comparable. For example, when asked if there is a unified criterion of the Public Prosecutor's Office as to which legal figure is indicated for the complaint of *non-consensual intimate images dissemination*, or the action of "revenge porn", no answer has been provided. The number of complaints regarding the legal figure of "harm to communication and image" was pointed out, but it is not established whether these complaints dealt with images of intimate content. This figure may also include interception of communications and photographs of the person in general, beyond the intimate.

For its part, the Ministry of Women's Affairs stated that the figures raised are usually "domestic violence" or "family violence". The response also indicates having received calls to the 137 "SOS Mujer" helpline from women who reported being victims of telematic violence. At the same time, neither of the 2 institutions responded as to whether these complaints had been dealt with in the courts.

As a first preliminary conclusion, we believe that the State should generate data and statistics to address this phenomenon in depth, as well as to guarantee victims access to justice. It is possible to conclude preliminarily that many women do not dare to denounce because of social prejudices related to the sphere of intimacy and the few guarantees offered by the system.

4.2. Analysis of court records

One of the most interesting findings of this research was found through the analysis of judicial cases. We discovered some variables about how the problem is approached in the Judicial Branch, and which is the path that generates the most satisfactory results for the victim.

We found that the victims have strong problems of access to justice, that is, we observed that the greatest obstacle for women to file complaints before criminal prosecution institutions is that most of the criminal offences are of private action, which correspond to the request of the party. This generates a situation of exclusion in that it subjects access to justice to women who have the economic means to pay the fees of a lawyer.

At the same time, we note that the most effective measure to stop the circulation of images or videos of intimate content is the submission a writ of amparo. This is a constitutional remedy that stands out for being a summary judicial action, by which the obstacle that prevents the exercise of a constitutional or legal right is removed when there is no ordinary way to achieve it²⁸.

28 Recurso interpuesto: Amparo Constitucional de Pronto Despacho. Poder Judicial. Available at <https://www.pj.gov.py/notas/13576-recurso-interpuesto-amparo-constitucional-de-pronto-despacho>

On the other hand, we focused on judicial decisions that had visibility through the local media in the city of Asunción. This was due to the limitation of the Judicial Branch and the Public Prosecutor's Office in identifying cases of non-consensual image dissemination in a disaggregated manner. In addition, the Judicial Branch's jurisprudence search engine only allows access to rulings from the Supreme Court, and after an exhaustive search, no rulings were found that deal with the topic in question: "revenge porn", "revenge pornography", "dissemination of intimate images", or "dissemination of unauthorized image".

All this allows us to conclude preliminarily that the Supreme Court has not dealt with cases on non-consensual image dissemination.

In this sense, we chose to work with judicial decisions that had notoriety through the local media (occurred in the city of Asunción). This was due to the limitation of the Judicial Branch and the Public Prosecutor's Office in identifying cases of non-consensual image dissemination in a disaggregated manner. For the selection of the published cases, we chose those based on gender or sex and which have gained notoriety in the last 10 years. More than 10 cases were found and only 5 sentences could be accessed, covering the years 2015 to 2020. The Judicial Branch does not have all the cases available in the system.

For the analysis of the 5 sentences, we used a list of the methodology developed by InternetLab in their research "O corpo é o código" (Mariana Giorgetti Valente et al., 2016):

1. Categories that allow us to identify the researcher and the case (objective description);
2. Categories that allow identifying the trial: record and process, type of action, date of judgment, relator, plaintiff, court of origin and chamber;
3. Categories that deal with the relationship between the parties and the existence (or not) of revenge motivation when the violation of the victim's intimacy or privacy occurs;
4. Categories that allow to identify the request for remedies, as well as what happened in first and second instance in terms of penalty or liability;
5. Categories that deal with the evidentiary set (discussion on evidence and content) and the reasoning of the decision (doctrine, jurisprudence and arguments external to the law).

4.3. Relevant results of analysis

We had the hypothesis that most of the legal cases were carried out through the figures of punishable acts against honor, such as slander (150 CP), injury (152 CP), defamation (151 CP), or others such as harm to image (144), threat (122 CP) and extortion (185 CP). However, through the analysis of the sentences, it can be deduced that most of the victims resort to the submission filing of constitutional appeals of amparo: the 5 sentences analyzed correspond to amparo appeals and one of the cases derives from the criminal matters. The latter was identified as a result of the fact that the same persons who submitted a constitutional remedy of amparo later opted for criminal proceedings.

These 5 legal cases analyzed are:

Final judgment (SD.) No. 27²⁹ dated May 7, 2015 refers to a constitutional remedy of amparo filed by women victims of the dissemination of videos of sexual content made without their knowledge (and therefore without their consent), disseminated in the press media. The legal representation of the victims points out that:

“not only has their privacy been outraged, but they have also been accused of allegedly engaging in prostitution, and intimate parts of their bodies have been exhibited through photographs, a matter that causes them tremendous moral damage of such magnitude that today they do not even dare to leave their homes to carry out their daily activities.”

The SD. No. 14³⁰ dated March 22, 2016 deals with a woman who submitted a writ of amparo because intimate photographs of her were disclosed after taking her mobile device to have it repaired by a technician. She points out that the photographs were subsequently disseminated in the media alleging that the same has caused irreparable damage to her professional career.

The SD. No. 44³¹ dated March 29, 2017 sets forth a criminal lawsuit from the facts derived from the constitutional appeal of the aforementioned judgment. It was promoted by the Public Prosecutor’s Office as a result of complaints made by women who indicated that they had been recorded without their knowledge (and therefore without their consent) having sexual relations with whoever was accused as the author of the punishable act of harm to private image under Art. 144 and human trafficking Art. 129 of the Criminal Code. At the same time, a woman, who was accused of providing the videos to the media, was convicted.

The SD. No. 30³² dated August 31, 2018 concerns with a woman who filed a writ of amparo based on publications in press media and social networks of photographs of intimate content without her consent. The responsibility for the dissemination to press media is alluded. The victim alleges that as a result of such publications, the press media referred to her:

“with all kinds of expletives to disqualify and denigrate her as a person ... qualifying her as a prostitute and shameless.”

29 Amparo constitucional Cris Pamela Amarilla Martínez, Karen Gisella Martínez Herмосilla, Romina Paredes y Andrea Carolina Giménez Paredes c/ Vanesa Trinidad y otros.

30 Amparo promovido María Marta Arrieta contra Teleshov, Diario Crónica, Epa Digital y churero.com

31 Sergio Ruben Caruso Fariña y Vanesa Trinidad s/ lesión del derecho a la comunicación y la imagen.

32 Amparo promovido por María Griselda Ortega Ferreria c/ Ana Gabriela Filizzola Rojas y Fredy Vera.

The SD. No. 26³³ dated June 6, 2019 refers to a writ of amparo submitted by a woman by virtue of the non-consensual dissemination of images through a video of sexual content recorded without her knowledge. The woman's defense points out that:

“this whole issue has affected her in a great way, due to the fact that she is a young woman with a family, a university student, a businesswoman and that she has her respective partner.”

When analyzing the sentences, the following common elements were found in the judges' decisions:

- a. All the cases analyzed had media coverage of the litigation before the courts.
- b. All the victims' defenses opted to use the writ of amparo, one of which resulted in a criminal case and a sanction for the victimizer.
- c. The amparos were accepted by all courts of first instance. No case was rejected.
- d. In 2 of the 5 cases analyzed, the accused had an intimate relationship with the victims. In the others, they had no relationship whatsoever.
- e. All the photos and videos contain pornographic content (intimate images of an erotic nature). 2 of the 5 cases analyzed were disseminated through the media. The other cases were disseminated through messaging applications and social networks.
- f. The accused persons were mostly men. In one of the cases the dissemination of images was carried out in conjunction with a woman, and in one of the cases it was carried out directly by the media (legal person).
- g. In all cases the accused person -physical or legal- was aware of the age of the victim (in all cases they were of legal age). In all the cases analyzed the victims were cis-gender women.
- h. In all the cases analyzed, the accused person was responsible for disseminating the photos or videos; only 1 was nameless, who was later identified during the legal process.
- i. For all the cases analyzed, the prohibition to continue reproducing the photos and/or videos with intimate content was ordered.
- j. The argument to support the decision was based mainly on the violation of the right to privacy and harm to private image.

33 Amparo constitucional promovido por el abogado Carmelo Martínez en representación de Liz Rocío Adorno c/ Deisy Patricia Rojas Delvalle y otro.

On the other hand, the analysis of the court sentences does not allow us to know much about the victims, such as their socio-economic level. Further on, from the analysis of the interviews it can be deduced that access to justice has a very high economic cost, so we assume that the victims in these 5 cases analyzed are of medium or high purchasing power.

In the judicial sentences, there is a timid -and highly insufficient- approximation of the gender perspective. This type of violence against women is generally assessed from a conservative and patriarchal cultural perception, i.e. it is analyzed based on the perception of the seriousness of the damage, and generally ends up being considered of minor importance.

In 3 judicial sentences that resolve writ of amparo, there is reference to international regulations related to women's rights: in SDs No. 14, 27, 26. In the legal documents there are references to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará). However, the accompanying arguments are basic and insufficient. This is evidenced in paragraphs contained in both SD No. 27 and SD No. 26 (that in exactly the same way) which reads as follows:

“What is the purpose of the continued exposure and scrutiny of a video obtained from dubious sources to society? Analyzing the circumstances of the present case, we have that intimate images were distributed by the media, without the authorization of the persons involved, violating the respect for the autonomy and freedom of women to decide about their body and image; the fact of circulating these images, which have no relevance to society, as they are not of public utility, have no political relevance, and no persons invested with representation of the State are affected, this situation can be qualified as ‘sexting’, which is defined by the circulation of images in order to undermine the status of women through discriminatory stereotypes about women and their bodies (...) the video in question constitutes a form of ‘sexting’, which is a form of ‘sexting’.) the video in question constitutes a form of discrimination against women, as it results in a objectification of their bodies and judgment on their intimate behavior, also an undermining of their fundamental rights enshrined in the National Constitution and International Conventions ratified by our country. The objective of all these regulations is to protect and ensure the harmonious development of women's lives in a society in which gender violence prevails.”

Although it can be noted that the courts in question considered that the action of disseminating intimate content without the consent of women implies a form of discrimination against women, as well as an objectification of their bodies and a judgment on their intimate behavior, it should be noted that the act is classified as sexting.

The use of the term sexting raises legal questions, because it is a voluntary practice, based on the exercise of sexual and reproductive rights, as well as the right to freedom of expression. It is a form of empowerment, since it implies exercising autonomous action over one's body³⁴. However, the courts confuse this term and qualify the exercise of sexting as an action that violates women's rights.

In addition, it can be identified in the text that the perception of the seriousness of the damage is based on the damage to the image of "woman" in terms of what a conservative vision considers to be values attributable to gender stereotypes, which falls on valuing the sexual exercise according to who exercises it.

Historically, women's sexual expression has been repressed to such an extent that a woman who exercises it freely is considered a woman with a "bad life" and is excluded from most spaces. This is evidenced in court rulings where it is stated that sexting is defined as "the circulation of images in order to undermine the status of women". In this context, we ask ourselves: what would that "status of woman" be? The fact that there is no explanation in this regard indicates that the judges who issued these sentences consider that this term and the stereotypes that support it are understood in the same way and therefore do not admit questions.

In the same sense, the same arguments were found on the part of the women's legal representatives: in all of them, without exception, it is argued that the women they represent are "good women", "family women". In SD No. 14 even, it is pointed out that:

"although I live off my image, I have never been involved in any activity of an immoral nature...."

This underlines the need to clarify the fact that a woman who works as a model does not imply that she conducts herself in an immoral manner. The question of morality is based on gender stereotypes of what "a woman should be". Under this logic, we ask ourselves: can it be deduced that women who do not conduct themselves under this moral gaze will not be protected?

In the same line, it can be noted that the judges who resolve these sentences take for granted that the dissemination of images of a woman having sexual relations automatically damages her "image as a woman". This implies that the damage considered by the courts is based on the fact that the image of a woman will be unfailingly affected by the fact that society can see her exercising a sexual action; not because sexual action in general would be something that would damage the image of any person.

SD 44 makes this explicit as follows: "By being exposed in this way they are stigmatized both in their family and in their social setting." No explanation is offered as to why this is so. In the same sentence it is evident how the expression of sexuality is seen in completely different ways depending on whether it is exercised by a man or a woman: in the statements of the Public Prosecutor's Office they refer to the accused as follows: "in the show business sphere she is known for her aggressiveness and a vulgar image of a porn girl (...) no religious

34 Disponible en <https://cyborgfeminista.tedic.org/no-es-el-sexting/>

or value formation is observed in her (...). On the other hand, when the court analyzes the defendant's conduct, in order to refer to his purposes, it establishes that: "the author acted with the purpose of satisfying his sexual instincts".

Although we value positively the recognition of the existence of harm in the dissemination, we consider it important that the organs of justice and their operators -who have a considerable potential of influence in society- can delve deeper into the cultural elements that generate harm.

The specialization of the institutions of the judicial system in these issues will be key for an integral application with a gender perspective from the police stations to the courts and prosecutors' offices.

As a result of this finding, we believe that this research can collaborate in the generation of public policies that allow institutions to function more efficiently, as well as to act with greater justice in the resolution of these disputes in the Judicial Branch.

4.4. Analysis of the interviews

We believe that in addition to the quantitative and qualitative analysis of the cases we have conducted, the in-depth interviews have allowed us to complement the research in order to achieve a more comprehensive approach.

For this part of the research we limited ourselves to work territorially in Asunción. This was defined on the basis that it has the largest court in Paraguay and the largest population in the country. In addition, specialists in gender and justice issues, as well as prosecutors and public defenders are mostly located in this territory, which facilitated access by our research team for consultations and clarifications.

The interviews were semi-structured and were guided by questions that were then deepened according to the profile. The central or trigger questions were:

- What do you think of the term revenge porn?
- Do you consider that intimate photos/videos of women, disseminated without their consent, are pornography?
- From a gender perspective, what do you think about this category? Do you think it is a good term to think about this problem?
- Does the vision that the media and discourses in the public sphere usually give to the problem give a good description of its nuances? What is missing?
- Should it be a non-protected discourse?
- Have there been legal changes to deal with "revenge porn?" Is it enough?
- What do you think is the best way to protect victims?

Generally speaking, all interviewees agreed that the term *revenge porn* should not be used to describe a non-consensual image dissemination event. The interviewees do not believe that there is a commercial purpose, nor that the aggravating factor is revenge. Nearly all of them say that it is a gender issue and that violence is structural.

The representative of the Ministry of Women's Affairs, attorney Lilian Zayas expresses the following:

"I did not know the term revenge porn [...] However, when there is a breakup of a relationship usually violence towards women occurs. The aggressor uses an image without commercial purposes and without her authorization; only with the purpose of humiliating her, undermining her. This is where we enter into the definition of what we call violence against women. We face a psychological violence, sexual. It also affects her labor rights, her patrimony."

She also emphasizes the importance of reporting to the Ministry of Women through the free helpline number 137, to accompany and systematize cases of violence against women, both offline and online. The aim is to improve compliance with the commitments assumed by the State to guarantee equality for all people.

From the Public Defense, lawyer and public defender Tania Argüello expresses her disagreement with the term:

"Revenge porn is an inadequate measure to name virtual harassment, when you think of revenge, it gives a charge of retribution for something that the woman is supposed to have done. It has nothing to do with porn for economic purposes, but where there is an affective bond, where it gets broken, where one of them decides to violate the dignity of the woman, whether it is a partner or ex-partner".

Lilian Soto, politician and feminist activist, states that this problem occurs mostly to women because of discriminatory conceptions related to gender and sexuality. She further emphasized:

"Pornography has a long history of subjugation, which I believe has changed today and we must appropriate to exercise our rights and freedoms".

Likewise, lawyer and activist Mirta Moragas also shared similar concerns. She highlighted the concern about the approach to the dissemination of non-consensual intimate images, which today is approached as a punishable offense against honor, instead of an approach based on sexual freedom. She believes that it is a step backwards, because it is not a matter of shame to be reproachable, but violates the freedom of women to exercise their sexuality. She remarks the following:

"These social issues —dissemination of non-consensual intimate image— would not be a big problem, if we were not a society of double standards. We are in a moment where we are discussing how this affects girls and women. The ideal stage would be that when it is disseminated -the intimate content- does not generate any harm, this will mean that we overcome the double standards as a society; on the one hand we are the prudes and on the other hand we have a free sexual life that is normal to have. The biggest underlying problem is to have this double life. Today we are at the stage of being able to think about what we do to stop this, do we have to keep saying that this should not be

spread? We are only looking at the consequences and I think we should go a little further and go deeper.”

From a gender and feminist perspective, experts from civil society emphasize the approach to solutions, from a comprehensive perspective based on a rights-based approach.

4.4.1. Access to justice

In this context, the civil society interviewees also expressed a common concern: the difficulties of access to justice and procedural law for punishable acts that affect honor and reputation. These are prosecuted as private criminal actions, unlike punishable acts against sexual freedom, which are public criminal actions. This means that the Public Prosecutor’s Office can only act at the request of the victim, through a lawyer, and consequently the costs generated are borne by the victim, who generally cannot bear them. This causes the case to decline.

However, from the *Consultorio Jurídico Feminista*, Moragas tells us her experience on how they approach this problem, so that it is solved within the framework of what the victim needs:

“What the victims were looking for is for the image to be erased, to be taken out of circulation; I did not necessarily hear that they want a penalty against the aggressor. From the *Consultorio Jurídico Feminista* we suggest the victim to file a complaint to the Justice of the Peace. With this, it is sought that the protection measure is the prohibition of the dissemination or downloading of content. The result is that if there is a court order requesting the removal of the content and it is not complied with, then there is contempt and it enters the criminal field for contempt instead of damage to the image”. This is a creative solution, where you do not have to discuss the image itself, but the breach of the order, and this is a relief for the victims.”

For his part, Soto emphasized:

“Reparation is a very important issue but it is not the only one. I believe that protection measures should be based on the speed of protection. Most women are only looking for the aggression to stop as soon as possible.”

As a legal strategy, the Public Defender’s Office usually requests protection measures under Law 5777/16, which are the fastest and are carried out before the Justice of the Peace. Also as a legal strategy they invoke Article 43 of the same law which offers “green light” to extend protection measures and specifically request that the circulation of the content be stopped or the content be removed. When dealing with children and adolescents, the Public Defender’s Office in addition to requesting the measures offered by law 5777/16, requests the precautionary measure under law 4295/11 on child pornography.

Regarding cases accessed from the Ministry of Public Defense, Argüello does not recall that they have had a fact specifically on non-consensual image dissemination. In addition, the public defender does not believe that there is much jurisprudence on this criminal figure because it is an instance of the parties, which means that the legal case can be finalized through mediation. That is, private arrangements can be made between the parties before reaching the instance of oral trial.

For her part, prosecutor Irma Llano explains how the specialized prosecutor's office receives complaints from victims of *non-consensual image dissemination*. Since this act is currently considered an ordinary crime, the file has the heading "punishable act to be determined", so that the system of the Public Prosecutor's Office allows them to enter the case to this specialized prosecutor's office. According to the interviewee, it usually falls within the framework of article 144 of harm to the image and 146 of violation of the secrecy of communications. These criminal figures of public action can be applied *ex officio* because there is public interest. Therefore, this specialized prosecutor's office accompanies the victim throughout the criminal process, without the need to file a complaint. This is one of the reasons why there are no disaggregated statistics for this type of crime.

The prosecutor considers that the typification of *harm to the image* should be considered a computer-related crime because the whole act is consummated through the use of technology and occurs clearly on the Internet.

With respect to Internet intermediaries, the prosecutor alleges that there is a great advance in the content moderation policies of social network platforms. The latter usually remove such content for violating their community standards. She also highlights the collaboration with the justice systems of the countries, providing information in the framework of the fulfillment of international rogatory letters known as Mutual Legal Assistance Treaty, with the acronym MLAT.

The current concern of the Prosecutor's Office is with messaging companies, such as WhatsApp, Signal, Telegram, Facetime and others. Requesting the removal of content to stop the dissemination of intimate image in private chats is usually more difficult, mainly because of the *end-to-end encryption*. That is, since they are private chats and the content cannot be accessed, it is unknown to whom the images were sent. The prosecutor believes that one solution could be to request, through a duly justified court order, the removal of content using a digital *fingerprint system*, i.e. a numerical code called hash that allows the content to be identified in order to remove it. This is used in the contents catalogued as child pornography and serves to automatically identify an image, with the same or similar characteristics, even if alterations are made on a file (Sequera, 2019).

With regard to the complaint not being dismissed, the prosecutor suggests that the victims previously preserve the digital evidence to request the content platforms and Internet providers to keep the traffic data and digital identities of the aggressor user, in order to identify and carry out the relevant prosecutions.

It should also be noted that the interviewees agreed that the victims seek for the aggression to stop and therefore the immediate removal of the content. On very few occasions does the victim seek economic reparation for the damages suffered and to criminally punish the aggressor.

Zayas shares the following:

“The instance of part has its term of 6 months according to the procedural code. According to the United Nations, how long does it take for a woman to be recognized as a victim of violence? The UN speaks of an average of 8 years. So, how far we are from being able to urge the victim to have access to justice! Because if I do not recognize myself as a victim of violence, when I do, perhaps the time for the parties to file a complaint has already expired.

The laws need to be revised. For me, it is necessary to suppress the instance of the party in sexual harassment, in the harm to the image and other types of violence against women. I do not know what is the budget to put instances, I hope they do not tell me: ‘because it is a punishable act to honor.’

If not, we should go to the Code of Theodosius, where he classified women into honest women and those who were not. In that code sexual harassment was a punishable act against honor and today it is a punishable act against freedom.”

The identification as a victim is a very delicate situation: it takes time for each person and, as the representative of the Ministry of Women explains, this is a complex barrier to break. Among the most relevant are the victims’ feelings of shame, which is why they usually turn to the justice system to put an end to this violence. The processes and actions offered by the judicial system are bureaucratic, long: they usually take more than 6 months, or even years to respond to the victims.

For her part, public defender Argüello explains that very few people are currently accessing the justice system to denounce this type of punishable acts occurring on the Internet. Therefore, Argüello assures, it could be assumed that currently people with a middle and high socio-economic level are the ones who access the justice system to denounce the dissemination of non-consensual images.

4.4.2. Integral approach for the development of public policies

All the interviewees agreed that it is important to develop public policies for prevention through awareness campaigns and early education. Soto remarks that the main element is consent, and that third parties, at the time of dissemination, should be aware that if there is no consent from the owner, they may be violating the rights of that person. Therefore, it is necessary to invest in campaigns and comprehensive public policies so that this does not happen, she stated.

In the same sense, Zayas emphasizes the role of the press in raising such a complex issue. She also expressed that there is a difference between the victim when she voluntarily goes to the media to make her complaint, in order to obtain protection, and that she is treated with a gender perspective in the interview. Thus the interviewee stated:

“The way in which the media communicate these situations, is at a beginning. It is a matter of extreme urgency to communicate without harming or revictimizing [...] On the other hand, they do not respect the confidentiality of the victim.”

Prosecutor Irma Llano emphasizes that sexting is a common practice among all people, both adults and adolescents. Education should be focused on understanding the rights to privacy and freedom of expression: how they work and how to use the platforms to perform sexting safely and responsibly.

Lawyer and activist Moragas believes that one of the answers that public policies have to give to address this phenomenon is cultural change:

“For me, we have to de-emphasize it. We have to ensure that it is no longer a drama that this is spread. But on the other hand, on issues of violence and this one in particular, the solution should not be first and foremost the punitive, but should be policies broad enough to give you options without judging you.

Today the only thing that is expected of the person is that she makes the complaint and separates from the aggressor and that the aggressor is punished. If she wants something different from this premise, she is judged by society. There is the example of women who go to the police station for about the fifth time and do not separate. There is a paradigm that ‘you are correct and appropriate if you want to separate from the guy and you want him to go to jail or have another punishment or sanction’. If you want anything other than that, you are already a problem for the system. Because this system only visualizes one type of possible way out for women and it should come as no surprise that part of feminism also has this same approach.

When the Ministry of Women proposed the extension of protective measures at the beginning of the coronavirus pandemic for me it was a problem, because women call me to lift protective measures, and whatever she wants is valid for her. I am not the one to tell her how dangerous her aggressor is. I have to respect her autonomy, otherwise I am assuming that I have a greater moral agency than she does to know what she should want.”

The interviewee stresses that the feminist perspective should be the basis for addressing responses to victims, not only from a human rights perspective. People’s autonomy must be taken as a measure to meet the victim’s expectations. If the solution is based on measures that are not within what the victim wants, then it cannot be judged by the judicial system and state institutions. The State must fulfill its role of protection but not assume that all women victims of violence will automatically want measures to be applied or measures to be extended.

Moragas argues that in some cases there have been negative consequences, as they end up exposing the women who originally requested the protection measures and are automatically extended. This is observed in cases where the victim returns to contact with the aggressor, exposing her to a situation of contempt for non-compliance with the court decision. Therefore, solutions for the comprehensive protection of women, victims of gender violence, must be analyzed very carefully and the analysis must be based on evidence.

5. Concluding remarks

From the findings of this research we know that legal provisions are not sufficient to curb the causes and consequences of *non-consensual image dissemination*.

However, the *non-consensual image dissemination* is of regulatory interest because it results in the infringement of rights. This means that when a right is violated, the legal system must have a mechanism for its redress. Therefore, the question is not whether this problem should be regulated, but how to do it. Before creating the criminal type, it would be important to analyze whether criminal liability will cause a preventive effect in cases of hate speech, or violation of privacy.

Public policies should increase the effectiveness of the implementation of these laws. This means that the problem must be addressed starting from the generation of evidence in the statistical field, through access to justice, training of delegates and judges, to promoting cultural changes that alter the current paradigm. In all situations of gender violence “the victim is blamed” and “sexting” is visualized as a negative figure of women’s freedoms and rights. This must change.

In addition, we know that a large number of cases of non-consensual image dissemination are resolved simply by the decision of the social networking platforms themselves, based on their terms of use, which provide moralistic values. These values are the same ones that impose censorship on women’s bodies, and end up being an instrument for other practices of violence.

Quantitative and qualitative analyses have allowed us to draw the following conclusions in this regard: firstly, it can be observed that the dissemination of non-consensual images has an impact mainly on women. This is due to discriminatory conceptions related to gender and sexuality, as explained by the expert Lilian Soto in the in-depth interviews. Suggesting to the victims to use the criminal instance of private action related to punishable acts against honor or the right to privacy, instead of approaching it from a feminist point of view about sexual freedom, is a step backwards. That is, it is not a matter of shame, but the approach should be to highlight the violation of women’s freedom to choose the way in which they exercise their sexuality.

The second result to highlight is the use of the legal defense tool in the judicial system. At first, we thought that the victims of *non-consensual image dissemination* would use the legal resources of the Penal Code and Civil Code. However, the five rulings analyzed used the constitutional remedy of amparo and, failing that, referred to the criminal courts.

As a general result, it can be deduced that the victims seek the removal of the content or to stop its circulation by means of the writ of amparo. It is unlikely that they are willing to take the case to criminal or civil proceedings, which are longer and more costly.

In the in-depth interviews, the problem of women's access to justice emerged. The cause of this problem is that the legal actions (criminal, writ of amparo and civil) are carried out at the victim's request and this implies that the person must be self-employed or hire a legal professional. According to Tania Argüello, this is why there is not much jurisprudence in this regard. There is also the fact that in criminal proceedings it is allowed to finalize the complaint using negotiation and mediation measures and not through final sentences.

It also highlights the great effort being made by the prosecutor's office specializing in computer-related crimes: although these types of acts are not considered a computer-related crime, the prosecutor seeks to accompany the victims using the legal strategies offered by the punishable acts that damage communication, to the image (art 144 of the Penal Code) and the secrecy of communications (art 146 of the Penal Code) to prosecute this ex officio act.

On the other hand, bringing a case to the judicial system implies that the victim must expose her intimate images before the eyes of a judge and other servers of the justice. To avoid the analysis of the content (i.e., images and videos) by the justice system, the lawyers of the *Consultorio Jurídico Feminista* suggest that this type of complaints of violence are made by invoking law 5777/16 before a Justice of the Peace, and protective measures, such as the removal of the content, be requested. This strategy is also used by the Ministry of Public Defense. As already explained, if the aggressor fails to remove the content, the corresponding sanction of contempt would be applied (art 1 - Law 4711).

Victims of *non-consensual image dissemination* face shame, trial and the law. Therefore, they end up generating barriers to access to justice, due to lack of quick and effective response from State institutions.

It will be a challenge for the Paraguayan State to guarantee and protect people from the effects of the of *non-consensual image dissemination* in society. The way in which this type of information is collected and analyzed in public institutions must be improved. Evidence-based solutions can improve the approach from an integral perspective based on a rights-based approach.

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ANNEX I

List of interviewees

The interviews were conducted between September and November 2020. In the framework of care and compliance with the protocol in the context of the health emergency, all interviews were conducted via video calls.

Interviewee	Institution/Organization
Mirta Moragas	Consultorio jurídico feminista – Lawyer and activist
Irma Llano	Public Prosecutor's Office - Specialized Prosecutor's Office for Computer Crimes. Lawyer
Lilian Zayas	Ministry of Women's Affairs. Lawyer
Tania Argüello	Ministry of Public Defense. Lawyer
Lilian Soto	Center for Documentation and Studies. Physician and activist.

ANNEX II

Interview Consent Form

You were invited to contribute to the research “Dissemination of non-consensual image in Paraguay”, developed by TEDIC, coordinated by Maricarmen Sequera and with the assistance of Paloma Lara Castro.

If you agree to contribute to this research, you will be invited to give an interview on the topic and your experience on the subject.

Upon your permission, the interview will be recorded and then transcribed, and its content will be used for academic purposes only. A copy of the transcript will be sent to you and, if you wish, you may make corrections, additional comments or deletion of information.

If you do not agree to have your name mentioned in the work, confidentiality of all records related to the research will be strictly maintained, and information obtained through the interview will in no way be linked to your identity or your organization.

A completed and signed copy of this consent form will remain in your possession.

I, _____ (hereinafter “participant”), agree to participate in the above research.

Confidentiality

_____ Yes, I give TEDIC permission to use my name when quoting material from the interview.

_____ No, I prefer that my name not be mentioned and that arrangements be made so that my interview is not linked to my person/organization.

Signature and clarification

ANNEX III

Request for access to public information

Department of Statistics
Courthouse
Alonso and Testanova
5th floor, South Tower
Asunción, Paraguay

Paloma Lara Castro, in her own right, domiciled at 15 de Agosto 823, Asunción, Paraguay, has the pleasure to request the following information:

Considering the right to privacy enshrined in Art. 33 of our National Constitution where the protection to the private image is included as well as the criminal type of harm to the image recognized in Art. 144 of the Penal Code which aims to safeguard said legal good; in addition to Art. 3 of Law 5777 of Integral Protection of Women which stipulates that said good is recognized under the figure of telematic violence, different legal figures are invoked to denounce this type of facts so it becomes quite broad. In turn, in many occasions the violation of said right involves other criminal conducts such as extortion and/or threats. In this regard, I request:

1. Report the number of cases processed that have as a basis the violation of the right to private image and privacy in the period from January 2017 to July 2020.
2. Report whether other criminal figures were invoked in such cases.
3. Indicate whether such cases were processed in criminal, civil or amparo proceedings.
4. Report whether the term “revenge porn” has been used in such cases.
5. Report the current status of such cases.
6. Report how many cases have been tried and resolved in the Judicial Branch.

Basis of Law

Law 5282/14 ‘On free access to public information and government transparency’ put into effect on September 18, 2015. The purpose of the same is to regulate Article 28 of the Constitution of the Republic, in order to guarantee to all persons the effective exercise of the right of access to public information (Article 1). In this sense, it establishes a term of fifteen (15) working days to respond to requests for public information (art. 16).

Yours faithfully



TECH &
COMMUNITY

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