

Chapter 28

Introduction

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The seven chapters in this section examine legal responses to technology-facilitated violence and abuse (TFVA) generally, but also with respect to specific forms, including the nonconsensual disclosure of intimate images (NDII) and other privacy-invasive tactics such as voyeurism and doxxing. The section moves from consideration of the international human rights and obligations at play, toward a specific call to address legislative gaps between those guaranteed rights and existing legislative measures in the Arab region and in Malawi. The remainder of the chapters in the section remind us of the integral tie between the desirability and efficacy of legal responses, and the broader socio-political context in which they are situated. Simply put, this broader context can play a central role in determining whether domestic legal responses are actually likely to work to protect the internationally recognized human rights of TFVA targets.

Drawing on social science findings relating to TFVA generally, as well as the gendered dimensions arising from those findings, Elizabeth Coombs explores some of the ways in which various forms of TFVA violate internationally protected human rights to privacy, and to freedom from violence (particularly gender-based violence). Pointing to the obligations on nation states to take steps to protect their citizens' enjoyment of these rights, Coombs highlights states' obligations to ensure that private corporate actors operate in ways that respect them.

Sukaina Al Nasrawi's chapter builds on the international human rights framework outlined by Coombs, in this case, highlighting more specifically the applicable obligations for members of Arab nations to take action to address gender-based TFVA. She then provides a comprehensive analysis of existing legal responses within those nations, and identifies gaps between those responses and these nations' international human rights obligations. Ultimately, Al Nasrawi calls for new legislative initiatives aimed at filling those gaps.

The final five chapters in the section move beyond the question of whether additional legal responses are needed to consider how various aspects of context affect the efficacy of those responses. These explorations of the role of context in

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determining legislative efficacy begin with Sarai Chisala-Templehoff and Seonaid Stevenson-McCabe's comparison of legislative responses to NDII in Malawi and Scotland. The authors chronicle the lack of an explicit legal prohibition on NDII in Malawi and the successful campaign that led to creation of such an offense in Scotland. However, they caution that the absence of a strong feminist movement to push for the creation of such an offense in Malawi may impede its passage there. Moreover, they note that even if a legal prohibition on NDII were created in Malawi, its efficacy could be limited by the absence of an informed and engaged police force and a risk of misuse against targeted women in an effort to enforce discriminatory tropes of chastity and propriety.

Next, Moira Aikenhead examines the degree to which the surrounding context of rape culture is reflected in the facts of reported cases relating to criminal prosecution of NDII in Canada, and in the reasons for judgment in those cases. Her analysis focuses on all reported decisions in which Canada's criminal prohibition on NDII was used to prosecute instances of "revenge porn" – the nonconsensual sharing of intimate images by a current or ex-intimate partner. The cases examined by Aikenhead support an understanding of "revenge porn" as a serious form of communal, gendered intimate partner violence (IPV) that is particularly harmful, because of the kind of myths and stereotypes about women's sexuality identified by Chisala-Templehoff and Stevenson-McCabe. Furthermore, she finds that victim-blaming and other patterns arising from a rape culture context may also be informing Canadian judicial assessments of such violence.

Kristen Thomasen and Suzie Dunn's chapter demonstrates the impact of context on the efficacy of legal responses to TFVA, with a particular focus on the disparately negative implications of privacy-invasive attacks, especially in light of the growing prevalence of drones and sexualized deepfakes. The authors focus on the Supreme Court of Canada's analysis of privacy in *R v Jarvis* (a voyeurism case in which a high-school teacher surreptitiously recorded images of the breasts of female students on a pen camera). Demonstrating how the Court's failure to explicitly factor the gendered context of such crimes into the analysis is likely to undermine the efficacy of legislative responses to gender-based privacy violations, they call for an evolution of normative and legal conceptions of privacy, an evolution they predict will become increasingly urgent as drone and deepfake technologies proliferate.

Like Thomasen and Dunn's chapter, Anne Cheung's chapter also focuses on a privacy-invasive form of TFVA – the nonconsensual release of personal information, known as "doxxing," and its uses in the particular socio-political context of mass protests against abuses of state power in Hong Kong. After examining several cases in which injunctions have been issued to prevent the release of personal information about law enforcement officials who refused to identify themselves while policing these protests, as well as journalists involved in reporting on the protests, Cheung argues for a contextually sensitive legal analysis of doxxing. In particular, she advocates for a defense to doxxing that is tailored to allow for the nonconsensual release of personal information about police officers that is necessary to hold the state

publicly accountable for abuse of power, particularly in socio-political contexts pervaded by well-grounded and widely held concerns about the abuse of state authority.

Finally, Pam Hrick's chapter shifts away the primarily *criminal* legal responses to TFVA focused on in this section of the Handbook toward statutorily created administrative bodies. In particular, she assesses the capacity of agencies such as the Office of the eSafety Commissioner in Australia, NetSafe in New Zealand, and the Cyberscan Unit and Canadian Center for Child Protection in Canada to effectively respond to TFVA against women. In this chapter, she identifies the needs and priorities of TFVA survivors as being the relevant context to be taken into account. Drawing on the literature focused on survivor-centered approaches to violence against women, Hrick argues that these sorts of administrative bodies hold some promise for meaningfully addressing TFVA against women, where their approaches are intersectional, provide multiple options that allow survivors to choose their own course of action, ensure that survivors are treated with dignity and respect, center prevention as a key goal, and are grounded in research, evidence, and the first-hand perspectives of survivors themselves.