5 Femicide and judging

Social media as an alternative online court in Kenya

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Introduction

When the hyena is the judge, the goat has no rights

Kenyan proverb

On December 10, 2019, a petition, which included five demands and a call for the Ministry of Education to commit to ensuring higher learning institutions uphold the laws on sexual harassment outlined in the Sexual Offences Act No. 3 of 2006 section 23 and 24, was delivered to the Cabinet Secretary in the Ministry of Education in Kenya. This petition was dubbed #CampusMeToo and was waged on social media. This petition came against the backdrop of the rising number of femicide¹ cases in the country. According to *Counting Dead Women – Kenya*, a nationally recognized and respected Twitter account that creates an online archive highlighting the number of Kenyan women who are victims of femicide reported in the Kenyan media, 108 women were victims of femicide between January 1, 2019, and December 30, 2019.

What is also problematic, however, is that when these deaths are reported in the Kenyan mainstream media, the facts are often one-sided, a distortion that directs the public conversation in the wrong direction. Inadvertently, this one-sidedness serves to disparage the reputations of victims, often portraying them as having contributed to their deaths by being involved intimately with other men apart from those who killed them, or by failing to requite affection from their partners (Mutune, 2019). While femicide victims are blamed, the killers are often sanitized as cool men who had never shown any signs of “stress” or staunch African men who could not bear “love gone sour.”

Gender-based violence (GBV) has a long history in Kenya. It is a normalized violation of women dating back many decades (Morrison, 2007). The Kenyan communities uphold, practice, and normalize violence against women, mostly perpetuated as a form of discipline. It is noteworthy that the most practiced gender-based violence occurs in the family setting in the form of domestic violence, which is the use of force or threats by a husband or boyfriend to coerce or intimidate a woman into submission (National Gender and Equality Commission,

2016). According to the 2008–2009 Kenya Demographic and Health Survey, about 45% of women aged between 15 and 49 years had experienced gender-based violence. Some of these GBVs end up being femicide cases. The World Bank's Poverty and Gender Assessment report 2015–2016 notes that “in 2014, 22 percent of Kenyan women and 19 percent of Kenyan men agreed with the statement that a husband is justified in hitting or beating his wife if she goes out without telling him” (World Bank, 2018).

Historically, there has been a strong link between physical violence and marriage, with a prevalence of GBV among women who have been married. World Bank research has shown that “women who have ever been married, and especially those who have gone through a marital dissolution” are more likely to have experienced physical violence than women who had not been married, indicating that current or former spouses are often perpetrators of violence (World Bank, 2018). Additionally, age can also play a role in the risk that a woman experiences GBV, as well as whether the woman is remarried, and her employment status. Women who marry after the age of 25 are less likely to experience GBV than women who marry before they turn 15. In addition, women who have married more than once are almost four times more likely to have experienced GBV than women who have been in only one union (World Bank, 2018).

Whereas GBV and femicide may now be a national tragedy in Kenya, mainly rooted in exploitive power dynamics and entrenched by a cursory application of the law, there is a human rights need to spark a national conversation on these vices. This conversation has already begun in earnest in the new media, specifically in social media. Social media² in Kenya provides a national conversation that preserves the integrity of women's voices and builds a shared understanding that both men and women can speak up and speak out without the fear of reprisals. It provides an alternative space for articulating and amplifying resisting voices.

Femicide and GBV are unethical and illegal practices that hurt women and families. However, in most cases, the necessary measures are not taken to effectively enforce the Sexual Offences Act No. 3 of 2006, especially sections 3, 4, 5, 8, 9, 10, 11, 23, and section 24 on sexual offenses relating to positions of authority and persons in a position of trust, or to prevent femicide and violence against women in formal courts. In Kenyan parlance, statements like “no stone will remain unturned until we bring the culprits to book” are mostly used, and then forgotten. The national anger subsides until another femicide or GBV case is reported. According to *#CountingDeadWomenKenya*, eight Kenyan women are currently being killed every month by their boyfriends or husbands. While this “deliberate forgetting” has been propped up by the perennial lack of goodwill from advocates and judges in Kenya, another possible late entrant in this debilitating forgetting is the traditional media.³ The traditional media is guilty because it portrays patriarchal notions, like violence against women, as the reality and recognized culture of the Kenyan people and taken over by the spirit of the Kenyan law. According to Fiske (1987, pp.4–5), “what passes for reality in any culture is the product of that culture's codes [...] ‘reality’ is always already

encoded, it is never ‘raw.’” Therefore, Kenyan traditional media has been able to define, package, and perpetuate masculinities that objectify, erase, and murder women while using the law to escape liability.

Hard questions, thus, need to be asked. If the Kenyan girl/woman cannot feel secure in the family⁴ and in the formal courts, where else can she feel secure? Who watches over the watchman⁵? This chapter argues that in social media, Kenyan women, and those angered by the partial application of the law that denies women justice, use social media to provide the evidence needed to “bring the culprit(s) to book.” In other words, social media “turns the stones for the law enforcers.” This chapter thus discusses the connection between gender, judging, and the issue of femicide and GBV in Kenya.

Situating social media in feminist scholarship

Gusse (2016, p.2) argues that social media, specifically Twitter, has facilitated the rise of #BlackLivesMatter by creating an environment where social-political movements can flourish. These movements are accomplished by determining the unique characteristics of social media in activism (resistance to censorship, the efficiency of communication, horizontalist structure, and hashtag activism) and analyzing how #BlackLivesMatter has utilized these principles. According to scholars, social media outlets, that is, Facebook, Twitter, Tumblr, etc., employ a bottom-up structure to produce user-generated content and are therefore not subject to this degree of censorship (Gusse, 2016; Heather & McVey, 2016). Conversely, traditional mass media outlets like CNN, *The New York Times*, and Vox use a top-down format to produce content, allowing such content to be controlled and influenced by the political elite. Because of this, traditional mass media outlets are subject to a certain degree of censorship that makes them less likely to voice alternative viewpoints or run stories that may upset the political *status quo*.

In Kenya, social media has not only been used to express dissenting opinions on socio-political issues in the country but also serves as a platform where dissent can be circulated to the masses in a way that traditional mass media cannot. In essence, social media can give a voice to the voiceless. Jackson and Banaszczyk (2016) examine how hashtags have worked in the past to challenge dominant silences about gendered violence. Anchoring their study on the hashtags #YesAllWomen and #YesAllWhiteWomen, they powerfully contended that hashtags can be representative of a more traditional feminist counter-public seeking to influence, challenge, and rewrite dominant public narratives about violence against women. Social media can also reflect an oppositional counter-public that challenges the tendency in traditional feminist spaces to collapse women’s experiences along the lines of gendered oppression.

In the same way, social media in Kenya manifests and articulates resistance on the miscarriage of justice in the formal courts, especially in femicide and GBV cases. Using hashtags #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow, social media provided spaces for, transformed, and influenced

broad public narratives on issues central to women's lives. The cases in point were Winfred Mwendu in Makueni County (who was captured on camera being beaten by her husband to unconsciousness), Sharon Otieno (who was allegedly killed by people known to her and closely linked to Migori County Governor Okoth Obado), and Ivy Wangechi (a final year Bachelor of Medicine student who was hacked to death by Naftali Kinuthia because he could not stand rejection). Social media played a central role in all these cases, although in varying degrees. One of the ways social media intervened was to bring these cases to the public. The traditional media got the information from social media. The public outrage that followed these cases was necessitated by social media. In these cases, social media was telling "their side of the story" in instances whereby the formality in the formal courts seemed to buy into the myth of "oppressed masculinity."

Using mixed methods as part of my methodology, I combined an examination of the text of tweets, the use of questionnaires with ten women judges, and an analysis of existing discourse on social media. I purposely sampled out tweets that engaged the Kenyan law by demanding justice for women who suffered the brunt of femicide or GBV. The research focused on the tweets that touched on and emanated specifically from the three cases under investigation here. The tweets sampled and interrogated were between September 2018 and May 2019. From each hashtag, and each case, I studied tweets within a month. The tweets were contained in the hashtags #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow. These online interlocutions were interpreted alongside what the ten female judges said offline in the questionnaire I circulated.

Social media, in my opinion, is the new judge in Kenya today. There has been a deliberate feminization of social media in Kenya, especially in matters of judging. Inside the suffocating "bricked walls of patriarchy" (Roy, 2019) that seem to define the Kenyan judicial system is a new light threatening to break down the Kenyan gender-blind judicial system. Mobile internet, especially in smartphones, has become the primary means by which new internet users are sharing information, particularly information that deals with issues of public concern, especially women's access to justice (Macharia, 2014; Napoli & Obar, 2014). As with the mobile phone, greater access to social media has the potential to create gender equity and access to justice (Liew et al., 2014).

My locus of enunciation in this chapter is that social media in Kenya provides a pool of knowledge that when given space in the judicial system, can contribute and restore the dignity of Kenyan women by bringing out particular kinds of memory production in ways that subvert normative temporalities. As it were, and following the above trajectory, social media can function as counter-publics for the debate and exchange of ideas and facilitate constructive dialogue about justice for women. Through social media, feminists can document what happens to Kenyan women daily and how their cases are handled in the formal courts. This documentation, I argue, provides a foundation for rewriting (her)stories and restores women within the discourse of gender, feminism, and the law. Handled well, social media can remove the veil of silence that has for so long been cast over the legal narratives that threaten to continue keeping the Kenyan woman

marginalized by the same Kenyan law that is supposed to protect her, with the hope of increasing access to justice for women.

The “artifacts of political engagement”⁶ in Twitter, showing women being molested by men and shared on social media, touch on collective memory in our lived realities. The use of social media shows how traumatic experiences are being viewed and remembered in Kenyan society today. By collecting and foregrounding these experiences in social media, Kenyans denounce the silencing of femicide and GBV cases in the formal court of law, where, in most instances, these cases are deemed private and relegated to the privacy of the family. By exposing these cases, social media maps directions for new forms of remembering and memory activism (Altinay & Pető, 2015, pp.379–385). In the hands of a feminist, social media is feminized and acquires a radical angle that refuses multi-faceted exclusions, intolerance, and erasure as well as the exclusion of challenging memories from women. At the same time, sharing these traumatic experiences and the dark sides of Kenyan law, social media produces new solidarities among and between feminists.

Conceptual and analytical framework

I draw on André Brock’s (2012) critical technocultural discourse analysis (CTDA) framework to examine the complexities involved in social media communication with a particular focus on how Twitter hashtags can be used to help women access justice. According to Brock (2012), CTDA is a multimodal analytic technique for the investigation of internet and digital phenomena, artifacts, and culture. It integrates an analysis of the technological artifact and user discourse, framed by cultural theory, to unpack semiotic and material connections between form, function, belief, and meaning of information and communication technologies (ICTs). CTDA requires the incorporation of critical theories like feminism to integrate the epistemological standpoint of underserved ICT users to avoid deficit-based models of underrepresented populations’ technology use. In the Kenyan case, the underserved populations are, due to the many patriarchal bottlenecks, women.

Locating itself within this framework, this chapter foregrounds the power of social media in constructing a new technoculture that resists the pernicious wave of violence and its normalization that has gripped the Kenyan socio-political spaces; a kind of culture that is genderless. Social media has the capacity of becoming a counter-public (Fraser, 1992; Farrell and Rabin, 1996). Women, who, as I have already argued, are newcomers and a minoritized community, utilize social media to display artifacts of their engagement in a patriarchal system. There is a culture that permeates the discourses in these artifacts of engagements. According to Williams (1977), these artifacts, i.e., the photos, videos, or even quotes that accompany these photos/videos, gain meaning because they are shared, oftentimes, by someone known to the recipient. Of course, the Kenyan case proves otherwise; most interlocutors are new to one another and only joined together by their chagrin about femicide and GBV cases. These artifacts,

therefore, become imbued with meanings that are understood as actively lived and felt, yet are meanings that have not gained full expression but may lead to new starting points and new conclusions. Within this meaning creation, new cultures are formed in the form of online activism, a tsunami that can puncture patriarchal myths that normalize violence against women.

Pacey (1983) argues that technology is a construction of technical artifacts, practices, organizations, actors, and beliefs that are governed by a particular culture. This kind of formulation is advanced by CTDA, which focuses on representations within and of technology and is keenly interested in the technological artifact as a “set of rules and resources built into the technology by designers during its development which are then appropriated by users as they interact with the technology” (Orlikowski & Iacono, 2001). This definition is advanced in this research to accommodate the photos, memes, drawings, and streams of videos shared in the identified hashtags. These artifacts advance particular public discussions whose purpose is to resist patriarchal practices that dehumanize women. The culture constructed online, thus, humanizes women, giving not only voice but also life to female bodies. In this way, Brock (2012) argues that CTDA offers a critical approach to technology artifacts that reorients technocultural practice to the cultural context in which the artifact is being used.

Speaking and appealing to the emotion of the recipients, the culture of the social media hashtags draws people to action, bringing together online affective publics and counter-publics and propelling people toward participation in constructing contested public spaces (Papacharissi, 2014). Relying on feminist beliefs, CTDA draws directly from the perspective of the group under examination; the Kenyan feminist interlocutors in #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow platforms; and discussions meant to decenter theories of technological determinism (advancing misogynist notions that normalize violence against women) premised upon the beliefs of a dominant patriarchal Kenyan culture. The hashtags #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow platforms shaped online and offline activism in three cases: Winfred Mwendu’s, Sharon Otieno’s, and Ivy Wangechi’s cases. CTDA “formulates technology as cultural representations and social structures to simultaneously interrogate culture and technology as intertwined concepts” (Brock, 2018, p.1012).

This theoretical framework opens ways to analyze online discussions that touch on Kenyan law and its attendant opaqueness through a critical deconstruction of the activities of the discussants involved in engaging with seeking justice for women victims. In this sense, the theory can be seen as providing “a holistic analysis of the interactions between technology, cultural ideology, and technology practice” (Brock, 2018, p.1013). Within this framework, it is imperative to examine the intricacies of technology use by taking into consideration the actors involved and the cultural capital they possess (Nissenbaum & Shifman, 2017), their technological literacy skills, and the relationships between old and new media (Srinivasan, 2013). According to Mohammed (2019), who borrows from Brock (2012), Srinivasan (2013), and Pillay (2016), the new media use disrupts

notions of binaries between old and new technology, online and offline affordances among others, because these binaries do not reflect the complexities of the relationships between digital technology and social movements in the physical world. This point will be pursued later in this chapter.

Social media provides the subaltern with a voice to discuss and articulate not only the daily lived realities of Kenyan women, especially bringing to light the many femicide cases, but also informally contravening the *sub judice* rule⁷ to discuss miscarriage in justice or even lauding justice when well served. Importantly, the 2010 constitution of Kenya was born out of the need to ensure that all Kenyan men and women would be part of the process of telling a different story—a different narrative about how they wanted to be protected. It was a people-driven process that entailed several stages of civic education, collection, and collation of views, and I would add that at various stages of the process, it was indeed a women-driven process (see also Sivi-Njonjo, 2016; Kameri-Mbote, 2016; Omondi, 2016). Social media has been instrumental in bringing these cases to the public knowledge and ensuring that justice is served in the formal courts.

Social media and judging: Lived realities of a Kenyan woman

#When a woman goes to report some of these cases, she is told “Hii ni mambo ya nyumbani” [*these are family matters*]

#And here you talk of due process ... In Kenya, all that matters is the judge. Why hire a lawyer when you can buy the judge

The data from the femicide awareness platform *Counting Dead Women Kenya* paint a gloomy picture of the status of femicides in Kenya. Their report shows that 46 women were victims of femicide between January and May 2019. By November 16, this figure had risen to 82 cases of reported femicide (Mutune, 2019). Another strand of data from the *Open Africa* report on “Femicides in Kenya” shows that 84 women were murdered between January and October 2019 by their boyfriends and/or husbands (Odhiambo, 2018). The report indicates that Kenya is among the countries with the highest numbers of female homicides and abuse against women. For example, 38.5% of girls and women in Kenya aged 15 to 49 have experienced physical violence at least once in their lifetime, and 24% of these women experienced physical violence in 2018 alone (Mutune, 2019). This is despite having many laws in the country that aim to protect women from all kinds of harm.

In Table 5.1, I describe three particular cases that were discussed in the three hashtags, whether they went to court or not, and the outcome of the prosecution (convicted, acquitted, or otherwise).

It is noteworthy that before social media, many similar cases would take place, and even the police would not be informed (Chepkwony, 2016, p.12). It could be reported to the village head, then the chief, a process that could take weeks. In most cases, the village head would revert the case to the family (in case of battery) or the clan (in case of death) (Okoth-Ogendo, 1979; International Development

Table 5.1 Legal status of cases discussed in social media

<i>Prosecution</i>			
<i>Cases</i>	<i>Conviction</i>	<i>Acquitted</i>	<i>Other</i>
Julius Nzomo Daudi against The Republic of Kenya (August 2018)	Convicted: Serving 12-year jail term		
Governor Zackary Okoth Obado against The Republic of Kenya (murder of Sharon Otieno) (Sept. 2018)			released on a Ksh5 million cash bail.
Naftali Kinuthia against the Republic of Kenya (murder of Ivy Wangechi) (April 2019)			bond denied on 17th day of June 2019 Could not start on March 6, 2020 as planned.

Source: Kenya Law Cases Database, 2020

Law Organization, 2020). However, due to social media, and through online activism, it took a few hours before the three cases in Table 5.1 were brought to the public. The mainstream media, the Director of Public Prosecution (DPP), the Inspector General's office, and all citizens were involved in the conversation. Hinging my discussion on the online conversations on the three cases presented in Table 5.1, I argue that the swift action of the arrest of the accused persons was engineered by social media. The discussion they led online approached the cases from all possible angles, interpreting the applicable laws and pointing out the potential loopholes. These conversations enlighten the public and educate women on the possible laws they can use to seek justice. This later function confirms the points made by judges F, G, and I (see the next section in this chapter) that one impediment of women's access to justice was a lack of information about the available laws that protect them.

Although there were many femicide cases in Kenya before social media, a paltry number of perpetrators were punished (Brown, 2020). For instance, if it were not for social media, the likes of Julius Nzomo, Zachari Obado, and Naftali Kinuthia would probably remain unprosecuted. Nzomo was captured on camera beating his wife Mwende unconscious. Images of the unconscious Mwende surfaced online, and this prompted the DPP to swing into action. Consequently, Nzomo, the perpetrator, was arrested, charged, and arraigned before court. He was convicted to serve 12 years' imprisonment.⁸

The hashtags #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow draw national attention to the violence and killings against women by amplifying the plight of Kenyan women. There follow samples of some of the online inter-lotutions, which I will interpret later alongside what the ten female judges said offline in the questionnaire I circulated:

- #Straight members of the societies do not want to hear the reasons these criminals had for carrying out these heinous acts, we demand **justice** for the families of the victims. It is their **right** #TotalShutdownKe #SayHerNameKE [1]
- #TotalShutdownKe #SayHerNameKE We are tired of being murdered. We can't even be safe in our own houses. We will not be silent anymore. Let's fight for our **right** to live. Let us rise and say [2]
- #NoToFemicide, #TotalShutDownKe Women's **rights** are fundamental **rights**. [3]
- #We salute all women & womxn for their bravery, determination and resolve; for breaking barriers and disrupting patriarchal spaces; for calling out **injustice** and demanding **transparency & accountability** among duty bearers; for their compassion & #SayHerNameKE #TotalShutDownKE [4]
- #I am marching because I want to change the narrative and stop normalizing violence against womxn. What we want **accountability** #TotalShutdownKe #SayHerNameKe [5]
- #Ivy's aunt is speaking, she wrote a paper on achieving **justice** for women and girls in Kenya, "I never expected that I would be living the story of my paper." #TotalShutdownKE #JusticeForIvy #SayHerName #HerLifeMatters [6]
- #Don't say "died" when you mean "murdered." People die from old age. Or from terminal diseases. But it's not plain old death to be hacked by a machete in the head. The passive voice invisibilises murderers and does little to give victims **justice**. #totalshutdownke #sayhername [7]
- #There should be a national inquiry to the killing of women, special courts to deal with SGBV issues, and the establishment of Gender Recovery Centers in all the 47 counties. We demand **accountability** #HerLifeMatters [8]
- #One of the family members speaking had just come from a funeral to bury their daughter. Truly, this is a national tragedy. People should not have to go through this and with nil **justice**. #HerLifeMatters [9]
- #The fact that #sexualviolence is being normalized is not only a grim representation of our realities but a serious injunction on what the Kenyan society is turning into. We demand state **accountability** for these violations. #HerLifeMatters [10]
- #@CSMargaretKobia and @Rachelshebesh will today join other women leaders at a vigil night at @uonbi from 4-9 pm to protest against the widespread killing of women and girls and appeal for **justice**. @FredMatiangi will also be in attendance. #HerLifeMatters [11]
- #Time has come for the government of #Kenya to live up to its obligations to protect, prevent against and punish perpetrators of #sexualviolence including femicide; and to collectively affirm the **rights** of women to self-determination and bodily autonomy. #HerLifeMatters [12]
- #HerLifeMatters, it is indeed a tragedy that lives are lost in the name of love. we are watching because we could be the next victim and demanding **justice** before it all gets out of hand! [13]
- #@CS Matiangi commits DCI effort and investment in tackling femicide, GBV, and reviving gender desks at police stations. Where are the commitment

- to paper and hard action? What are the timelines? We want to hold this to **account**. #HerLifeMatters #TotalShutdownKE [14]
- #WE DEMAND TO LIVE We demand for a police department that solely deals with violence, femicide and rape cases against women. We demand **accountability**. We demand **justice** #HerLifeMatters #EndFemicideNow @FeministsKE [15]
- #When a woman goes to report some of these cases, she is told “Hii ni mambo ya nyumbani” #EndFemicideNow #HerLifeMatters #KTNNewsCentre @Michellengele [16]
- #Are there adequate laws protecting women from gender-based violence? We **demand justice and accountability**. #HerLifeMatters [17]
- #We demand **accountability**. We want **justice**. There are more than enough laws that protect girls and women in Kenya, more than anywhere else in the world. Article 100 of the constitution is among them [18]
- “GBV has been shrouded in a conspiracy of silence, thus perpetuating impunity. We need to strategise on how we can make laws more impactful to the lives of people,”@Rachelshebeshe, @PSYGKenya #EndGBV #GBVConferenceKe #HerLifeMatters [19]
- #Proving Malice aforethought is essential in murder cases ... Now the narrative for the defense will be that Kinuthia had bought an Axe for his own use chopping firewood, and he visited Ivy, but a mob of irate guys thought they were thugs and beat them up. Kinuthia survived.

Ivy didn't ... So the prosecution will have to prove beyond reasonable doubt this was not the case ... it is a basic **right**. We want **justice**.

Remember the case of Matheri, Nyamwacha, all who had seemingly overwhelming evidence of murder ... they were never convicted of murder ... it all depends on the Judge. We demand **accountability** #kibetosh #HerLifeMatters [20]

- #Apart from proving malice aforethought or premeditation, the rest of your submission is hogwash or at best muguka wisdom. Court process is not a circus where accused have time to come up with tales. The two incoherent cases you quoted are not in any way related and their verdict was never acquittal. Proving criminal case is easier than acknowledged. We demand **accountability** is the key #Jalaal Kafkaesque kibetosh #HerLifeMatters [21]
- #Hahahahah ...yet the cop who followed and killed Ainamoi MP together with his Female Companion in 2008, who happened to be the cop's lover only got 10 years in a case that put current CJ into ridicule a accused of favouring the cop because he was came from his tribe. The cop has now finished his ten-year sentence and is most likely out. In the meantime, two innocent people died, and the family was left to lick their wounds. We demand **Accountability**. **Accountability** is the key to **justice**. As a Precedent [Precedent] ... what is the difference btwn that case and this one concerning Kinuthia ad Ivy.

Similarities. In both cases the victim was followed by her male lover.

Figure 5.1 Hashtag Courts

In both cases the culprit was well armed

In both cases the culprit traveled hundreds of Kilometers in pursuit of the victim who did not know she was being followed.

And here you talk of due process ... In Kenya, all that matters is the judge. Why hire a lawyer when you can buy the judge. @#kibetosh Jalaal Kafkaesque, #HerLifeMatters [22]

In these conversations, the word *justice* has been used 12 times in the 22 tweets. The word *right(s)* has been used 6 times and the word *accountability* 14 times. These three words are correlated. When the word *justice* is used, it is mostly introduced by the word *no/nil,-* or *demand*. This information is presented in Figure 5.1.

Some of the tweets have more reactions from the online publics, with 12 tweets (55%) interpreting applicable laws ([1], [2], [3], [4], [10], [11], [15], [18], [19], [20], [21], [22]), another 6 (27%) expressing disgust about the blindness of the Kenyan law on femicide cases ([10], [12], [15], [20], [21], [22]), one (5%) appealing for and 16 (73%) demanding action ([1], [4], [5], [8], [9], [10], [13], [14], [15], [17], [18], [20], [20], [21], [22]) against femicide and GBV cases. See Figure 5.2 for this information.

In Figure 5.2, 54% interpreted the Kenyan law, 27% expressed disgust about the opaqueness of the Kenyan law on femicide, 5% appealed for action, and 73% demanded justice and accountability. What becomes apparent is that the users of this platform make social media a site of engagement; a public platform where oppressive discourses can be contested and resisted. The result is a technoculture with a common purpose, demanding action. This technoculture is gender-inclusive, objective, and humane.

The aim of the hashtags is not only to honor femicide victims but also to use online activism to seek justice for women. For instance, in the first tweet in #TotalShutdownKE, Renoh Omollo said on the day of the protest on March 8, 2019, “there is a war against our bodies, there is a war against Kenyan womxn and together we are raising our voices to say no to this femicide and violence against womxn. No consequences befall these perpetrators. We note that violence

Figure 5.2 Hashtags Engaging the Law

against womxn has been normalized and, therefore, escalating because of the systemic power structures that favour men” (Feminist Collective, 2019). What can be seen from the tweet is the deliberate deletion of the vowel “e” in “women.” The word is deliberately changed to “womxn.” This refusal to be yoked together with the tormentor problematizes the general view in a patriarchal society; that women are appendages of men (daughter of so and so, wife of so and so, mother of so and so). This view can be seen through the rationalization that follows these murders, which as the women judges interviewed for this study suggested, affects the judgment that is meted out to the culprits in the formal court of law.

Perceptions of women judges

To supplement the data from Twitter, this study benefited from data collected using a questionnaire circulated and filled in by ten purposely sampled out female high court judges in Kenya. The study chose female judges due to their positionality and gender. Views from the ten judges are relatively representational. After the ten judges filed the questionnaires (typing their answers to the questions asked), I analyzed their responses and retyped them, following similarities and divergences in their responses. In this way, I was able to minimize unnecessary repetitions and redundancy. For anonymity, the judges are referred to as A, B, C, D, E, F, G, H, I, J.

The main question in the questionnaire was: does social media impact on justice in Kenya? The answer to this question was an affirmative yes: all ten judges agreed that social media can influence the outcome of court cases in Kenya. Seven out of the ten high court judges who answered the questionnaires said that one of the problems making femicide cases problematic to handle was the general public’s rationalization of crimes against women and girls. Quoting the Naftali Kinuthia case against the Republic (refer to Table 5.1), judges A, B, and D blamed societal normativity as an impediment to justice for women. However, the same judges strongly agreed that it is wrong for any man to harm a woman,

irrespective of the motivation, and any man who kills a woman for whatever reason deserves the full punishment provided by the law.

According to these judges, the public is always out to defend the perpetrator's action, even to the extent of working tirelessly to sanitize the killers. Others (mis) use the law to entrench male entitlement to the female body. The responses from judges A, B, and D were also noted in #HerLifeMatters and #EndFemicideNow, where approximately 5% of the tweets tried to sanitize Naftali Kinuthia as "a teetotaller who had never shown any sign of stress, a gentleman who was being misused by Ivy Wangechi, and a generous man who was always sending money to his cheating girlfriend." It is noteworthy that the use of the terms "teetotaller" and "gentleman" in the tweets contradicts research findings, which have noted that the risk of a woman being subject to GBV in Kenya "declines with the education level of her spouse but increases if her spouse has a history of alcohol abuse" (World Bank Group, 2018). This is because although the victim was highly educated, the perpetrator had no history of alcohol abuse.

It becomes clear that the use of the words "gentleman" and "teetotaller" serves to advance patriarchal interests in the case, as seen through the argument of the other 75% of the tweets, which contended that the problem with Naftali was his failure to stand rejection, a warped sense of male entitlement that can best be described as toxic masculinity. This latter group argued that the spirit of the law is very harsh on criminals like Kinuthia, men who justify murder or assault. Women are not and have never been chattels. Any man who harms a woman, irrespective of the motivation, deserves the full punishment provided by the law.

This latter group (75%) also blamed the law for being silent on issues of femicide. According to this group, by being silent on issues of GBV and femicide, the law itself was being toxic. Out of toxicity, the law becomes sensational and reactionary, and judgment is served overly from a patriarchal point of view aimed at disparaging the reputations of victims (Mutune, 2019). According to this toxic strand of the law, those killed by their husbands contributed to their murders by being involved intimately with other men apart from those that killed them, or by failing to reciprocate affection from their partners. Others, like Sharon Otieno, were being blamed for accepting monetary favors from the men who kill them. The killers are sanitized as men who had never shown any signs of "stress" or as men who could not bear "love gone sour" (Mutune, 2019).

One of the key demands for #TotalShutdownKE was that existing laws and action plans be reviewed to determine why they have failed to protect women from violence and murder. Approximately 30% of the tweets under this hashtag talked about the failure of Kenyan law to deal with this seemingly new occurrence in the Kenyan courts. This was also acceptable to three judges according to the way they answered the question of whether there was a possibility that laws can be misread to deny women justice. The judges, just like some of the tweets, discussed the failure of Kenyan laws to even define what constitutes femicide or what qualifies a case as femicide. There was agreement among the views of the female judges who filled in the questionnaire that social media, and especially these hashtags, amplified these femicide and GBV cases, a kind of activism that

positively influenced the nature of judgment meted out to the culpable culprits. These hashtags did this by letting the public know what was going on in the court of law, and what the Kenyan law said about cases of similar nature.

To the question of how the judges dealt with femicide cases that are brought before them, all the ten female judges who filled in the questionnaires for this study agreed that the law on femicide in Kenya is governed under the murder regime. There is no law that specifically provides for femicide. Femicide is treated like any other murder case despite its uniqueness. The fact that judicial officers also exercise discretion in sentencing opens a door for the judicial officers to deal with every femicide matter independently. This has thus produced mixed results for the sentencing of convicts. What these honorable judges seemed to suggest, and frown upon, is that there is no consistent legal jurisprudence in Kenya on femicide. The same sentiments were expressed in the hashtags #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow.

Online discussions on these platforms about the inadequacies of the Kenyan law to combat femicide and GBV cases corroborated the offline response from the ten female judges. From the analysis of the data collected, the study argues that although there is legislation that criminalizes gender-based violence and codifies the rights of people to live free of violence, social media plays an emblematic role by amplifying the relevant clauses. The related sanctions may serve a deterrence function. Legislation can also be receptive to victims by providing protection and access to support services. Social media, as can be noted from the foregoing, enhances other interventions designed to reduce GBV in low- and middle-income countries. To wit, researchers have identified strategies, including group training, social communications, community mobilization, and livelihood strategies, which help in addressing underlying risk factors for violence, including social norms regarding gender dynamics and the acceptability of violence (Arango et al., 2014).

The problem of non-prosecution of femicide and GBV cases in Kenya presents a conundrum—the paradox between the existence of laws, on the one hand, and the lack of prosecution of cases, on the other hand. The Kenyan government has performed relatively well in the enactment of laws, policies, and regulations on the response, prevention, and management of gender-based violence. The problem therefore lies with the lack of effective implementation of the law. For instance, Article 29 (c) of the Kenyan constitution provides that every person has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources. Besides, many laws have been enacted in Kenya to protect people from gender-based violence. These laws include The Protection against Domestic Violence Act 2005, 2015; The Sexual Offences Act 2003; The Matrimonial Property Act 2013; The Marriage Act 2014; and Penal Code Cap 63 (Revised Edition 2012).

Other national instruments include the Criminal Procedure Code (Revised Edition 2012), the Prohibition of Female Genital Mutilation Act (2011), and the National Gender and Equality Commission Act (2011). Article 2 (5 and 6) of the Constitution of Kenya provides that all international laws, treaties, and

conventions form part of Kenya's laws. Kenya has ratified several treaties that govern gender-based violence, including The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979; The Declaration on the Elimination of Violence Against Women (DEVAW), 1993; and The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (known as the Maputo Protocol), 2005. By Article 2 (5 and 6) of the Constitution of Kenya, upon domestic ratification, these international treaties became part of the laws of Kenya and are applicable within the domestic arena. Despite the many laws governing gender-based violence, there is a likelihood of judicial officers misdirecting themselves on the laws. This can be attributed to various factors such as little knowledge about their existence. Also, the enactment of the Acts has not been matched with adequate training and dissemination of the Acts to law enforcement officers and relevant justice system agents, such as prosecutors, who have the responsibility to bring the right charges to court.

Although the government has audited various laws and repealed discriminatory provisions, subsequent legislations have remained gender neutral in their language, thus making it difficult to deal with discrimination in situations where the law fails to categorize discrimination as an offense. Also, the co-existence of customary and religious laws that are not consistent with the legislative prohibitions could cloud the reasoning of judicial officers. The seemingly conflicting co-existence of customary, religious, and the formal Kenyan law was seriously critiqued in the hashtags #TotalShutDownKe, #HerLifeMatters, and #EndFemicideNow, especially in the cases of Winfred Mwendu, Sharon Otieno, and Ivy Wangechi. The agreement among the tweets was that by homogenizing these deaths, it watered down the motive behind the many killings.

It appears that formal courts have taken judicial notice of the fact that the home (private sphere) has now become an unsafe haven for women. Therefore, any sentences passed must reflect the fact that offenses of this nature have pricked the judicial conscience. However, the three hashtags disagreed and accused judges of doublespeak, inconsistency, and laziness. Courts dealing with the offense of murder are allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offense. In applying the law governing femicide, the courts are likely to exercise their discretion judiciously, although in some cases, the courts may be too lenient on the accused persons. When the court is lenient on the accused, what results is an injustice to the woman, the victim of the femicide, as was seen in the cases of Sharon Otieno and Ivy Wangechi.

Do you, the judges, accept social media evidence in court when determining femicide cases? Judges argued that in the normal course of life or business, most people are likely to use their mobile phones: taking pictures, sending or receiving text messages, accessing the internet to send or receive an email, record a video, play music, and/or send or receive instant message service. This data is more often than not shared on social media. The data can be produced as primary evidence by the person who shared the data on social media. Section 106B (4)(d)

of the Evidence Act provides for the admissibility of such evidence. Social media consequently becomes relevant in courts only where there is a person to authenticate the information shared on social media. This information is necessary, as it would help courts in decision-making.

Social media brings out femicide cases to the public. The unedited streams of videos that circulate present the event as it occurred with the unedited voices of the argument, if there was any. Here, the viewers become the jury, discussing the evidence produced and passing judgment. Of late, these discussions are specifically addressed to the necessary state apparatus like the DPP or the Inspector General of Police. The inclusion of social media in judging seems to have been brought forth by the continual instrumentalization of women's stories as part of the common public narrative in the formal courts. Additionally, social media strongly reflects underlying norms within Kenyan society. By sharing and calling for justice for the victims of GBV and femicide, social media persuades others to see the brunt of violence against women. Additionally, by sharing this information and discussing it, social media provides new information that influences individuals to accept it. Furthermore, it informs listeners about what others learn, thus facilitating coordination. This shows the shifting attitudes around GBV.

To this end, Winfred Mwendu and David Nzomo's case would serve as an example. The incident, which captures extreme levels of brutality against a seemingly defenseless wife, woke the silent social media.irate "netizens"⁹ took to Twitter under the tagline #ArrestNzomo to demand justice following the ruthless attack. The video that sparked outrage among members of the public caught the attention of the DPP. The streams of videos that circulated on social media with captions #ArrestNzomo, and his eventual arrest and speedy prosecution and sentencing to 12 years, shows the centrality of social media in search of justice for women.

As already argued, the Kenyan formal courts have used opaqueness of some laws to deny women justice. It is also important to note that the Kenyan courts have in the past used the *sub judice* rule to deter people from debating on issues of the public interest but which were yet to be determined. The repealed Constitution of Kenya in section 79 (2) secured the common law position on *sub judice*. In recent times, however, and especially in this era of technological advancement, it has become clear that information about trials can be shared via social media. The *sub judice* rule is no longer an automatic bar to public discussion on matters pending before the court in Kenya. However, under the Constitution of Kenya, 2010, any limitation on the freedom of expression guaranteed under Article 33 must be justified. It is, thus, no longer enough to front *sub judice* as an automatic bar to public discussion on matters pending before the court.

When interrogating what #HerLifeMatters and #EndFemicide discussions have achieved, one repeated point of discussion which Kenyans belabor concerns miscarriage of justice in the formal courts. It would seem that social media shines light on the miscarriage of justice. Social media can shine light when existing redress mechanisms are corrupt or opaque. One case in point in Kenya involved the rape and killing of Sharon Otieno. One of the accused persons was an influential, wealthy politician,

but because of the evidence provided in the social media, including recorded phone calls, the formal court had to detain the accused. However, the accused was later released on bail of 5 million Kenyan shillings.

In her incisive book *Digital Democracy, Analogue Politics: How the Internet Era Is Transforming Kenya*, Nanjala Nyabola explains how social media has “reinvigorated feminist discourse in Kenya.” Nyabola describes how social media had cultivated a movement with the hashtag #MyDressMyChoice to call out a series of attacks on women in November 2014. The #MyDressMyChoice movement was created on the Facebook page of Kilimani Moms, a coalition of mothers from Nairobi who called for protests to support the right of women to dress as they wish. Following these protests, the Kenyan judiciary started to prosecute those caught molesting women, which as Nyabola suggests, is “the first time there had been a prosecution for this kind of behavior in recent memory” (2018, p.127).

Social media can be used to curb femicide in Kenya. Femicide is the ultimate form of violence against women and girls, often taking various forms and linked to gender power imbalance and historic gender-discriminatory practices, norms, and beliefs. For a case to be considered femicide, there must be an implied intention to carry out the murder and a demonstrated connection between the crime and the female gender of the victim (Kumari, 2013; Laurent et al., 2013). Femicide and gender-based violence are increasing all over the world, and this is exacerbated by the current global pandemic. Failure to comprehensively address femicide will signal to abusers that these actions are acceptable. The judiciary has a role in sending a signal that perpetrators will be punished for violating the fundamental human right to life of their victims.

Conclusion

To conclude this chapter, I briefly mention a subject elided in the argument so far—the downside of femicide and GBV cases playing out entirely on social media. Often, when this happens, there is the possible trolling of the survivors by supporters of the accused. This trolling may cause more harm to the victims. Therefore, as we embrace the changes brought about by online activism, we should also consider the impact of the “cancel culture” on both the accusers and the accused. However, through careful analysis, the chapter has established that social media in Kenya provides a powerful platform for the articulation of formally silenced voices, and therefore, its use has more advantages than its drawbacks. Indeed, it is helping victims get justice, because courts can no longer ignore these hashtags and also, judges are using social media artifacts to strengthen the evidence used to prosecute cases.

Judges can help in two ways. The first is through judicial support of social media evidence guided by acceptable legal norms, which will enable them to administer justice. The second is creating awareness about the legal implications of using social media wrongly. Through judicial activism, judges should participate in sensitization and creating awareness among the masses and disseminate existing norms on the rights of women and girls.

This chapter has shown that social media provides an alternative judicial forum that enables crafting an informed definition of femicide and its weight; it shines light on the miscarriage of justice in the judicial system through corruption and opaqueness of the Kenyan law on issues of femicide. Social media is feminized; both men and women are involved; the war against femicide involves both men and women in the social media; this is important, because the boy child also has to be emancipated to know that his sister, mother, and the child must also be respected. Through social media, WE CAN ALL BE FEMINISTS!

Notes

- 1 The term 'femicide' is used in this study to denote the killing of women because of their gender. In this sense, femicide is understood to be motivated by misogyny and prejudice against women. For a case to be considered femicide there must be an implied intention to carry out the crime and a demonstrated connection between the crime and the gender of the victim.
- 2 Here the term social media will be applied to describe the various forms of media content that are publicly available and created by end-users. Social Media is a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of User Generated Content.
- 3 This includes Radio and Television
- 4 Many femicide and GBV cases are perpetrated in the confines of the family/ home, by a close family member or a person known to the family. In most cases, these cases are left to be handled by the family, in a private arbitration or informal courts. In almost all cases, the girl/ woman cannot get justice because the family, the customary courts are punitively patriarchal. The figure of the father is the law by itself.
- 5 Watchman here refers to the formal Kenyan courts. Their mandate is to protect people from all sorts of violations, violence or any sort of harm.
- 6 Clark (2015) uses this phrase to stand for the photos, memes, quoted sayings, and original or curated commentary that is shared on social media. What is important is not just the photo, meme, or the quote itself; the item gains meaning because it was shared by someone known to the recipient. These artifacts therefore become imbued with meanings that are understood as actively lived and felt, yet are meanings that have not gained full expression but may lead to new starting points and new conclusions.
- 7 The sub judice rule is a common law principle that generally prohibits public discussion on matters pending before the court. It is a principle used in cases where there was genuine fear that lay jury members would be swayed by public opinion.
- 8 Kenya Law Cases Database, HCCRA NO.78 OF 2019; Julius Nzomo Daudi v Republic [2019] eKLR
- 9 A term coined in a 1992 by Michael Hauben to describe a person actively involved in online communities or the Internet in general.

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